ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

Page Number

SPECIAL NOTICE AND TABLE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VIII pertaining to transitioning existing sales finance company licenses to the Nationwide Multistate Licensing System and use of the system for all future licensing	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 10, 2014, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to banking@mt.gov.

3. The department intends to apply these rules retroactively to July 1, 2014. A retroactive application of the proposed rules does not negatively affect any involved party. The department participated in a group of states that started transitioning licensees onto the Nationwide Multistate Licensing System (NMLS) on July 1, 2014. As of that date, the licensees were allowed to request transition of their existing paper licenses to the NMLS.

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

NEW RULE I ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) NMLS company form dated March 31, 2014;

(b) NMLS branch form dated March 31, 2014; and

(c) NMLS individual form dated April 16, 2012.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana sales finance company transition checklist dated May 21, 2014;

(b) Montana sales finance company new application checklist dated June 2, 2014;

(c) Montana sales finance company amendment checklist dated June 2, 2014;

(d) Montana sales finance company surrender checklist dated May 21, 2014;

(e) Montana sales finance company branch transition checklist dated July 11, 2014;

(f) Montana sales finance company branch new application checklist dated July 11, 2014;

(g) Montana sales finance company branch amendment checklist dated June 2, 2014; and

(h) Montana sales finance company branch surrender checklist dated June 2, 2014.

(3) For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(4) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for a sales finance company license and for renewal of that license are aware of and use the NMLS standardized forms and submit them electronically through the NMLS. The NMLS forms are standardized for all license types. One company form exists that all companies use, regardless of the type of license they seek. This is intended to streamline the licensing process for a company that engages in a business that may require more than one license. The company fills out one form and checks the boxes to indicate the business or businesses in which they engage. The company selects the states in which it intends to do business. The application is automatically transmitted to the appropriate jurisdiction(s) in which the company seeks a license. The company can then be licensed by each state under one or more license types using the same application form.

The rule is necessary since the only way to get licensed in the NMLS is to use the proper form to accomplish what the licensee seeks. By this rule the department adopts the various licensing forms that exist in the NMLS and the NMLS policy guidebook. The policy guidebook sets forth the meaning of terms used in the NMLS applications and gives guidance on how to complete the various uniform forms.

NEW RULE II TRANSITION (1) Each licensee holding a Montana sales finance company license shall properly complete and submit a transition request through the NMLS by September 30, 2014. The transition request may be made beginning July 1, 2014. There is no fee for a transition request.

AUTH: 31-1-221, 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: The department has determined that the NMLS allows a more efficient and streamlined process than the department's current paper licensing process because all information is entered and stored electronically. The applicant inputs the application into the system on standardized forms. The applicant checks a box for each state to which the applicant is submitting an application. The NMLS notifies each state to which an application has been submitted.

Department licensing personnel may access and review the application as well as communicate with the applicant through the system, if necessary. If the department determines the application is complete and the requirements of licensure have been met, it may grant a license through the NMLS. As soon as the license is issued electronically, it becomes publicly available through NMLS Consumer Access. NMLS Consumer Access is routinely used by the public and secondary market businesses to ensure the company they are dealing with is properly licensed.

The NMLS is a real-time system of record. As soon as a change is made, it is reflected in the system. It retains every change made in the system, as well as the time and date of every change. The system assigns a unique identifier number to each individual or business that applies for a license. The unique identifier number never changes. The individual or entity can leave the industry for years, switch business types, change addresses, and reappear years later, but the unique identifier number will remain the same and all their prior data will remain in the system. This makes the system an efficient and effective licensing tool for states and lessens the regulatory burden on individuals and companies.

All transition requests must be made by September 30, 2014. The department chose this date for two reasons: it gives licensees ample time to transition and it is one month before renewal begins. The renewal period in NMLS begins on November 1. Each license expires on December 31. The license must be renewed before December 31 to ensure the licensee can continue legally doing business.

To renew a license, it must exist in the NMLS. The one-month period between the close of transition and the beginning of renewal allows the department to process all transition requests, follow up on any stragglers, and ensure the transition process is complete before renewal starts.

The department anticipates that there will be no fiscal impact. There is no NMLS fee or department fee for transition. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 115 sales finance companies licensed in Montana.

NEW RULE III LICENSE RENEWALS (1) The renewal period begins November 1. Every renewal applicant shall apply for renewal through the NMLS. Licensees shall use the NMLS renewal process to request renewal of their license.

(2) Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 31-1-221, 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule III is necessary because the NMLS renewal period begins on November 1 and ends on December 31 of each year. To allow the department sufficient time to process the applications before they expire on December 31, the department must receive the completed renewal request by December 1. The department processed 1,845 renewal applications for mortgage licensees alone last year. This year the department will have approximately the same number of mortgage renewal applications, plus 115 sales finance company license renewals, 55 consumer loan license renewals, and 11 escrow business license renewals. Since the department will be processing over 2,000 license renewals, the department must receive the completed renewal application by December 1 to ensure the license will be issued by December 31 to qualified applicants so that they may continue in business as of January 1.

Section (3) is necessary to ensure that licensees understand the license expires on December 31. If the license is not renewed before that date, the license expires. As of January 1, the former licensee is unlicensed and cannot conduct any business in Montana until they are properly licensed.

NEW RULE IV INITIAL LICENSE APPLICATION THROUGH NMLS (1) An applicant for a license shall submit an application for license through the NMLS. The applicant shall use the NMLS forms for requesting a license as a sales finance company.

AUTH: 31-1-221, 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule IV is necessary because in the future all license applications must be submitted, processed, and issued through the NMLS. Beginning July 1, 2014, paper applications for a license are not accepted by the department. To be licensed through the NMLS, an applicant must select and use the appropriate form in the NMLS system to request licensure. It is essential that applicants are aware of these requirements.

NEW RULE V AMENDMENTS (1) An applicant or licensee needing to amend the information in NMLS shall follow the NMLS procedure and use NMLS forms to submit the amendment.

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments through the NMLS are submitted electronically. The department no longer accepts paper amendments. Amendments can only be made electronically through the NMLS. The amendments are automatically transmitted to the proper state regulator who then reviews the proposed amendment for completeness and determines whether the amendment will be approved. If the amendment is approved, the electronic record is amended on the system and the new information shows as current.

NEW RULE VI LICENSE SURRENDER (1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to set forth the procedure for an offer of surrender of a license. Since the license that the licensee wishes to surrender exists in electronic form on the NMLS, the only way to surrender the license is to submit a surrender request to the department through the NMLS. The department will no longer accept paper requests to surrender a license. If the department accepts the surrender of the license, it will change the status of the license to "terminated-surrendered/cancelled" on the NMLS.

NEW RULE VII FEES (1) All fees must be paid through the NMLS.

AUTH: 31-1-223, MCA
IMP: 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: Since the department is transitioning to the electronic licensing and renewal platform of the NMLS, all fees must be paid through the NMLS. This includes fees for initial applications and renewals of licenses. Fees will not be directly collected by the department.

NEW RULE VIII REINSTATEMENT OF EXPIRED LICENSES (1) Upon expiration of a license issued under 31-1-221, MCA, due to nonrenewal by the renewal date, the former licensee shall immediately cease from engaging in the activities for which the license was issued. The department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted through the NMLS:

(a) a properly completed license renewal application;

(b) the license renewal fee as set forth in 31-1-221, MCA;

(c) a reinstatement fee of $50; and

(d) proof that the licensee continues to meet standards for licensure under 31-1-222, MCA.

(2) An expired license that is not reinstated by the last day of February under (1) is "terminated-expired" and may not be reinstated. The holder of a "terminated-expired" license may reapply as a new license applicant.

AUTH: 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS allows persons whose licenses expired on December 31 to reinstate their licenses if they apply within the reinstatement period which runs from January 1 to the last day of February. If the license is not renewed during the reinstatement period, the former licensee must reapply as a new applicant. During the reinstatement period, the applicant must file for reinstatement, pay the renewal fee and the reinstatement fee, and show that it still meets the standards for licensure. The properly completed license renewal form is required by the NMLS. The license renewal fee is set forth in 31-1-221, MCA, and is required by statute for all renewals. The reinstatement is one-half the renewal fee and is being set at this amount by the department to discourage missing the renewal deadline. If an applicant misses the reinstatement deadline as well, they must apply as a new licensee and pay the full new application fee which is the same as the renewal fee.

The department cannot predict with any certainty how many entities will avail themselves of the reinstatement period. This is a new option being provided to them. The department estimates that, at most, less than five entities will miss the renewal deadline and choose to reinstate their license, resulting in total fees of $250 or less.

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 4, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., September 4, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 11 persons based on the 115 current sales finance companies licensed.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/AdministrativeRules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative J.P. Pomnichowski, the primary bill sponsor of HB 63 (2013), was notified on July 11, 2014, that the department was beginning to draft rules on the subject by U.S. mail at the address for her on the Secretary of State's register of legislator contact information and her comments were invited. None were received.

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VIII pertaining to transitioning existing consumer loan company licenses to the Nationwide Multistate Licensing System and use of the system for all future licensing	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 10, 2014, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to banking@mt.gov.

3. The department intends to apply these rules retroactively to July 1, 2014. A retroactive application of the proposed rules does not negatively affect any involved party. The department participated in a group of states that started transitioning licensees onto the Nationwide Multistate Licensing System (NMLS) on July 1, 2014. As of that date, the licensees were allowed to request transition of their existing paper licenses to the NMLS.

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

NEW RULE I ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) NMLS company form dated March 31, 2014;

(b) NMLS branch form dated March 31, 2014; and

(c) NMLS individual form dated April 16, 2012.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana consumer loan license transition checklist dated June 3, 2014;

(b) Montana consumer loan license new application checklist dated June 3, 2014;

(c) Montana consumer loan license amendment checklist dated June 2, 2014;

(d) Montana consumer loan license surrender checklist dated May 21, 2014;

(e) Montana consumer loan branch transition checklist dated June 2, 2014;

(f) Montana consumer loan branch new application checklist dated June 2, 2014;

(g) Montana consumer loan branch amendment checklist dated June 2, 2014; and

(h) Montana consumer loan branch surrender checklist dated June 2, 2014.

(3) For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(4) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: 32-5-201, 32-5-209, MCA
IMP: 32-5-201, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for a consumer loan company license and for renewal of that license are aware of and use the NMLS standardized forms and submit them electronically through the NMLS. The NMLS forms are standardized for all license types. One company form exists that all companies use, regardless of the type of license they seek. This is intended to streamline the licensing process for a company that engages in a business that may require more than one license. The company fills out one form and checks the boxes to indicate the business or businesses in which they engage. The company selects the states in which it intends to do business. The application is automatically transmitted to the appropriate jurisdiction(s) in which the company seeks a license. The company can then be licensed by each state under one or more license types using the same application form.

The rule is necessary since the only way to get licensed in the NMLS is to use the proper form to accomplish what the licensee seeks. By this rule the department adopts the various licensing forms that exist in the NMLS and the NMLS policy guidebook. The policy guidebook sets forth the meaning of terms used in the NMLS applications and gives guidance on how to complete the various uniform forms.

NEW RULE II TRANSITION (1) Each licensee holding a Montana consumer loan company license shall properly complete and submit a transition request through the NMLS by September 30, 2014. The transition request may be made beginning July 1, 2014. There is no fee for a transition request.

AUTH: 32-5-209, MCA

IMP: 32-5-201, 32-5-201, MCA

STATEMENT OF REASONABLE NECESSITY: The department has determined that the NMLS allows a more efficient and streamlined process than the department's current paper licensing process because all information is entered and stored electronically. The applicant inputs the application into the system on standardized forms. The applicant checks a box for each state to which the applicant is submitting an application. The NMLS notifies each state to which an application has been submitted.

Department licensing personnel may access and review the application as well as communicate with the applicant through the system, if necessary. If the department determines the application is complete and the requirements of licensure have been met, it may grant a license through the NMLS. As soon as the license is issued electronically, it becomes publicly available through NMLS Consumer Access. NMLS Consumer Access is routinely used by the public and secondary market businesses to ensure the company they are dealing with is properly licensed.

The NMLS is a real-time system of record. As soon as a change is made, it is reflected in the system. It retains every change made in the system, as well as the time and date of every change. The system assigns a unique identifier number to each individual or business that applies for a license. The unique identifier number never changes. The individual or entity can leave the industry for years, switch business types, change addresses, and reappear years later, but the unique identifier number will remain the same and all their prior data will remain in the system. This makes the system an efficient and effective licensing tool for states and lessens the regulatory burden on individuals and companies.

All transition requests must be made by September 30, 2014. The department chose this date for two reasons: it gives licensees ample time to transition and it is one month before renewal begins. The renewal period in NMLS begins on November 1. Each license expires on December 31. The license must be renewed before December 31 to ensure the licensee can continue legally doing business.

To renew a license, it must exist in the NMLS. The one-month period between the close of transition and the beginning of renewal allows the department to process all transition requests, follow up on any stragglers, and ensure the transition process is complete before renewal starts.

The department anticipates that there will be no fiscal impact. There is no NMLS fee or department fee for transition. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 55 consumer loan companies licensed in Montana.

NEW RULE III LICENSE RENEWALS (1) The renewal period begins November 1. Every renewal applicant shall apply for renewal through the NMLS. Licensees shall use the NMLS renewal process to request renewal of their license.

(2) Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 32-5-209, MCA
IMP: 32-5-201, 32-5-201, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule III is necessary because the NMLS renewal period begins on November 1 and ends on December 31 of each year. To allow the department sufficient time to process the applications before they expire on December 31, the department must receive the completed renewal request by December 1. The department processed 1,845 renewal applications for mortgage licensees alone last year. This year the department will have approximately the same number of mortgage renewal applications, plus 115 sales finance company license renewals, 55 consumer loan license renewals, and 11 escrow business license renewals. Since the department will be processing over 2,000 license renewals, the department must receive the completed renewal application by December 1 to ensure the license will be issued by December 31 to qualified applicants so that they may continue in business as of January 1.

Section (3) is necessary to ensure that licensees understand the license expires on December 31. If the license is not renewed before that date, the license expires. As of January 1, the former licensee is unlicensed and cannot conduct any business in Montana until they are properly licensed.

NEW RULE IV INITIAL LICENSE APPLICATION THROUGH NMLS (1) An applicant for a license shall submit an application for license through the NMLS. The applicant shall use the NMLS forms for requesting a license as a consumer loan company.

AUTH: 32-5-201, 32-5-209, MCA
IMP: 32-5-201, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule IV is necessary because in the future all license applications must be submitted, processed, and issued through the NMLS. Beginning July 1, 2014, paper applications for a license are not accepted by the department. To be licensed through the NMLS, an applicant must select and use the appropriate form in the NMLS system to request licensure. It is essential that applicants are aware of these requirements.

NEW RULE V AMENDMENTS (1) An applicant or licensee needing to amend the information in NMLS shall follow the NMLS procedure and use NMLS forms to submit the amendment.

AUTH: 32-5-209, MCA
IMP: 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments through the NMLS are submitted electronically. The department no longer accepts paper

amendments. Amendments can only be made electronically through the NMLS. The amendments are automatically transmitted to the proper state regulator who then reviews the proposed amendment for completeness and determines whether the amendment will be approved. If the amendment is approved, the electronic record is amended on the system and the new information shows as current.

NEW RULE VI LICENSE SURRENDER (1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.

AUTH: 32-5-205, 32-5-209, MCA
IMP: 32-5-205, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to set forth the procedure for an offer of surrender of a license. Since the license that the licensee wishes to surrender exists in electronic form on the NMLS, the only way to surrender the license is to submit a surrender request to the department through the NMLS. The department will no longer accept paper requests to surrender a license. If the department accepts the surrender of the license, it will change the status of the license to "terminated-surrendered/cancelled" on the NMLS.

NEW RULE VII FEES (1) All fees must be paid through the NMLS.

AUTH: 32-5-201, 32-5-209, MCA
IMP: 32-5-201, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: Since the department is transitioning to the electronic licensing and renewal platform of the NMLS, all fees must be paid through the NMLS. This includes fees for initial applications and renewals of licenses. Fees will not be directly collected by the department.

NEW RULE VIII REINSTATEMENT OF EXPIRED LICENSES (1) Upon expiration of a license issued under 32-5-201, MCA, due to nonrenewal by the renewal date, the former licensee shall immediately cease from engaging in the activities for which the license was issued. The department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted through the NMLS:

(a) a properly completed license renewal application;

(b) the license renewal fee as set forth in 32-5-201, MCA;

(c) a reinstatement fee of $250; and

(d) proof that the licensee continues to meet standards for licensure under 32-5-202, MCA.

(2) An expired license that is not reinstated by the last day of February under (1) is "terminated-expired" and may not be reinstated. The holder of a "terminated-expired" license may reapply as a new license applicant.

AUTH: 32-5-201, 32-5-202, 32-5-209, MCA
IMP: 32-5-201, 32-5-202, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS allows persons whose licenses expired on December 31 to reinstate their licenses if they apply within the reinstatement period which runs from January 1 to the last day of February. If the license is not renewed during the reinstatement period, the former licensee must reapply as a new applicant. During the reinstatement period, the applicant must file for reinstatement, pay the renewal fee and the reinstatement fee, and show that it still meets the standards for licensure. The properly completed license renewal form is required by the NMLS. The license renewal fee is set forth in 32-5-201, MCA, and is required by statute for all renewals. The reinstatement is one-half the renewal fee and is being set at this amount by the department to discourage missing the renewal deadline. If an applicant misses the reinstatement deadline as well, they must apply as a new licensee and pay the full new application fee which is the same as the renewal fee.

The department cannot predict with any certainty how many entities will avail themselves of the reinstatement period. This is a new option being provided to them. The department estimates that, at most, less than five entities will miss the renewal deadline and choose to reinstate their license, resulting in total fees of $1,250 or less.

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 4, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., September 4, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 persons based on the 55 current consumer loan companies licensed.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/AdministrativeRules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises

all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative J.P. Pomnichowski, the primary bill sponsor of HB 65 (2013), was notified on July 11, 2014, that the department was beginning to draft rules on the subject by U.S. mail at the address for her on the Secretary of State's register of legislator contact information and her comments were invited. None were received.

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VIII pertaining to transitioning existing escrow business company licenses to the Nationwide Multistate Licensing System and use of the system for all future licensing	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 10, 2014, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to banking@mt.gov.

3. The department intends to apply these rules retroactively to July 1, 2014. A retroactive application of the proposed rules does not negatively affect any involved party. The department participated in a group of states that started transitioning licensees onto the Nationwide Multistate Licensing System (NMLS) on July 1, 2014. As of that date, the licensees were allowed to request transition of their existing paper licenses to the NMLS.

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

NEW RULE I ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) NMLS company form dated March 31, 2014;

(b) NMLS branch form dated March 31, 2014; and

(c) NMLS individual form dated April 16, 2012.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana escrow business company transition checklist dated May 21, 2014;

(b) Montana escrow business company new application checklist dated June 2, 2014;

(c) Montana escrow business company amendment checklist dated June 2, 2014; and

(d) Montana escrow business company surrender checklist dated May 21, 2014.

(3) For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(4) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for an escrow business company license and for renewal of that license are aware of and use the NMLS standardized forms and submit them electronically through the NMLS. The NMLS forms are standardized for all license types. One company form exists that all companies use, regardless of the type of license they seek. This is intended to streamline the licensing process for a company that engages in a business that may require more than one license. The company fills out one form and checks the boxes to indicate the business or businesses in which they engage. The company selects the states in which it intends to do business. The application is automatically transmitted to the appropriate jurisdiction(s) in which the company seeks a license. The company can then be licensed by each state under one or more license types using the same application form.

The rule is necessary since the only way to get licensed in the NMLS is to use the proper form to accomplish what the licensee seeks. By this rule the department adopts the various licensing forms that exist in the NMLS and the NMLS policy guidebook. The policy guidebook sets forth the meaning of terms used in the NMLS applications and gives guidance on how to complete the various uniform forms.

NEW RULE II TRANSITION (1) Each licensee holding a Montana escrow business company license shall properly complete and submit a transition request through the NMLS by September 30, 2014. The transition request may be made beginning July 1, 2014. There is no fee for a transition request.

AUTH: 32-7-109, 32-7-112 MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The department has determined that the NMLS allows a more efficient and streamlined process than the department's current paper licensing process because all information is entered and stored electronically. The applicant inputs the application into the system on standardized forms. The applicant checks a box for each state to which the applicant is submitting an application. The NMLS notifies each state to which an application has been submitted.

Department licensing personnel may access and review the application as well as communicate with the applicant through the system, if necessary. If the department determines the application is complete and the requirements of licensure have been met, it may grant a license through the NMLS. As soon as the license is issued electronically, it becomes publicly available through NMLS Consumer Access. NMLS Consumer Access is routinely used by the public and secondary market businesses to ensure the company they are dealing with is properly licensed.

The NMLS is a real-time system of record. As soon as a change is made, it is reflected in the system. It retains every change made in the system, as well as the time and date of every change. The system assigns a unique identifier number to each individual or business that applies for a license. The unique identifier number never changes. The individual or entity can leave the industry for years, switch business types, change addresses, and reappear years later, but the unique identifier number will remain the same and all their prior data will remain in the system. This makes the system an efficient and effective licensing tool for states and lessens the regulatory burden on individuals and companies.

All transition requests must be made by September 30, 2014. The department chose this date for two reasons: it gives licensees ample time to transition and it is one month before renewal begins. The renewal period in NMLS begins on November 1. Each license expires on December 31. The license must be renewed before December 31 to ensure the licensee can continue legally doing business.

To renew a license, it must exist in the NMLS. The one-month period between the close of transition and the beginning of renewal allows the department to process all transition requests, follow up on any stragglers, and ensure the transition process is complete before renewal starts.

The department anticipates that there will be no fiscal impact. There is no NMLS fee or department fee for transition. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 11 escrow business companies licensed in Montana.

NEW RULE III LICENSE RENEWALS (1) The renewal period begins November 1. Every renewal applicant shall apply for renewal through the NMLS. Licensees shall use the NMLS renewal process to request renewal of their license.

(2) Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 32-7-109, 32-7-110, 32-7-112, MCA
IMP: 32-7-109, 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule III is necessary because the NMLS renewal period begins on November 1 and ends on December 31 of each year. To allow the department sufficient time to process the applications before they expire on December 31, the department must receive the completed renewal request by December 1. The department processed 1,845 renewal applications for mortgage licensees alone last year. This year the department will have approximately the same number of mortgage renewal applications, plus 115 sales finance company license renewals, 55 consumer loan license renewals, and 11 escrow business license renewals. Since the department will be processing over 2,000 license renewals, the department must receive the completed renewal application by December 1 to ensure the license will be issued by December 31 to qualified applicants so that they may continue in business as of January 1.

Section (3) is necessary to ensure that licensees understand the license expires on December 31. If the license is not renewed before that date, the license expires. As of January 1, the former licensee is unlicensed and cannot conduct any business in Montana until they are properly licensed.

NEW RULE IV INITIAL LICENSE APPLICATION THROUGH NMLS (1) An applicant for a license shall submit an application for license through the NMLS. The applicant shall use the NMLS forms for requesting a license as an escrow business company.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule IV is necessary because in the future all license applications must be submitted, processed, and issued through the NMLS. Beginning July 1, 2014, paper applications for a license are not accepted by the department. To be licensed through the NMLS, an applicant must select and use the appropriate form in the NMLS system to request licensure. It is essential that applicants are aware of these requirements.

NEW RULE V AMENDMENTS (1) An applicant or licensee needing to amend the information in NMLS shall follow the NMLS procedure and use NMLS forms to submit the amendment.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments through the NMLS are submitted electronically. The department no longer accepts paper amendments. Amendments can only be made electronically through the NMLS. The amendments are automatically transmitted to the proper state regulator who then reviews the proposed amendment for completeness and determines whether

the amendment will be approved. If the amendment is approved, the electronic record is amended on the system and the new information shows as current.

NEW RULE VI LICENSE SURRENDER (1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.

AUTH: 32-7-112, MCA
IMP: 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to set forth the procedure for an offer of surrender of a license. Since the license that the licensee wishes to surrender exists in electronic form on the NMLS, the only way to surrender the license is to submit a surrender request to the department through the NMLS. The department will no longer accept paper requests to surrender a license. If the department accepts the surrender of the license, it will change the status of the license to "terminated-surrendered/cancelled" on the NMLS.

NEW RULE VII FEES (1) All fees must be paid through the NMLS.

AUTH: 32-7-110, 32-7-112, MCA
IMP: 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: Since the department is transitioning to the electronic licensing and renewal platform of the NMLS, all fees must be paid through the NMLS. This includes fees for initial applications and renewals of licenses. Fees will not be directly collected by the department.

NEW RULE VIII REINSTATEMENT OF EXPIRED LICENSES (1) Upon expiration of a license issued under 32-7-110, MCA, due to nonrenewal by the renewal date, the former licensee shall immediately cease from engaging in the activities for which the license was issued. The department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted through the NMLS:

(a) a properly completed license renewal application;

(b) the license renewal fee as set forth in 32-7-110, MCA;

(c) a reinstatement fee of $50; and

(d) proof that the licensee continues to meet standards for licensure under 32-7-109, MCA.

(2) An expired license that is not reinstated by the last day of February under (1) is "terminated-expired" and may not be reinstated. The holder of a "terminated-expired" license may reapply as a new license applicant.

AUTH: 32-7-109, 32-7-110, 32-7-112, MCA
IMP: 32-7-109, 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS allows persons whose licenses expired on December 31 to reinstate their licenses if they apply within the reinstatement period which runs from January 1 to the last day of February. If the license is not renewed during the reinstatement period, the former licensee must reapply as a new applicant. During the reinstatement period, the applicant must file for reinstatement, pay the renewal fee and the reinstatement fee, and show that it still meets the standards for licensure. The properly completed license renewal form is required by the NMLS. The license renewal fee is set forth in 32-7-110, MCA, and is required by statute for all renewals. The reinstatement is one-half the renewal fee and is being set at this amount by the department to discourage missing the renewal deadline. If an applicant misses the reinstatement deadline as well, they must apply as a new licensee and pay the full new application fee which is the same as the renewal fee.

The department cannot predict with any certainty how many entities will avail themselves of the reinstatement period. This is a new option being provided to them. The department estimates that, at most, less than five entities will miss the renewal deadline and choose to reinstate their license, resulting in total fees of $250 or less.

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 4, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., September 4, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1 person based on the 11 current escrow business companies licensed.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/AdministrativeRules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site

accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Jenny Eck, the primary bill sponsor of HB 117 (2013), was notified on July 11, 2014, that the department was beginning to draft rules on the subject by U.S. mail at the address for her on the Secretary of State's register of legislator contact information and her comments were invited. None were received.

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VII pertaining to requiring deferred deposit loan applicants to use the Nationwide Multistate Licensing System for all future licensing	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 10, 2014, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to banking@mt.gov.

3. The department intends to apply these rules retroactively to July 1, 2014. A retroactive application of the proposed rules does not negatively affect any involved party. The department participated in a group of states that started transitioning licensees onto the Nationwide Multistate Licensing System (NMLS) on July 1, 2014. As of that date, the licensees were allowed to request transition of their existing paper licenses to the NMLS.

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

NEW RULE I ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) NMLS company form dated March 31, 2014;

(b) NMLS branch form dated March 31, 2014; and

(c) NMLS individual form dated April 16, 2012.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana deferred deposit lender new application checklist dated June 2, 2014;

(b) Montana deferred deposit lender amendment checklist dated June 2, 2014;

(c) Montana deferred deposit lender surrender checklist dated May 21, 2014;

(d) Montana deferred deposit lender branch new application checklist dated July 11, 2014;

(e) Montana deferred deposit branch amendment checklist dated June 2, 2014; and

(f) Montana deferred deposit branch surrender checklist dated June 2, 2014.

(3) For renewal, companies, branches, and individuals must go to the NMLS home page (http://mortgage.nationwidelicensingsystem.org) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(4) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: 31-1-705, 31-1-710, MCA
IMP: 31-1-705, 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for a deferred deposit loan license and for renewal of that license are aware of and use the NMLS standardized forms and submit them electronically through the NMLS. The NMLS forms are standardized for all license types. One company form exists that all companies use, regardless of the type of license they seek. This is intended to streamline the licensing process for a company that engages in a business that may require more than one license. The company fills out one form and checks the boxes to indicate the business or businesses in which they engage. The company selects the states in which it intends to do business. The application is automatically transmitted to the appropriate jurisdiction(s) in which the company seeks a license. The company can then be licensed by each state under one or more license types using the same application form.

The rule is necessary since the only way to get licensed in the NMLS is to use the proper form to accomplish what the licensee seeks. By this rule the department adopts the various licensing forms that exist in the NMLS and the NMLS policy guidebook. The policy guidebook sets forth the meaning of terms used in the NMLS applications and gives guidance on how to complete the various uniform forms.

NEW RULE II LICENSE RENEWALS (1) The renewal period begins November 1. Every renewal applicant shall apply for renewal through the NMLS. Licensees shall use the NMLS renewal process to request renewal of their license.

(2) Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 31-1-706, 31-1-710, MCA
IMP: 31-1-706, 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule II is necessary because the NMLS renewal period begins on November 1 and ends on December 31 of each year. To allow the department sufficient time to process the applications before they expire on December 31, the department must receive the completed renewal request by December 1. The department processed 1,845 renewal applications for mortgage licensees alone last year. This year the department will have approximately the same number of mortgage renewal applications, plus 115 sales finance company license renewals, 55 consumer loan license renewals, and 11 escrow business license renewals. Since the department will be processing over 2,000 license renewals, the department must receive the completed renewal application by December 1 to ensure the license will be issued by December 31 to qualified applicants so that they may continue in business as of January 1.

Section (3) is necessary to ensure that licensees understand the license expires on December 31. If the license is not renewed before that date, the license expires. As of January 1, the former licensee is unlicensed and cannot conduct any business in Montana until they are properly licensed.

NEW RULE III INITIAL LICENSE APPLICATION THROUGH NMLS (1) An applicant for a license shall submit an application for license through the NMLS. The applicant shall use the NMLS forms for requesting a license as a deferred deposit lender.

AUTH: 31-1-705, 31-1-710, MCA
IMP: 31-1-705, 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule III is necessary because in the future all license applications must be submitted, processed, and issued through the NMLS. Beginning July 1, 2014, paper applications for a license are not accepted by the department. To be licensed through the NMLS, an applicant must select and use the appropriate form in the NMLS system to request licensure. It is essential that applicants are aware of these requirements.

NEW RULE IV AMENDMENTS (1) An applicant or licensee needing to amend the information in NMLS shall follow the NMLS procedure and use NMLS forms to submit the amendment.

AUTH: 31-1-710, MCA
IMP: 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments through the NMLS are submitted electronically. The department no longer accepts paper amendments. Amendments can only be made electronically through the NMLS. The amendments are automatically transmitted to the proper state regulator who

then reviews the proposed amendment for completeness and determines whether the amendment will be approved. If the amendment is approved, the electronic record is amended on the system and the new information shows as current.

NEW RULE V LICENSE SURRENDER (1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.

AUTH: 31-1-710, MCA
IMP: 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to set forth the procedure for an offer of surrender of a license. Since the license that the licensee wishes to surrender exists in electronic form on the NMLS, the only way to surrender the license is to submit a surrender request to the department through the NMLS. The department will no longer accept paper requests to surrender a license. If the department accepts the surrender of the license, it will change the status of the license to "terminated-surrendered/cancelled" on the NMLS.

NEW RULE VI FEES (1) All fees must be paid through the NMLS.

AUTH: 31-1-705, 31-1-706, 31-1-710, MCA
IMP: 31-1-705, 31-1-706, 31-1-710, MCA

STATEMENT OF REASONABLE NECESSITY: Since the department is transitioning to the electronic licensing and renewal platform of the NMLS, all fees must be paid through the NMLS. This includes fees for initial applications and renewals of licenses. Fees will not be directly collected by the department.

NEW RULE VII REINSTATEMENT OF EXPIRED LICENSES (1) Upon expiration of a license issued under 31-1-705, MCA, due to nonrenewal by the renewal date, the former licensee shall immediately cease from engaging in the activities for which the license was issued. The department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted through the NMLS:

(a) a properly completed license renewal application;

(b) the license renewal fee as set forth in 31-1-706, MCA;

(c) a reinstatement fee of $250; and

(d) proof that the licensee continues to meet standards for licensure under 31-1-707, MCA.

(2) An expired license that is not reinstated by the last day of February under (1) is "terminated-expired" and may not be reinstated. The holder of a "terminated-expired" license may reapply as a new license applicant.

AUTH: 31-1-223, MCA
IMP: 31-1-221, 31-1-223, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS allows persons whose licenses expired on December 31 to reinstate their licenses if they apply within the reinstatement period which runs from January 1 to the last day of February. If the license is not renewed during the reinstatement period, the former licensee must reapply as a new applicant. During the reinstatement period, the applicant must file for reinstatement, pay the renewal fee and the reinstatement fee, and show that it still meets the standards for licensure. The properly completed license renewal form is required by the NMLS. The license renewal fee is set forth in 31-1-706, MCA, and is required by statute for all renewals. The reinstatement is one-half the renewal fee and is being set at this amount by the department to discourage missing the renewal deadline. If an applicant misses the reinstatement deadline as well, they must apply as a new licensee and pay the full new application fee which is the same as the renewal fee.

The department cannot predict with any certainty how many entities will avail themselves of the reinstatement period. This is a new option being provided to them. The department estimates that, at most, less than five entities will miss the renewal deadline and choose to reinstate their license, resulting in total fees of $1,250 or less.

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 4, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., September 4, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1 person based on the fact there are currently no deferred deposit lenders licensed.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/AdministrativeRules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be

considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Jenny Eck, the primary bill sponsor of HB 116 (2013), was notified on July 11, 2014, that the department was beginning to draft rules on the subject by U.S. mail at the address for her on the Secretary of State's register of legislator contact information and her comments were invited. None were received.

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 28, 2014.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.59.103 pertaining to the Montana School for the Deaf and Blind Foundation	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 11, 2014, the Board of Public Education proposes to amend the above-stated rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on September 4, 2014, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.59.103 CONTENTS OF THE CONTRACT (1) The contract between the Board of Public Education and the foundation must require the foundation to have:

(a) ~~A~~articles of incorporation which without limitation stipulate that~~:~~ the

~~(i) The board of public education shall have one of its members serve as a member of the board of directors of the foundation for the duration of his term as board of public education member; and~~

~~(ii) The~~ superintendent of the school for the deaf and blind shall by virtue of ~~his~~ the office be one of the directors of the foundation until ~~his~~ a successor is duly appointed;

(b) ~~B~~bylaws which without limitation cover selection of officers, meetings, compensation for services, and amendment procedures; and

(c) ~~P~~policy which covers the acceptance, management, and expenditure of foundation property, proceeds, interest, and income.

AUTH: 20-8-103, MCA
IMP: 20-8-111, MCA

REASON: The Board of Public Education strongly supports the Montana School for the Deaf and Blind (MSDB), the Foundation, and all its students. However, board members reside all across the state making it difficult to travel to Great Falls for meetings in addition to regularly scheduled Board of Public Education meetings.

The Board of Public Education, in a joint effort with the Superintendent of the MSDB, made the decision to remove this requirement.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Peter Donovan, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov, and must be received no later than 5:00 p.m., September 4, 2014.

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 Peter Donovan at the above address no later than 5:00 p.m., September 4, 2014.

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 2 persons based on the number of members in the two affected parties. There are 7 Board of Public Education members and 11 MSDB Foundation members.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll
Chair
Board of Public Education

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.607 pertaining to release categorization	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On August 27, 2014, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The 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 Elois Johnson, Paralegal, no later than 5:00 p.m., August 13, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.56.607 RELEASE CATEGORIZATION (1) through (9)(g) remain the same.

(10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:

(a) through (h) remain the same.

(i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted by the Board of Environmental Review pursuant to 75-5-301, MCA. The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604.

(j) ~~A~~ a petroleum mixing zone must remain within the facility property boundary unless a recorded easement approved by the department allows the mixing zone to extend off the facility property. ~~A petroleum mixing zone may extend no further than 500 feet from the origin of the release.~~ For purposes of this rule, the

term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;

~~(j) a petroleum mixing zone may not extend to within 500 feet of an existing drinking water well or surface water;~~

(k) a petroleum mixing zone may not extend either beyond 500 feet from the origin of the release or within 500 feet of an existing drinking water well or surface water unless the department determines, in writing and based on site-specific circumstances, that a shorter distance, specified in the determination, will ensure present and long-term protection of human health and safety and of the environment in the specific circumstances. In making this determination, the department shall consider the following factors:

(i) the specific contaminants and concentrations involved;

(ii) the nature, hydrogeologic characteristics, and quality of the aquifer(s) involved;

(iii) the nature and quality of any well or surface water potentially affected;

(iv) the degree of certainty that site-specific scientific data supports the determinations made pursuant to (c), (d), (g), and (h); and

(v) any other consideration determined by the department to be relevant in the particular circumstances.

(k) through (k)(iv) remain the same, but are renumbered (l) through (l)(iv).

~~(l)~~ (m) a notice is placed on the deed of all parcels of real property on which the facility is located that ~~is~~ the source of the release is resolved with a petroleum mixing zone ~~release is located~~. This deed notice must describe the nature and location of the residual contamination remaining in the soil and ground water at the facility and must describe all institutional controls, engineering controls, physical conditions, or other controls or conditions required to maintain the petroleum mixing zone.

(11) and (12) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The proposed amendment is necessary to allow for closure of petroleum release sites where the available scientific data indicates that site-specific conditions are sufficiently protective of human health and safety and the environment to justify resolution of the release even though the petroleum mixing zone (PMZ) extends beyond 500 feet from its source or extends to within 500 feet of drinking water wells or surface water.

The department has a list of several petroleum release sites regulated under the Montana Underground Storage Tank Act, 75-11-501, et. seq., MCA, that could be resolved using a petroleum mixing zone, except that they do not meet the 500 foot criteria. The cost to continue to monitor these sites over a period of years is significant and may not be warranted where adequate protection for human health, safety and the environment can be provided at some sites without meeting the 500 foot criteria. Additionally, the inability to close these active petroleum releases with a

petroleum mixing zone hinders business development and makes it more difficult to sell the property due to liability issues and the stigma associated with environmental contamination, which makes it difficult to obtain loans or other sources of funding to purchase the property.

The department is proposing to amend (l) (renumbered (m)) to correct grammatical errors in the language. As corrected, the language clearly implements the department's intent when the language was initially adopted.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 4, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Becky Convery, attorney, has been designated to preside over and conduct the 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

8. 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.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North BY: */s/ Tracy Stone-Manning*
JOHN F. NORTH TRACY STONE-MANNING, Director
Rule Reviewer

Certified to the Secretary of State, July 28, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1101, 17.30.1102, 17.30.1105, 17.30.1106, 17.30.1107, 17.30.1111, 17.30.1341 and 17.30.1342 pertaining to Montana pollutant discharge elimination system (MPDES) permits, purpose and scope, definitions, permit requirements, exclusions, designation procedures: small municipal separate storm sewer systems (MS4s), application procedures, permit requirements, general permits and conditions applicable to all permits and repeal of ARM 17.30.1110, 17.30.1115 and 17.30.1117 application procedures: general, notice of intent procedures, and transfer of permit coverage pertaining to storm water discharges	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL (WATER QUALITY)

TO: All Concerned Persons

1. On August 27, 2014, at 9:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., August 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.1101 PURPOSE AND SCOPE (1) This subchapter is intended to be applied together with ARM Title 17, chapter 30, subchapters 12 and 13 to establish a system for regulating the discharge~~s~~ of ~~potential~~ pollutants from point source~~s~~ ~~discharges of storm waters into surface~~ to state waters. This subchapter and subchapter~~s~~ 12 and 13 of ARM Title 17, chapter 30~~, which regulate storm water discharges through Montana pollutant discharge elimination system (MPDES) general permits, permit authorizations, and notices of intent,~~ are intended

to be compatible with the national pollutant discharge elimination system (NPDES) as established by the United States ~~e~~Environmental ~~p~~Protection ~~a~~Agency pursuant to section 402 of the federal Clean Water Act (CWA), 33 USC 1251, et seq. ~~Except as expressly modified in this subchapter, all requirements in ARM Title 17, chapter 30, subchapters 12 and 13 remain effective pertaining to point source discharges of storm water.~~

~~(2) The rules in this subchapter pertain to point source discharges of storm water that do not contain routine process wastewater and that do not contain non-storm water discharges except for the potential non-storm water discharges from MS4s that are listed in ARM 17.30.1111(6)(c)(iii). ARM Title 17, chapter 30, subchapter 13 contains additional requirements pertaining to point source discharges of storm water that routinely contain process wastewater or non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in ARM 17.30.1111(6)(c)(iii)) that are regulated using an individual MPDES permit.~~

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: For the reasons set forth below, the board is proposing to amend (1) to clarify a person's duty to apply for an MPDES permit for any discharge of pollutants to state waters, unless the discharge is excluded under ARM 17.30.1310 or 17.30.1106. The term "discharge of pollutant" is defined in ARM 17.30.1102 and 17.30.1304 and means the addition of any pollutant or combination of pollutants to state waters from any point source. The board is also proposing to remove the term "potential" in reference to pollutants because the discharge of "potential pollutants" is not regulated under state or federal permit requirements. The board is proposing to remove the term "surface water" and replace it with "state water," as defined in 75-5-103, MCA. The board is also proposing to remove text from (1) stating that the requirements in subchapter 11 modify the requirements in subchapters 12 and 13. This change is necessary because subchapters 12 and 13 apply to all MPDES permits and are not modified by subchapter 11.

The board is also proposing to remove (2) to provide consistency between storm water discharge permit requirements and ARM 17.30.1322 (pertaining to all MPDES permit application requirements) and to clarify that storm water discharge permits are subject to the provisions of subchapter 13, which pertain to all MPDES permits. These amendments to (2) are necessary to provide storm water discharge permit requirements that are consistent with the applicable federal regulations and board rules pertaining to all discharge permits.

17.30.1102 DEFINITIONS (1) through (4) remain the same.

~~(5) "Final stabilization" means the time at which all soil-disturbing activities at a site have been completed and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative~~

~~cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.~~

(6) through (21) remain the same, but are renumbered (5) through (20).

(21) "Significant materials" includes, but is not limited to:

(a) raw materials;

(b) fuels;

(c) materials such as solvents, detergents, and plastic pellets;

(d) finished materials such as metallic products;

(e) raw materials used in food processing or production;

(f) substances designated as hazardous under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9601(14);

(g) any chemical the facility is required to report pursuant to the reporting requirements under section 313 of the federal Emergency Planning and Community Right to Know Act (EPCRA) created under the Superfund Amendments and Reauthorization Act (SARA) also known as SARA Title III, 42 U.S.C. 11001 - 11050;

(h) fertilizers;

(i) pesticides; and

(j) waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(22) through (27) remain the same.

~~(28) "Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.~~

~~(a) Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to ARM 17.30.1105(1)(f).~~

~~(b) For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.~~

~~(c) For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in (29)(a), (b), (d) and (e).~~

~~(29)~~ (28) "Storm water discharge associated with industrial activity" means a discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

(a) remains the same.

~~(b) For the categories of industries identified in (e)(ix) of this definition, the term includes only storm water discharges from all the areas (except access roads~~

~~and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.~~

(c) remains the same, but is renumbered (b).

~~(d)~~ (c) Industrial facilities~~,~~ ~~(~~including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in ~~(e)~~ (d)(i) through ~~(ix) and (30))~~ (x), include those facilities designated under the provisions of ARM 17.30.1105(1)~~(f)~~ (d).

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

(i) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (Effluent Guidelines and Standards Part 405-471), ~~(~~except facilities with toxic pollutant effluent standards that are exempted under category ~~(e)~~ (d)~~(ix)~~ (x) of this definition~~)~~;

(ii) remains the same.

(iii) facilities classified as standard industrial classifications 10 through 14 (mineral industry) including active and inactive mining operations, except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990; oil and gas exploration, production, processing, or treatment operations; and transmission facilities that discharge storm water by contact with, or that come into contact with, any overburden, raw material, intermediate material, finished products, byproducts, or waste products located on the site of such operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

(iii) remains the same, but is renumbered (iv).

~~(iv)~~ (v) landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition~~, or under the definitions of "storm water discharge associated with mining and oil and gas activities," and "storm water discharge associated with construction activity" that will result in construction-related disturbance of five acres or more of total land area~~) including those that are subject to regulation under subtitle D of RCRA;

(v) through (ix) remain the same, but are renumbered (vi) through (x).

(xi) construction activities including clearing, grading, and excavating except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more.

~~(30) "Storm water discharge associated with mining and oil and gas activity" means the same as the definition for "storm water discharges associated with~~

~~industrial activity" except that the term pertains only to discharges from facilities classified as standard industrial classifications 10 through 14 (mineral industry) that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations. Such facilities include active and inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, and except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990); and oil and gas exploration, production, processing, or treatment operations; and transmission facilities. "Inactive mining operations" are mining sites that are not being actively mined but that have an identifiable owner/operator, but do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.~~

(29) "Storm water discharge associated with small construction activity" means:

(a) the discharge of storm water from construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where the conditions given in ARM 17.30.1105(3) are satisfied; and

(b) any other construction activity designated by the department under ARM 17.30.1105, or by the EPA regional administrator, based on the potential of the discharge to contribute to a violation of a water quality standard or to contribute significant pollutants to state surface water.

~~(31) "Storm water pollution prevention plan (SWPPP)" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.~~

~~(32) "Surface waters" means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs, and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.~~

(33) through (35) remain the same, but are renumbered (30) through (32).

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend definitions found in ARM 17.30.1102 to add several new definitions found in 40 CFR 122.26(b), the federal rule defining terms used in the federal storm water regulations, and to remove several definitions that are no longer used in this subchapter. The board is also proposing to modify several definitions to ensure consistency with federal storm water regulations found at 40 CFR 122.26. The board's specific reasons for amending these definitions follow.

The board is proposing to remove the definition of final stabilization as this term does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity from initiation of construction-related ground disturbance to "final stabilization" of that disturbance. The term "final stabilization" is defined in Part 5 of General Permit No. MTR1000000, to describe the point at which coverage under General Permit No. MTR1000000 may be terminated, but the term does not appear in subchapter 11.

The board is proposing to add a definition of "significant materials" to define materials that may be discharged with storm water and have the potential to impact human health or the environment. The proposed definition at (21) is consistent with the federal definition of "significant materials" at 40 CFR 122.26(b)(12).

The board is proposing to remove the definition of storm water discharges associated with construction activity at (28) and replace it with two new definitions. The first of these definitions is at proposed (28)(d)(xi) and would place construction activities that disturb more than five acres of total land area under the definition of storm water discharges associated with industrial activity. The second definition pertains to storm water discharges associated with small construction activity at proposed (29), which would include the disturbance of less than five acres of total land area. These amendments are necessary to ensure consistency with the federal definitions of storm water discharge associated with construction activities at 40 CFR 122.26(b).

The board is proposing the amendments at current (29) (proposed to be renumbered (28)) to define the term "storm water discharges associated with industrial activity" to include mining and oil and gas activities, currently defined in (30), and construction activities greater than five acres. The board is also proposing to make other minor editorial changes and to renumber the definitions in this rule. This amendment is necessary to provide consistency with the federal definition of industrial activities at 40 CFR 122.26(b)(14). The board is proposing to delete what is currently numbered (29)(b) as the text is not part of the federal definition of industrial activities in 40 CFR 122.26(b)(14). The board is proposing to amend current (29)(e) (proposed to be renumbered (28)(d)) to make minor editorial changes and to correct internal references. The board is proposing to amend current (29)(e)(i) (proposed to be renumbered (28)(d)(i)) to change the reference to subparts

of this definition. The board is also proposing to amend current (29)(d)(iv) (proposed to be renumbered (28)(d)(v)) to remove language that is no longer necessary due to the inclusion of mining and oil and gas activities that were defined in (30) and are now defined in proposed (28) as amended.

The board is proposing to remove the definition of "storm water discharges associated with mining and oil and gas activities," currently at (30), and to include this category of industrial discharge in proposed (28), along with other similar industrial activities. This amendment will provide consistency between the state and federal definitions of storm water discharge associated with industrial activity.

The board is proposing a new definition in (29) to define "storm water discharges associated with small construction activity" consistent with 40 CFR 122.26(b)(15). This amendment is necessary to maintain consistency with federal regulations defining storm water discharges and different application and permitting requirements for small construction in ARM Title 17, chapter 30, subchapter 13.

The board is proposing to delete the definition of "storm water pollution prevention plan" (SWPPP), currently in (31), as this term is no longer used in this subchapter and does not appear in federal storm water regulations found at 40 CFR 122.26. The General Permit for Storm Water Discharges Associated with Construction Activity (General Permit No. MTR1000000) covers storm water discharges associated with construction activity. In order to achieve compliance with the conditions of General Permit No. MTR1000000, the permittee is required to develop a Storm Water Pollution Prevention Plan (SWPPP). The term "SWPPP" is defined in Part 5 of General Permit No. MTR1000000 to describe a document developed to identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity and on the respective MPDES permit requirements.

The board is proposing to remove the definition of "surface waters," currently at (32), because this definition is unnecessary. Surface waters are included in the definition of state water at 75-5-103, MCA. The provisions of this subchapter apply to discharges of storm water to state water unless excluded under ARM 17.30.1106. The board is proposing to renumber current (33) through (35) as (30) through (32). The proposed amendments to these definitions are necessary to ensure consistency and equivalency with the federal definitions found in 40 CFR 122.2 and 40 CFR 122.26(b) and with the definitions found in the board rules at ARM 17.30.1304 and 17.30.1202.

17.30.1105 PERMIT REQUIREMENT (1) ~~Any person who discharges or proposes to discharge storm water from a point source must obtain coverage under an MPDES general permit or another MPDES permit for discharges~~ On or after October 1, 1994, operators must obtain an MPDES permit for discharges composed entirely of storm water that are not required by (4) to obtain a permit only if:

(a) the discharge is associated with small construction activity as defined in ARM 17.30.1102;

~~(b) associated with industrial activity;~~

~~(c) associated with mining and oil and gas activity;~~

~~(d)~~ (b) the discharge is from a small municipal separate storm sewer system~~s that are~~ as ~~identified~~ defined in ARM 17.30.1102 or as designated pursuant to ARM 17.30.1107;

~~(e)~~ (c) ~~for which~~ the department determines that storm water controls are needed based on wasteload allocations that are part of TMDLs that address the pollutants of concern; ~~and~~ or

~~(f)~~ (d) ~~that~~ the department determines ~~are~~ that the discharge is contributing to a violation of a water quality standard or ~~are~~ is a significant contributor~~s~~ of pollutants to surface waters.

~~(2) For point source discharges of storm water identified in (1)(a) through (f) that are routinely composed entirely of storm water, authorization under an MPDES general permit must be obtained pursuant to this subchapter, unless the discharge is covered under an individual MPDES permit that is issued pursuant to ARM Title 17, chapter 30, subchapter 13 to the same owner or operator for other point source discharges.~~

~~(3) For point source discharges of storm water identified in (1)(a) through (f) that are not routinely composed of storm water, and that routinely discharge pollutants, coverage under an individual MPDES storm water permit or under an MPDES general permit must be obtained pursuant to ARM Title 17, chapter 30, subchapter 13.~~

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

~~(5)~~ (3) The department may waive the permit requirements in this subchapter for a storm water discharge associated with construction activity that disturbs less than five acres of total land area if either of the following two conditions exist:

(a) the value of the rainfall erosivity factor ("R" in the revised universal soil loss equation) is less than five during the period of construction activity. ~~The period of construction activity extends through to final stabilization.~~ The rainfall erosivity factor must be determined using a state-approved method. The owner or operator must certify to the department that the construction activity will take place only during a period when the value of the rainfall erosivity factor is less than five. If unforeseeable conditions occur that are outside of the control of the waiver applicant, and which will extend the construction activity beyond the dates initially applied for, the owner or operator shall reapply for the waiver or obtain authorization under the general permit for storm water discharges associated with construction activity. The waiver reapplication or notice of intent must be submitted within two business days after the unforeseeable condition becomes known; or

(b) remains the same.

~~(6)~~ (4) Prior to October 1, 1994, discharges composed entirely of storm water are not required to obtain an MPDES permit except for:

(a) discharges with respect to which an ~~individual~~ MPDES permit has been issued prior to February 4, 1987; ~~and~~

(b) ~~discharges listed in (1)(a), (b), (c), and (f), except that, for discharges listed in (1)(a), this requirement applies only to storm water discharges associated with construction activity that will result in construction-related disturbance of five acres or more of total land area~~ a discharge associated with an industrial activity; or

(c) a discharge that the department or EPA regional administrator determines

contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters.

~~(7)~~ (5) For storm water discharges designated by the department under (1) ~~(e)~~ (c) and ~~(f)~~ (d) or (4)(c), the owner or operator shall apply for a permit within 180 days of receipt of the department's notice of designation, unless the department grants a later date.

~~(8)~~ (6) Except as provided in ~~(9)~~ (7), ~~if not authorized under a storm water general permit, a permit application or notice of intent must be submitted to the department for storm water discharges existing as of~~ any storm water discharge associated with an industrial activity as defined in ARM 17.30.1102 that is not covered under an existing MPDES permit must submit a permit application to the department by October 1, 1992~~, that are associated with:~~.

~~(a) industrial activity;~~

~~(b) mining and oil and gas activity; and~~

~~(c) construction activity that will result in construction-related disturbances of five acres or more of total land area and for which storm water discharges are not authorized by a storm water general permit.~~

~~(9)~~ (7) The permit requirements in this subchapter are effective beginning March 10, 2003, ~~F~~for ~~discharges identified in (8)(a) through (c) that are not authorized by a general or individual MPDES permit, and which are~~ any storm water discharge associated with industrial activity from a facility~~, other than an airport, powerplant, or uncontrolled sanitary landfill,~~ that is owned or operated by a municipality with a population of under 100,000~~,~~ that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill ~~the permit requirements in this subchapter are effective beginning March 10, 2003~~.

(10) and (11) remain the same, but are renumbered (8) and (9).

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the permit requirements for discharges composed entirely of storm water in ARM 17.30.1105 to maintain consistency with the equivalent federal regulations set forth in 40 CFR 122.26(a) and the permit requirements set forth in ARM Title 17, chapter 30, subchapter 13. The proposed amendments to the definitions of "storm water discharges associated with small construction" and "storm water discharges associated with industrial activity" in ARM 17.30.1102 allow for streamlining and better alignment of this subchapter with the applicable federal regulations and board rules in ARM Title 17, chapter 30, subchapter 13. Under 40 CFR 123.25, the permit requirements in ARM 17.30.1105 are a required element of a delegated state's NPDES permit program. The board is also proposing minor changes to wording, punctuation, formatting, and renumbering the provisions in this rule. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to maintain consistency with the equivalent federal rules at 40 CFR 122.26(a)(9). This federal rule requires permit coverage for certain discharges that are composed entirely of storm water after October 1, 1994. Permit coverage under this rule is limited to: discharges

associated with small construction activity; discharges from designated small municipal separate storm sewer systems; storm water discharges which require a waste load allocation; and discharges which contribute to a violation of water quality standards or are required by current (6) (proposed to be renumbered (4)) to obtain permit coverage. Unless specifically required by (1) or proposed (4) of this rule, discharges composed entirely of storm water are not subject to permit requirements under this subchapter. The board is proposing to amend (1)(a) to reflect the proposed change in the definition of small construction activity in ARM 17.30.1102, which would include construction activities that are greater than one acre and less than five acres. The board is proposing to delete industrial facilities from (1) since they are addressed in (4). The board is also proposing to delete mining and oil and gas activities from (1) since these activities are proposed to be included in the definition of industrial activity in ARM 17.30.1102. The board is also proposing to amend (1)(d) to make minor wording changes and to renumber it (1)(b).

The board is proposing to delete (2) which requires a storm water discharger to obtain coverage under a general permit unless the discharge is covered under an individual permit because this requirement is not found in equivalent federal rules set forth in 40 CFR 122.21, 122.26, and 122.28. When it qualifies for general permit coverage, a facility may obtain coverage under that general permit unless directed by the department to obtain coverage under an individual permit. A facility may also request to be excluded from coverage under the general permit, in accordance with 40 CFR 122.28(b)(3) or ARM 17.30.1341 and obtain an individual permit.

The board is proposing to delete (3) because the board rules in ARM Title 17, chapter 30, subchapter 13, have been updated to include storm water discharges as well as discharges of process wastewater and other types of wastewater making the requirements set forth in (3) unnecessary. A facility that discharges both storm water and other forms of wastewater must submit the applicable information as specified in a general permit issued under ARM 17.30.1341 or individual permit under ARM 17.30.1322.

The board is proposing to amend (6) and renumber it (4). The proposed amendments reflects changes to the definition of "discharges from small construction activity and industrial activity" proposed in ARM 17.30.1102 and are necessary to maintain consistency with 40 CFR 122.26(a)(1). In order to maintain consistency with the equivalent federal rule at 40 CFR 122.26(a)(i), which does not restrict this permitting requirement to discharges for which individual permits were issued prior to February 4, 1987, the board is proposing to delete the word "individual." The board is also proposing to amend (b) to maintain consistency with 40 CFR 122.26(a)(ii) to reflect the proposed amendment in the definition which will include discharges from mining, oil and gas, and construction activities greater than five acres. The board is also proposing a new (c) to maintain consistency with 40 CFR 122.26(a)(v) which is a federal rule requiring discharges of storm water that contribute to a violation of water quality standards, or are a significant contributor of pollutants, to obtain permit coverage.

The board is proposing to amend (7) to make minor word changes and renumber (7) as (5). This amendment is necessary to incorporate changes in the definitions, to incorporate the proposed deletion and renumbering of two subsections in (1), and to incorporate the proposed addition of (4)(c).

The board is proposing to amend (8) and renumber it as (6). The proposed amendment also deletes (8)(a) through (c), which would no longer be necessary if the amendments are adopted as proposed. The proposed amendments to the definition of "storm water discharges associated with industrial activity" at ARM 17.30.1102 will incorporate the activities described in existing (a) through (c).

The board is proposing to amend (9) and renumber it as (7). The proposed amendments maintains consistency with 40 CFR 122.26(e)(1)(ii), which is a federal rule establishing application deadlines for certain categories of industrial activities.

17.30.1106 EXCLUSIONS (1) In addition to the exclusions stated in ARM 17.30.1310, the following storm water discharges do not require MPDES permits:

(a) remains the same.

(b) existing or new discharges composed entirely of storm water from oil or gas exploration, production, processing, or treatment operations, or transmission facilities, unless the operation or facility:

(i) has had, at any time since November 16, 1987, a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6; or

(ii) contributes to a violation of a water quality standard; ~~or~~

~~(iii) has a storm water discharge associated with construction activity, as defined in this subchapter;~~

(c) existing or new discharges ~~composed entirely of storm water from mining operations, unless the discharge has come into contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations~~ of storm water runoff from mining operations, from oil and gas exploration, production, processing, treatment operations, or transmission facilities, if such existing or new discharges are composed entirely of flows which are from conveyances or systems of conveyances including, but not limited to, pipes, conduits, ditches, and channels, used for collection and conveying precipitation runoff and which have not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation. For purposes of this rule only, "oil and gas exploration, production, processing, treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1106 to maintain consistency with 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2), which are federal rules that exclude field activities or operations associated with oil and gas exploration, production, processing , or treatment from the permit coverage requirements of ARM Title 17, chapter 30, subchapters 11 and 13 for certain

discharges composed entirely of storm water.

The board is proposing to amend (1)(b)(i) and (ii) to make minor editorial changes to reflect the proposed deletion of (1)(b)(iii). The board is proposing to remove (1)(b)(iii) (the exception from the exclusion for oil and gas operations when the activity is associated with construction) because it is not found in the equivalent federal rules at 40 CFR 122.26(c)(1)(iii) and 40 CFR 122.26(a)(2) and the board has determined that it is unnecessary to maintain the exception for construction activities to protect human health and the environment because the proposed rule amendments maintain the authority to require an MPDES permit for storm water discharges associated with oil or gas exploration, production, processing, treatment operations, or transmission facilities when the operation or facility has had a storm water discharge resulting in a reportable quantity for which notification is or was required; or a storm water discharge that contributes to a violation of a water quality standard. These federal rules exclude storm water discharges from mining and from operations associated with oil and gas exploration, production, processing, treatment, or transmission facilities, including construction and other field activities from storm water discharge permit requirements provided these discharges do not come into contact with overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation.

The board is proposing to amend (1)(c) to expand the scope of this exclusion to oil and gas operations, consistent with 40 CFR 122.26(a)(2) (July 1, 2005) (the later version was vacated by the Ninth Circuit in NRDC v. U.S. EPA, 526 F.3d 591 (2008)) and with 33 USC 1342(l)(2) (CWA § 402(l)(2)), which exclude these activities from regulation under the national pollutant discharge elimination system. The board is proposing new (1)(c)(i) to clarify, for the purposes of this exclusion, the meaning of the term "oil and gas exploration, production, processing, treatment operations, or transmission facilities." This definition is consistent with 33 USC 1362(24) (§ 323 of the Energy Policy Act). These amendments are necessary to implement the storm water discharge permitting exclusions for mining and oil and gas activities provided under the federal Clean Water Act.

17.30.1107 DESIGNATION PROCEDURES: SMALL MS4S (1) through (3) remain the same.

(4) The department may designate an MS4 other than those identified in ARM 17.30.1102(23) pursuant to the criteria in ARM 17.30.1105(1) ~~(e)~~ (c) or ~~(f)~~ (d).

(5) through (13) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1107(4) to reflect changes that are proposed in ARM 17.30.1105(1). The changes in ARM 17.30.1105(1) reflect the changes in the definition of storm water discharges associated with industrial activity to include mining, oil and gas activities, and large construction activities. The proposed changes are also necessary to maintain the correct internal cross reference to this rule and to maintain consistency with the federal definitions at 40 CFR 122.26(a)(9) and 122.26(b).

17.30.1111 APPLICATION PROCEDURES, PERMIT REQUIREMENTS: SMALL MS4S (1) Owners or operators of small MS4s shall ~~apply for authorization under an MPDES permit as provided in ARM 17.30.1110 and this rule~~ obtain coverage under an MPDES general or individual permit and are subject to the following requirements~~.~~:

(a) and (b) remain the same.

(2) Small MS4s shall complete ~~an application for authorization~~ a notice of intent in accordance with the requirements ~~in ARM 17.30.1110~~ specified in a general permit issued pursuant to ARM 17.30.1341 or submit an application for an individual permit and comply with the application requirements set forth in (19).

The ~~application~~ general permit must~~,~~ ~~also include~~ at a minimum, require the following information:

(a) through (18) remain the same.

(19) An operator of a small MS4 that does not obtain coverage under a general permit must obtain coverage by the dates established in (1) and submit an application for an individual permit that includes the required permit application information specified in 40 CFR 122.26(d).

(20) The board adopts and incorporates by reference 40 CFR Part 122.26(d) (July 1, 2013), which sets forth application requirements for large or medium municipal separate storm sewers or for municipal separate storm sewers that are designated subject to permit requirements, as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the application procedures in ARM 17.30.1111 to reflect proposed changes in the general permit rule in ARM 17.30.1341, the proposed repeal of ARM 17.30.1110, and to maintain consistency with the federal regulations related to permit applications for small MS4s at 40 CFR 122.33. This federal rule sets forth application procedures and timeframes for small MS4s and is a required element of a delegated state's permit program as required by 40 CFR 123.25(a)(42). The proposed amendments are necessary to correct citations to the appropriate state regulation governing the application requirements for general permits. The permit requirements for small MS4 operators given in this rule remain unchanged. The board's specific reasons for proposing these amendments follow.

The board is proposing to amend (1) to provide that an operator of an MS4 must obtain permit coverage under a general permit or an individual permit and to remove the reference to ARM 17.30.1110 which is proposed for repeal. The proposed amendment is necessary to maintain consistency with 40 CFR 122.28(b), which sets forth the general administrative requirements for all general permits.

The board is proposing to amend (2) to provide that the operator of a small MS4 may submit a notice of intent to be covered under the general permit or submit

an application for an individual permit and that the application requirements are found in new (19). ARM 17.30.1341 and the federal rule at 40 CFR 122.28(b) require the contents of the notice of intent to be specified in the general permit. The board is also proposing to amend (2) to clarify that the general permit must at minimum contain the elements in (a) through (c). These amendments are necessary to maintain consistency with the equivalent federal rule related to permit applications for small MS4s found at 40 CFR 122.33 and 122.34, which are required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing to add new (19) to the application requirements for a small MS4 to maintain consistency with the equivalent federal rule found at 40 CFR 122.33, which is required by 40 CFR 123.25(42) to be part of a delegated state's permit program.

The board is proposing new (20) to incorporate 40 CFR 122.26(d) and the federal application requirements applicable to large or medium MS4s, or to small MS4s that are either designated or choose to obtain a permit for their discharges in order to retain state primacy under the federal Clean Water Act.

17.30.1341 GENERAL PERMITS (1) The department may issue general permits ~~for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105~~ in accordance with the following:

~~(a) cofferdams or other construction dewatering discharges;~~

~~(b) ground water pump test discharges;~~

~~(c) fish farms;~~

~~(d) placer mining operations;~~

~~(e) suction dredge operations using suction intakes no larger than four inches in diameter;~~

~~(f) oil well produced water discharges for beneficial use;~~

~~(g) animal feedlots;~~

~~(h) domestic sewage treatment lagoons;~~

~~(i) sand and gravel mining and processing operations;~~

~~(j) point source discharges of storm water;~~

~~(k) treated water discharged from petroleum cleanup operations;~~

~~(l) discharges from public water supply systems, as determined under Title 75, chapter 6, MCA;~~

~~(m) discharges to wetlands that do not contain perennial free surface water;~~

~~(n) discharges from road salting operations;~~

~~(o) asphalt plant discharges;~~

~~(p) discharges of hydrostatic testing water;~~

~~(q) discharges of noncontact cooling water;~~

~~(r) swimming pool discharge;~~

~~(s) septic tank pumper disposal sites; and~~

~~(t) pesticide application.~~

(a) The general permit must be written to cover one or more categories or subcategories of discharges or facilities described in the permit under (b), except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

(i) designated planning area under sections 208 and 303 of the federal Clean Water Act;

(ii) sewer districts or sewer authorities;

(iii) city, county, or state political boundaries;

(iv) state highway systems;

(v) standard metropolitan statistical areas as defined by the federal Office of Management and Budget;

(vi) urbanized areas as designated by the U.S. Bureau of Census; or

(vii) any other appropriate division or combination of boundaries.

(b) the general permit may be written to regulate one or more categories or subcategories of discharges or facilities, within the area described in (1)(a), where the sources within a covered subcategory of discharges are either:

(i) storm water point sources; or

(ii) one or more categories or subcategories of point sources, other than storm water point sources, if the sources within each category or subcategory all:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions;

(D) require the same or similar monitoring; and

(E) in the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

(c) Where sources within a specific category or subcategory of discharges are subject to water quality-based limits imposed pursuant to 40 CFR 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(d) The general permit must clearly identify the applicable conditions for each category or subcategory of discharges covered by the permit.

(e) The general permit may exclude specified sources or areas from coverage.

(2) ~~Although MPDES general permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.~~ General permits may be issued, modified, revoked and reissued, or terminated by the department in accordance with applicable requirements of ARM 17.30.1363 through 17.30.1365, and ARM 17.30.1370 through 17.30.1378. Unless EPA comments upon, objects to, or makes recommendations with respect to a proposed general permit in accordance with 40 CFR 123.44, the effective date of an MPDES general permit is 90 days after the receipt of the proposed permit by EPA.

(3) Prior to issuing a ~~MPDES~~ general permit, the department shall ~~prepare~~ provide a public notice ~~which includes the equivalent of information listed in ARM 17.30.1372(6) and shall publish the same as follows:~~ in accordance with the requirements of ARM 17.30.1372 and shall adhere to the requirements of ARM 17.30.1373 through 17.30.1377 regarding public comments and public hearings. The department shall provide a copy of the public notice

~~(a) prior to publication, notice to the U.S. Environmental Protection Agency;~~

~~(b) direct mailing of notice~~ to the Water Pollution Control Advisory Council ~~and~~ to any persons who may be affected by the proposed general permit~~;~~

~~(c) publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;~~

~~(d) after publication, a hearing must be held and a 30-day comment period allowed as provided in ARM 17.30.1372 through 17.30.1377 and 17.30.1383~~.

(4) A person owning or proposing to operate a point source who wishes to ~~operate~~ obtain coverage under a ~~MPDES~~ general permit shall ~~complete~~ submit to the department a ~~standard MPDES application or~~ written notice of intent ~~form available from the department for the particular~~ to be covered by the general permit. A discharger who fails to submit a written notice of intent in accordance with the terms of the general permit may not discharge under the permit. A complete and timely notice of intent to be covered in accordance with general permit requirements fulfills the requirements for permit application for purposes of ARM 17.30.1023, 17.30.1105, 17.30.1313, and 17.30.1322. ~~Except for notices of intent, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for denial:~~

~~(a) the specific source applying for authorization appears unable to comply with the following requirements:~~

~~(i) effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;~~

~~(ii) water quality standards established pursuant to 75-5-301, MCA;~~

~~(iii) prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;~~

~~(iv) prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation;~~

~~(v) prohibition of any discharges to which the regional administrator has objected in writing;~~

~~(vi) prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act; and~~

~~(vii) any additional requirements that the department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA.~~

~~(b) the discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the MPDES general permit;~~

~~(c) an MPDES permit or authorization for the same operation has previously been denied or revoked;~~

~~(d) the discharge sought to be authorized under a MPDES general permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;~~

~~(e) the point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC~~

~~1274.~~

(5) ~~Where authorization to operate under a MPDES general permit is denied, or a notice of intent under ARM 17.30.1115 is not applicable, the department shall proceed, unless the application or notice of intent is withdrawn, to process the application or notice of intent through the individual MPDES permit requirements under this subchapter.~~ Subject to (a) and (b), the contents of the written notice of intent must be specified in the general permit and must contain information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). A notice of intent must be signed in accordance with ARM 17.30.1323. In addition to these general requirements, the following specific provisions apply:

(a) Subject to the department's approval, a general permit for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative information and meet notice of intent requirements.

(b) Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information required in the Notice of Intent for MPDES Application for New and Existing Concentrated Animal Feeding Operation (CAFO Notice of Intent) provided by the department and the information specified in 40 CFR 122.21(i)(1), including a topographic map of the area in which the CAFO is located.

(6) ~~Every MPDES general permit must have a fixed term not to exceed five years. Except as provided in (10), every authorization to operate under a MPDES general permit expires at the same time the MPDES general permit expires.~~ Each general permit must specify the deadline for submitting notices of intent to be covered and the dates(s) when a discharger is authorized to discharge under the permit.

(7) A general permit must specify, by one of the following methods, whether a discharger that has submitted a complete and timely notice of intent to be covered under the general permit is authorized to discharge under the permit:

(a) upon receipt of the notice of intent by the department;

(b) after a waiting period specified in the general permit;

(c) on a date specified in the general permit; or

(d) upon receipt of written notification of authorization from the department.

~~(7)~~ (8) Where authorization to ~~operate~~ discharge under a ~~MPDES~~ general permit is denied solely because the source is already ~~issued to, or a notice of intent received from, a point source~~ covered by an individual ~~MPDES~~ permit, the ~~department~~ owner or operator may request ~~shall, upon issuance of the authorization to operate or receipt of the notice of intent under~~ termination of the ~~MPDES~~ individual ~~general~~ permit~~, terminate the individual MPDES permit~~ and coverage for that ~~point~~ source under the general permit. Upon termination of the individual permit, the general permit applies to the source.

~~(8)~~ (9) Any person authorized or eligible to ~~operate~~ discharge under a ~~MPDES~~ general permit may at any time, upon providing reasons supporting the request or application, apply for an individual ~~MPDES~~ permit ~~according to the~~

~~procedures in this subchapter~~. Upon issuance of the individual ~~MPDES~~ permit, the ~~department shall terminate any MPDES general permit authorization or notice of intent held by such person~~ authorization to discharge under the general permit automatically terminates.

~~(9)~~ (10) The department, on its own initiative or upon the petition of any interested person, may ~~modify, suspend, or revoke in whole or in part a MPDES general permit or an authorization or notice of intent to operate under a MPDES general permit during its term in accordance with the provisions of ARM 17.30.1361 for any cause listed in ARM 17.30.1361 or~~ require any discharger authorized by a general permit to obtain an individual permit ~~for~~ under any of the following ~~causes~~ circumstances:

(a) ~~the approval of~~ a water quality management plan has been approved that contains ~~containing~~ requirements applicable to categories or subcategories of discharges or facilities ~~point sources~~ covered in ~~the MPDES~~ a general permit;

(b) ~~determination by~~ the department has determined that the discharge from ~~any~~ the authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR ~~122.26(c)(2)~~ 122.28(b)(3) including the location of the discharge, the size of the discharge, the quantity and nature of the pollutants discharged, and other relevant factors; ~~or~~

(c) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to ~~a~~ the source or to a category ~~of sources~~ or subcategory of discharges or facilities;

(d) ~~occurrence of one or more of the following circumstances:~~ the discharger is not in compliance with the conditions of the general permit;

~~(i) violation of any conditions of the permit; or~~

~~(ii) obtaining an MPDES permit by misrepresentation or failure to disclose fully all relevant facts;~~

(e) circumstances have changed since the time of the request to be covered by the general permit so that the discharger is no longer appropriately controlled under the general permit;

(f) effluent limitations guidelines (ELGs) have been promulgated for the source, or a category or subcategory of discharges or facilities covered under the general permit; or

~~(iii)~~ (g) there is a change in any condition that requires either a temporary or permanent reduction or elimination of the ~~authorized~~ discharge authorized under the general permit~~; or~~

~~(iv) a failure or refusal by the permittee to comply with the requirements of 75-5-602, MCA~~.

~~(10)~~ (11) ~~The department may reissue an authorization to operate under a MPDES general permit provided that the requirements for reissuance of MPDES permits specified in ARM 17.30.1322 are met.~~ The department may require any owner or operator authorized to discharge under a general permit to apply for an individual permit as provided in (10) only upon written notice to the owner or operator that an individual permit application is required. This notice must include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the

individual permittee will automatically terminate. The department may grant additional time upon request of the applicant.

~~(11)~~ (12) The department shall maintain and make available to the public a register of all sources and activities authorized to discharge ~~operate, or with notices of intent to discharge,~~ under each ~~MPDES~~ general permit, including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) remains the same, but is renumbered (13).

~~(13)~~ (14) For purposes of this rule, the board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

~~(a) 40 CFR 122.28 (July 1, 2012), which sets forth criteria for selecting categories of point sources appropriate for general permitting;~~

~~(b) 40 CFR 124.10(d)(1) (July 1, 2012), which sets forth minimum contents of public notices; and~~

~~(c)~~ (a) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit~~.~~;

(b) 40 CFR 122.44 (July 1, 2013), which sets forth procedures for establishing limitations, standards, and other permit conditions;

(c) 40 CFR 123.44(a)(2) (July 1, 2013), which sets forth timeframes for EPA to object to general permits; and

(d) 40 CFR 122.21(i)(1) (July 1, 2013), which sets forth application requirements for new and existing concentrated animal feeding operations.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to maintain consistency with the federal requirements set forth in 40 CFR 122.28 and provide a uniform rule for the issuance and administration of general permits under both the MPDES and ground water pollution control system (GWPCS) programs. The board is proposing to adopt these federal requirements because they are required elements of a delegated state's permit program and are required to implement the federal Clean Water Act's national pollutant discharge elimination system (NPDES) program. See 40 CFR 123.25. In general, the proposed amendments add criteria for coverage and administrative requirements, clarify public notice and public hearing requirements, and update incorporations by reference to applicable federal rules. The board's specific reasons for adopting the federal requirements into various sections of ARM 17.30.1341 follow. The proposed amendments also make minor changes to wording and punctuation to conform to standard practices for rule formatting.

The board is proposing to amend (1) by adding, consistent with 40 CFR 122.28(a)(1) and (2), criteria with which the department can issue general permits and by removing the specific categories of discharges, which had been listed in (1), as general permits were not developed for some of those categories and some of the categories are not subject to permits such as discharges from road salting and septic systems. Categories of discharges currently listed may still be covered by a

general permit provided they meet the criteria now proposed in (1).

The board is proposing new language in (2) to provide that general permits are subject to the same requirements for issuance, modification, revocation and reissuance, and termination as set forth in ARM Title 17, chapter 30, subchapter 13 except that the issuance date is delayed for 90 days to allow EPA to review and object to state-issued general permits. The amendment is necessary to maintain consistency with 40 CFR 123.44(a)(2), which is the equivalent federal rule. Existing text in (2) that is redundant with the requirements and categories for issuing general permits given in (1) and in ARM Title 17, chapter 30, subchapter 13 is proposed to be stricken.

It is necessary to amend the public notice requirements for general permits, as the board proposed in (3), in order for the rules in subchapter 11 to reference the public comment and public hearing provisions in subchapter 13 and to be consistent with the board's public notice rules in ARM 17.30.1372 through 17.30.1377, which set forth procedures for responding to public comment and for holding public hearings. After these amendments become effective, permits issued under subchapter 11 will follow the public comment and public hearing provisions in subchapter 13. The board is proposing to retain the requirement in (3) that notice of the general permit be provided to the Water Pollution Control Advisory Council (WPCAC) and to any person affected by the general permit.

The board is proposing to amend the requirements to obtain coverage under a general permit, set forth in (4), to be consistent with the federal rule at 40 CFR 122.28(b)(2). The proposed amendments are necessary to remove the requirement that an owner or operator submit a complete application form because these proposed amendments will instead require an owner or operator wishing to obtain coverage under a general permit to submit a notice of intent. Standardizing the format and procedure serves an objective of general permitting, which is to expedite permitting and lessen the department's administrative burden for groups of similar discharges. The board is also proposing to remove the current rule's requirement to cite one of several specifically listed reasons when coverage is denied. Many of these "reasons" appear in 40 CFR 122.4 and ARM 17.30.1311 and are not specific to general permits. Federal regulations at 40 CFR 122.28 do not include any such requirements for denial of general permit coverage. Instead, conditions for requiring an individual permit, the equivalent of denial of coverage under a general permit, are given in (11), as amended.

The board proposes amendments to (5) to set forth the contents of a notice of intent that are necessary for the program to identify the owner or operator and the discharging facility, properly implement the storm water program, and specify that the signatory requirements for a notice of intent are given in ARM 17.30.1323. It is also necessary that the board propose removal of language regarding denial of general permit coverage as coverage under a general permit is not denied, rather the discharger is required to obtain individual permit coverage. Proposed (5)(a) is necessary to address specific situations where alternative notice of intent requirements may be necessary for certain storm water discharges from inactive facilities on federally owned lands. Proposed (5)(b) is necessary to provide that notices of intent to obtain coverage under a general permit for concentrated animal feeding operations (CAFOs) must be consistent with the federal rule at 40 CFR

122.21(i)(1).

The board is proposing to amend (6) to remove duplicative language and the condition that all authorizations expire on the date the general permit expires and replace it with new language to clarify that the general permit must specify the deadline for submitting a notice of intent and when permit coverage begins. ARM 17.30.1346 specifies that all MPDES permits are effective for a fixed term not to exceed five years, which applies to general permits as well. ARM 17.30.1313 addresses the continuation of expiring permits. The new language is necessary to maintain consistency with the federal requirements at 40 CFR 122.28(b)(2)(iii).

The board is proposing new (7) to specify the method in the general permit by which the permitee will be informed that it is authorized to discharge. The four methods for informing a permittee that it is authorized to discharge under a general permit are: upon receipt of the notice of intent; after a waiting period specified in the permit; on a specific date; or upon written notification by the department. These provisions are necessary to maintain consistency with 40 CFR 122.28(b)(2)(iv).

The board is proposing to amend (7) and renumber it as (8). The proposed amendments remove language that is specific to MPDES permits in order to include and accommodate ground water permits and to remove language that refers to a notice of intent, because that requirement is not consistent with the federal or state regulations governing individual permits and adds nothing to the intent of the rule, which is to provide a process for transferring coverage from an individual to a general permit. The board is also proposing to change the term 'operate' to 'discharge' to clarify that permits only authorize the discharge of pollutants and do not control other aspects of the facilities operations. These provisions are necessary to maintain consistency with the federal requirements for transferring coverage from an individual permit to a general permit in 40 CFR 122.28(b)(3)(v).

The board is proposing to amend (8) and renumber it as (9). The proposed amendments are necessary to remove language specific to MPDES permits, remove language referring to receipt of a notice of intent, and add a requirement that the permittee submit the reasons for requesting an individual permit along with the permit application. Such a requirement for "reasons" is consistent with 40 CFR 122.28 (b)(3)(iii), which provides a process for an owner or operator to request exclusion from the coverage of a general permit by applying for an individual permit. The request will be granted by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. This provides the department reasonable discretion to deny coverage under an individual permit in the case where a discharger is already properly covered by a general permit. An objective of general permitting is to ease the department's administrative burdens. Therefore, dischargers should not be able to routinely opt out of coverage by requesting an individual permit. The new language also specifies that the authorization to discharge under the general permit is terminated upon issuance of the individual permit.

The board is proposing to amend (9) and renumber it as (10). The proposed amendments are necessary to remove language that allows the department, on its own initiative or upon request by any interested person, to modify, suspend, or revoke, in whole or in part, a general permit, an authorization, or notice of intent to operate under a general permit. In accordance with (2), general permits are issued,

modified, revoked and reissued, or terminated in accordance with applicable provisions of ARM Title 17, chapter 30, subchapter 13. The proposed language in (10) is consistent with the federal rule at 40 CFR 122.28(b)(3),which specifies the conditions under which an individual discharger authorized under a general permit may be required to obtain an individual permit. The result of the proposed change to (10) is that interested persons may petition the department to require that a discharger, covered by a general permit, be required to obtain an individual permit where the conditions in (10)(a) through (g) are present. These provisions are necessary to maintain consistency with the federal requirements in 40 CFR 122.28(b)(3) for requiring a discharger authorized by a general permit to obtain an individual permit.

The board is proposing to amend (10) and renumber it as (11). The proposed amendments are necessary to remove provisions related to reissuance of an authorization to discharge under a general permit when the requirements of ARM 17.30.1322 are met. This proposed amendment is necessary because ARM 17.30.1322 establishes extensive application requirements for MPDES permits, but excludes "persons covered by general permits under ARM 17.30.1341" from the application requirements. The equivalent federal rule at 40 CFR 122.28(b)(2)(i) states that "[a] complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications." The equivalent language is proposed in the amendments to (4). The board is proposing new language in (11) that will require written notification from the department when a discharger under a general permit is required to submit an application for an individual permit. This notification must include the basis for the decision, appropriate application form(s), and timeframes for submittal of the individual permit application. The new language also specifies that coverage under the general permit terminates upon the effective date of the individual permit. This requirement is consistent with 40 CFR 122.28(b)(3)(ii) for EPA-issued permits.

The board is proposing to amend (11) and renumber it as (12). This amendment is necessary to make technical corrections, to remove language referring to the notice of intent, and to remove language specific to MPDES permits.

The board is proposing to amend (13) and renumber it as (14). The amendments are necessary to incorporate by reference federal rules that support ARM 17.30.1341 and are proposed for incorporation by reference. Two of the federal rules currently incorporated by reference are no longer necessary to support this rule and will be deleted because the criteria for categories of point sources appropriate for general discharge permits are now set forth in (1) and the criteria for public notice in subchapter 13 will apply to general permits. In order to maintain state primacy, the board is proposing to incorporate by reference the following federal rules: 40 CFR 122.44, which sets forth procedures for establishing limitations, standards, and other permit conditions necessary to support the categories of general permits in proposed (1)(c); 40 CFR 123.44(a)(2), which sets forth timeframes for EPA to object to state-issued general permits necessary to support general permit actions by the department under proposed (2); and 40 CFR 122(i)(1), which sets forth application requirements for CAFOs necessary to define notice of intent requirements for such facilities in proposed (5)(b).

17.30.1342 CONDITIONS APPLICABLE TO ALL PERMITS (1) The ~~following~~ conditions described in this rule apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1343 ~~17.30.1344~~. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

~~(1)~~ (2) The permittee shall comply with all standard conditions in 40 CFR 122.41 and all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

~~(a)~~ (3) The permittee shall comply with effluent standards or prohibitions established under the Act and rules adopted thereunder including limitations ~~ARM 17.30.1206~~ for toxic pollutants in ARM 17.30.1206 and is required by federal law to comply with technology-based effluent limitations for solids, sludge, and other pollutants removed in the course of wastewater treatment set forth in ARM Title 17, chapter 30, subchapter 12 within the time provided in the rules that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

~~(b)~~ (4) The Act provides that any person who violates a permit condition or limitation is subject to a civil penalty not to exceed ~~$10,000~~ 25,000 per day ~~of such~~ for each violation. Any person who willfully or negligently violates 75-5-605, MCA, including a permit condition or limitation, is subject to ~~a fine~~ criminal penalties not to exceed $25,000 per day of violation, ~~or~~ imprisonment for not more than one year, or both. In the case of a second or subsequent conviction for a willful or negligent violation, a person is subject to a fine of not more than $50,000 per day of violation, imprisonment of not more than two years, or both. The Act provides that any person who violates a permit condition or limitation may be assessed an administrative penalty by the department not to exceed $10,000 per violation per day, with the maximum penalty assessed not to exceed $100,000 for any related series of violations.

(2) remains the same, but is renumbered (5).

~~(3)~~ (6) It ~~may~~ is not ~~be~~ a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) through (8) remain the same, but are renumbered (7) through (11).

~~(9)~~ (12) The permittee shall allow the department, or an authorized representative, including an authorized contractor acting as a representative of the department, upon the presentation of credentials and other documents as may be required by law, to:

(a) through (d) remain the same.

~~(10)(a)~~ (13) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

~~(b)~~ (14) Except for records and monitoring information required by this permit that are related to the permittee's sewage sludge use and disposal activities, which must be retained for a period of at least five years, or longer, ~~T~~the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring

instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the department at any time.

~~(c)~~ Records of monitoring information must include:

(i) through (vi) remain the same, but are renumbered (a) through (f).

~~(d)~~ (15) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless ~~other test procedures have been specified in this permit~~ another method is required under 40 CFR 503.8 or Subchapter N.

(16) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $25,000, imprisonment for not more than six months, or both.

~~(11)~~ (17) All applications, reports, or information submitted to the department must be signed and certified~~. (See ARM 17.30.1323.)~~ as required by ARM 17.30.1323.

~~(12)(a)~~ (18) The permittee shall give notice to the department, as soon as possible, of any planned physical alterations or additions to the permitted facility~~. Notice is required only~~ when:

~~(i)~~ (a) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in ARM 17.30.1340~~(2)~~; or

(ii) remains the same, but is renumbered (b).

(b) remains the same, but is renumbered (19).

~~(c)~~ (20) This permit is not transferable to any person, except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary ~~under the Act. (See ARM 17.30.1360; in some cases, modification or revocation and reissuance is mandatory.)~~ or mandatory, as required by ARM 17.30.1360 and the Act.

~~(d)~~ (21) Monitoring results must be reported at the intervals specified elsewhere in this permit and subject to the following requirements~~.~~:

(i) remains the same, but is renumbered (a).

~~(ii)~~ (b) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136, ~~or as~~ using procedures specified in the permit for any pollutant for which an analytical method is not established by 40 CFR Part 136, or by another method required for an industry-specific waste stream under 40 CFR 503.8 or 40 CFR subchapter N, the results of such monitoring must be included in the calculation and reporting of the data submitted in the DMR.

~~(iii)~~ (c) Calculations for all limitations, which require averaging of measurements, must utilize an arithmetic mean unless otherwise specified by the department in the permit.

~~(e)~~ (22) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

~~(f)(i)~~ (23) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours

from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

~~(ii)~~ (24) The following must be included as information which must be reported within 24 hours under this rule:

(A) and (B) remain the same, but are renumbered (a) and (b).

~~(C)~~ (c) violation of a maximum daily discharge limitation for any ~~of the~~ pollutant~~s~~ listed by the department in the permit to be reported within 24 hours ~~(see ARM 17.30.1344 and~~ as required by 40 CFR 122.44(g) and 40 CFR 122.41~~)~~.

~~(iii)~~ (25) The department may waive the written report on a case-by-case basis for reports under ~~(ii)~~ (24), ~~above~~ if the oral report has been received within 24 hours.

~~(g)~~ (26) The permittee shall report all instances of noncompliance not reported under ~~(a)~~ (18)(a), ~~(d)~~ (21), ~~(e)~~ (22), and ~~(f)~~ (23), at the time monitoring reports are submitted. The reports must contain the information listed in ~~(f)~~ (23).

(h) remains the same, but is renumbered (27).

~~(13)(a)~~ (28) The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of ~~(b) and (c)~~ (29)(a) and (30).

(29) Bypasses are subject to the following notification requirements:

~~(b)~~ (a) If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the department, if possible at least ten days before the date of the bypass. ~~The permittee shall submit notice of an unanticipated bypass as required in (12)(f) (24-hour notice).~~

(b) The permittee shall submit notice of an unanticipated bypass as required in (23), except as provided in (28).

~~(c)~~ (30) Except as provided in (29), ~~B~~bypass is prohibited~~,~~ and the department may take enforcement action against a permittee for bypass, unless:

(i) and (ii) remain the same, but are renumbered (a) and (b).

~~(iii)~~ (c) the permittee submitted notice~~s~~ as required under ~~(c)~~ (30).

~~(d)~~ (31) The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed above in ~~(c)(i)~~ (30)(a).

~~(14)(a)~~ (32) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of ~~(b)~~ (33) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

~~(b)~~ (33) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) and (ii) remain the same, but are renumbered (a) and (b).

~~(iii)~~ (c) the permittee submitted notice of the upset as required in ~~(12)(f)(ii)(B)~~ (24)(b) ~~(24-hour notice)~~; and

~~(iv)~~ (d) the permittee complied with any remedial measures required under ~~(4)~~ (7).

(c) remains the same, but is renumbered (34).

~~(15)~~ (35) The board ~~hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~ adopts and incorporates by reference the following federal regulation as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR Part 136 (July 1, 2013), which ~~is a series of federal agency rules setting~~ sets forth guidelines establishing test procedures for the analysis of pollutants; ~~and~~

(b) 40 CFR 122.41 (conditions applicable to all discharge permits);

~~(b)~~ (c) 40 CFR 122.44(g) (July 1, 2013), which ~~is a federal agency rule~~ sets forth notification requirements requiring 24-hour notice of any violation of maximum daily discharge limits for toxic pollutants or hazardous substances;

(d) 40 CFR 503.8 (July 1, 2013), which sets forth sampling and analytical methods for sewage sludge that are approved for use in NPDES permits; and

(e) 40 CFR Subchapter N (July 31, 2013), which sets forth technology-based effluent limitations and specific analytical methods applicable to these limitations.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the conditions applicable to all permits in ARM 17.30.1342 in order to make the rule consistent with the equivalent federal requirements set forth in 40 CFR 122.41 and the Montana Water Quality Act. ARM 17.30.1342 defines and establishes certain conditions which apply to all MPDES permits and must be incorporated into the permits either expressly or by reference. The proposed amendments update the standard permit language to incorporate changes in the Montana Water Quality Act for assessment of civil and administrative penalties for noncompliance with permit conditions. The proposed amendments make minor changes to wording and punctuation to conform to standard practices for rule formatting. The board's specific reasons for deletions and amendments to ARM 17.30.1342 follow. The board has also renumbered the rule to simplify the rule and make it more readable.

The board is proposing to amend the language in new (1) to correct the reference for additional conditions applicable to certain categories of permits from ARM 17.30.1344 to 17.30.1343. ARM 17.30.1343 is the board's rule that is equivalent to 40 CFR 122.42 in federal rule, which contains the additional conditions that are applicable to certain categories of permits. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41 and to correct formatting.

The board is proposing to amend current (a) to add language requiring

compliance with the limitations and timeframes for toxic pollutants and for sewage sludge use and disposal in the Act and rules adopted thereunder, to provide that failure to comply with these standards and limitations is a violation of the permit even if the permit has not been modified to include these requirements, and to renumber (a) to (1)(a)(i). The federal CWA requires the administrator of the EPA to identify and promulgate effluent standards for toxic pollutants and to periodically revise and update the list of toxic pollutants and applicable standards for each listed toxic pollutant. Section 405(d) of the federal CWA requires the administrator of the EPA to develop and promulgate regulations governing the use and disposal of sewage sludge and identify and regulate toxic pollutants which may be present in such material. The state incorporates these requirements as standard permit conditions by incorporating 40 CFR 122.41 by reference. The permittee must comply with both of these federal provisions even if the permit has not been modified to incorporate these requirements. This amendment is necessary to maintain consistency with the federal requirements and standard conditions at 40 CFR 122.41(a)(1) and to correct formatting. Current (a) is proposed to be renumbered (3).

The board is proposing to amend current (b), regarding a permittee's duty to comply with the Montana Water Quality Act (the Act) and all permit conditions, by clarifying what civil, criminal, and administrative penalties may result from noncompliance with the permit or the applicable requirements under the Act or administrative rules and by renumbering. These changes are necessary to provide notice of penalties for noncompliance with permit conditions, the Act, and rules and to correct erroneous language. The board is also proposing to add language addressing administrative penalties that may be assessed under 75-5-611, MCA, for permit violations or violations of the Act. Administrative penalties may be assessed in the amount of up to $10,000 per day for each violation, but not exceed $100,000 for a series of related violations. These amendments are necessary to maintain consistency with the Act and 40 CFR 122.41(a) and 123.27(a). Current (b) is proposed to be renumbered (4).

The board is proposing to amend current (3), regarding compliance responsibilities for permittees, to make a minor word change and to renumber (3) to (6).

The board is proposing to amend current (9), which adopts and incorporates federal requirements regarding inspection and entry of permitted facilities by the department, to authorize~~e~~ a contractor, who presents appropriate credentials and is acting as a representative of the department, to access a permittee's premises and inspect and perform sampling to determine permit compliance. This amendment is necessary to maintain consistency with the federal rule at 40 CFR 122.41(i). Current (9) is proposed to be renumbered (12).

The board is proposing to amend current (10)(a), which incorporates federal requirements regarding monitoring and records, and to renumber (10)(a) to (13). The board is proposing to amend current (10)(b) to include language requiring monitoring records related to sludge use and disposal to be kept for five years and to renumber (10)(b) to (14). This amendment is necessary to maintain consistency with 40 CFR 122.41(j). The board is proposing a minor word change to current (10)(c) and is proposing to renumber (i) through (vi) as (a) through (f). The board is also proposing to amend current (10)(d), which specifies approved testing

procedures to include methods specified in 40 CFR 503.8 and subchapter N, which are federal regulations governing sewage sludge monitoring requirements and technology-based effluent limitation guidelines, respectively. This amendment is necessary to maintain consistency with 40 CFR 122.41(j). Current (10)(d) is proposed to be renumbered (15). The board is also proposing to add a new (16) to establish penalties that are consistent with 75-5-633, MCA, for falsifying, tampering with, or knowingly altering monitoring equipment or test methods causing inaccurate monitoring results. This amendment is necessary to maintain consistency with 40 CFR 122.41(j)(5).

The board is proposing to amend current (11), regarding signatory requirements, to make minor editorial changes, and renumber (11) to (17).

The board is proposing to amend current (12)(a), regarding the permittee's reporting and notification requirements, to correct minor changes to wording and punctuation, and to renumber (12)(a) to (18). The board is proposing to clarify when the permittee is required to notify the department of alterations or additions to permitted facilities and to correct formatting. Current (12)(a)(i) is proposed to be renumbered (18)(a) and the reference to ARM 17.30.1340(2), regarding new sources, is corrected to make the reference applicable to the entire rule. The board is also proposing to modify current (12)(c) and (12)(d) to make minor editorial changes and to renumber (12)(c) to (20) and (12)(d) to (21). The board is also proposing to amend current (12)(d)(ii) to include analytical results obtained using test methods that are specified in 40 CFR 136, the permit, 40 CFR 503.8, or 40 CFR subchapter N in permit calculations that are reported to the department in the DMR. Current (12)(d)(ii) is proposed to be renumbered (21)(b). Federal regulations at 40 CFR 136, 40 CFR 503.8, and 40 CFR subchapter N address effluent limitations that are adopted by the board at ARM 17.30.1207 and are required to be included in all MPDES permits issued by the department. In some cases, the effluent limitations given in these subchapters require specific analytical methods that are not included in 40 CFR 136, but are applicable to a specific industrial category. The board is proposing to make minor editorial changes to current (12)(d)(iii), (12)(e), (12)(f)(i), and (12)(f)(ii) and renumber them to (21)(c), (22), (23), and (24), respectively. The board is also proposing to modify current (12)(f)(ii)(C) to eliminate language directing permittees to ARM 17.30.1344, because the discharge limitations requiring 24-hour reporting are not contained in ARM 17.30.1344, and to renumber (12)(f)(ii)(C) to (24)(c). This provision requires permittees to report exceedances or violations, within 24 hours, of maximum daily discharge limitations for pollutants, which are listed by the department in an MPDES permit. 40 CFR 122.44(g) places the burden on the department to list those pollutants in an MPDES permit for which this 24-hour reporting requirement must be required. ARM 17.30.1344 adopts by reference 40 CFR 122.44(g). For clarification, the board is proposing text which points the permittee directly to 40 CFR 122.44(g). The board is also proposing to amend current (12)(f)(iii) and (12)(g) to correct internal references and to renumber (12)(f)(iii) to (25) and (12)(g) to (26).

The board is proposing to make minor amendments to current (13)(a), regarding bypass reporting requirements, to make editorial changes, correct formatting, correct internal references, and to renumber (13)(a) to (28). Bypass is the intentional diversion of waste streams from any portion of a treatment facility, as

defined in ARM 17.30.1303 and 40 CFR 122.41(m). These proposed changes are necessary to maintain consistency with 40 CFR 122.41(m). The board is proposing a new (29) to describe the department's bypass notification requirements. Current (13)(b), renumbered (29)(a), is proposed to be amended to provide notification requirements for anticipated bypass. New (29)(b) is being proposed to provide notification requirements for unanticipated bypass. These amendments are being proposed to make the rule consistent with the federal rule. The board is also proposing to amend current (13)(c)(iii) and (13)(d) to correct internal cross references and to renumber (13)(c)(iii) to (30)(c) and (13)(d) to (31).

The board is proposing to make minor amendments to current (14)(a) regarding upset requirements to make editorial changes, correct formatting, and to renumber (14)(a) to (32). An upset occurs when there is unintentional and temporary noncompliance with technology-based effluent limitations due to factors beyond the reasonable control of the permitee and is defined in ARM 17.30.1303 and 40 CFR 122.41(n). These changes are necessary to maintain consistency with 40 CFR 122.41(n) and to correct formatting.

In (33)(c), the board is proposing to reference the general 24-hour notice provision for permit noncompliance.

The board is proposing to incorporate and update all applicable federal rules necessary to support the provisions in ARM 17.20.1342 in proposed amendments to current (15), which is proposed to be renumbered (35). These amendments will also correct formatting and provide consistency with other MPDES rules. The proposed amendments to current (15)(a), proposed to be renumbered (35)(a), incorporate the most recent federal guidelines establishing testing procedures for the analysis of pollutants as given in 40 CFR 136 and the proposed amendments to current (15)(b), proposed to be renumbered (35)(b), clarify the notification requirements for permittees under this rule. The board is further proposing to add a new (35)(c) incorporating 40 CFR 503.8, which addresses additional analytical methods for sewage sludge and new (35)(d), which incorporates analytical methods that are assigned to specific technology-based limitations in 40 CFR subchapter N. The board has adopted federal technology-based effluent limitations as permit requirements in ARM 17.30.1207.

4. The rules proposed for repeal are as follows:

17.30.1110 APPLICATION PROCEDURES: GENERAL (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2871 and 17-2872, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1110, which sets forth application procedures for storm water discharges other than storm water discharges associated with construction activity. This rule is no longer necessary because application procedures for all individual MPDES permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including storm water general permits, are found in ARM 17.30.1341, as amended. These procedures require filing a notice of intent for coverage under a general permit and are common to all general permits issued under the MPDES rules. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual

permits, and 122.28, for general permits. Repeal of ARM 17.30.1110 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1115 NOTICE OF INTENT PROCEDURES: CONSTRUCTION ACTIVITY (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at pages 17-2883 and 17-2884, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1115, which sets forth application procedures for construction activity. This rule is no longer necessary because application procedures for all MPDES individual permits, including storm water, are found in ARM 17.30.1322. The procedures for issuing and administering MPDES general permits, including procedures for filing a notice of intent for coverage under a general permit, are found in ARM 17.30.1341, as amended. ARM 17.30.1322 and 17.30.1341 are equivalent to federal regulations set forth at 40 CFR 122.21, 122.26(c), for individual permits, and 122.28, for general permits. Repeal of ARM 17.30.1115 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

17.30.1117 TRANSFER OF PERMIT COVERAGE (AUTH: 75-5-201, 75-5-401, MCA; IMP, 75-5-401, MCA), located at page 17-2884.4, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1117, which sets forth procedures for transferring permit coverage for storm water discharges regulated under subchapter 11. This rule is not necessary because storm water permits are MPDES permits and may be transferred in accordance with the applicable provisions of ARM Title 17, chapter 30, subchapter 13, specifically ARM 17.30.1360. Repeal of ARM 17.30.1117 will eliminate duplication and potential conflicts between this rule and other rules adopted by the board in ARM Title 17, chapter 30, subchapters 11 through 13 and provide a uniform system for the administration of general permits.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 4, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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

person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, July 28, 2014.

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

In the matter of the adoption of New Rules I through XIV; the amendment of ARM 23.13.101, 23.13.201, 23.13.203, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.301, 23.13.304, 23.13.702, 23.13.703, 23.13.704, and 23.13.711; the transfer and amendment of ARM 23.13.401, 23.13.501, 23.13.701, 23.13.710, and 23.13.712; and the repeal of ARM 23.13.202 pertaining to the certification of public safety officers	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, TRANSFER AND AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 5, 2014, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Room 121 of the Karl Ohs Building, Montana Law Enforcement Academy, 2260 Sierra Road East, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

<u>NEW RULE I EMPLOYMENT AND TRAINING OF RESERVE OFFICERS</u>

(1) An agency that appoints a reserve officer pursuant to 7-32-213, MCA, must submit a completed employment status form to the director within ten days of appointing the reserve officer.

(2) The employing agency is responsible for training the reserve officer. The reserve officer must complete training as prescribed in this rule within two years of the reserve officer's initial appointment

(3) Training must, at a minimum, consist of the courses and hours listed in 7-32-214(1), MCA.

AUTH: 2-15-2029(2), MCA
IMP: 7-32-214, 44-4-401(2)(e), 44-4-403(1), MCA

REASON: The POST Council has responsibility for establishing employment and training requirements for "public safety officers," a term that includes reserve officers. This rule is reasonably necessary to let employing agencies know that they are responsible for training reserve officers they employ and what criteria fulfill the minimum training requirements. This proposed rule fulfills POST's responsibilities with respect to the employment and training of reserve officers, and implements POST Resolution 08-002, adopted August 21, 2008, which adopted these standards. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/.

NEW RULE II FIREARMS PROFICIENCY STANDARDS (1) Each agency that employs a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer;

(b) designate a POST-certified agency firearms instructor to document annual firearms proficiency, which must include:

(i) date of qualification;

(ii) identification of the officer;

(iii) firearm manufacture and model;

(iv) results of qualifying; and

(v) course of fire used.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records.

(2) The minimum standards for annual firearms proficiency are:

(a) Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;

(c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 100 yards;

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic.

(3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.

(4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.

AUTH: 2-15-2029(2), MCA

IMP: 7-32-303(2), 44-4-403(1), MCA

REASON: The council has statutory authority to establish training standards for public safety officers. This rule is reasonably necessary to set minimum proficiency standards for firearms and to require documentation for each officer's proficiency that must be available to POST. Firearms proficiency is an important element of officer training, promoting both efficiency in the enforcement of the law and safety for the public. This rule implements resolution 10-003, adopted April 15, 2010, which adopted similar standards. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. An administrative rule is required to make the policy enforceable.

NEW RULE III RECORD OF ALL POST COUNCIL MEETINGS (1) As required by Title 2, chapter 6, MCA, POST will maintain records of all meetings and make those records available for public inspection. The record consists of an audio recording and minutes of the proceedings. The audio recording is the official record of POST meetings.

AUTH: 2-15-2029(2), MCA
IMP: 2-3-212, 44-4-403(1), MCA

REASON: This rule is reasonably necessary to implement the requirements for keeping public records of POST's meetings. POST finds that audio recordings are the best method for maintaining records of meetings because recordings are relatively inexpensive, accurate, can be easily copied and shared for public inspection, and are well-suited for long-term storage.

NEW RULE IV FORMAL MAPA CONTESTED CASE PROCEEDINGS (1) A contested case involves a determination by POST that affects the rights or responsibilities of the respondent.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer has requested a hearing.

(3) Formal proceedings for suspension or revocation are subject to MAPA, in addition to, where applicable, the Montana Rules of Civil Procedure, the Montana Uniform District Court Rules, the Montana Rules of Evidence, the Montana Rules of Professional Conduct, the Montana Code of Judicial Conduct, and these rules.

(4) A respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) A party may be self-represented, or may, at the party's own expense, be represented by an attorney licensed to practice law in the state of Montana.

(6) Contested case counsel for POST will represent POST during the proceedings.

AUTH: 2-15-2029(2), 2-4-201, MCA
IMP: 2-4-201; Title 2, chapter 4, part 6; 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE V ADOPTION OF ATTORNEY GENERAL'S MODEL RULES

(1) The POST Council adopts and incorporates by reference the Attorney General Model Rules ARM 1.3.216, 1.3.226, 1.3.227, 1.3.228, 1.3.229, 1.3.230, and 1.3.232 in effect. The model rules incorporated by reference can be found on the Secretary of State's web site at http://sos.mt.gov/. In applying the model rules, references to "the agency" should be interpreted to refer to "the POST Council."

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, Title 2, chapter 4, part 6, 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VI CONTESTED CASES, DISCOVERY (1) In all contested cases, discovery is available to the parties in accordance with Rules 26 through 37 of the Montana Rules of Civil Procedure. All references to "court" will be considered references to the hearing examiner or POST Council; all references to subpoena power will be considered references to ARM 1.3.230; all references to "trial" will be considered references to "hearing"; all references to "plaintiff" will be considered references to "a party"; all references to "clerk of court" will be considered references to the hearing examiner.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the adversely affected party may seek enforcement in district court under 2-4-701, MCA.

(3) If either party seeking discovery believes it has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), M.R.Civ.P., or, if either party refuses to make discovery, the aggrieved party may petition the district court for review of the hearing examiner's action under 2-4-701, MCA.

(4) Severe failures of discovery may also be sanctioned pursuant to M.R.Civ.P. 37 and the case law interpreting it. Sanctions under this subsection may be enforced by or appealed to district court pursuant to 2-4-701, MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-104, 2-4-602, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VII CONTESTED CASES – HEARING EXAMINERS (1) The POST Council chair or the director may appoint a hearing examiner to conduct a hearing in a contested case, as allowed by 2-4-611, MCA.

(2) A hearing examiner appointed under 2-4-611, MCA and this rule may:

(a) administer oaths or affirmations;

(b) issue subpoenas;

(c) provide for the taking of testimony and depositions;

(d) set the time and place for hearing;

(e) set motion and briefing schedules that comport with the Montana Rules of Civil Procedure and the Montana Uniform District Court Rules for filing, service, deadlines, and time calculation;

(f) by mutual consent of the parties, hold conferences to consider narrowing or simplifying the issues;

(g) rule on summary judgment motions, motions in limine, and other motions and, if motions are dispositive, make recommendations to the POST Council as if a hearing on the merits had occurred;

(h) allow, disallow, or limit expert testimony;

(i) recommend to the council dismissal of the case based on M.R.Civ.P. 41, default, or other reason;

(j) provide for and conduct the MAPA contested case process as a matter of discretion, within the bounds of the applicable law.

(3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.

(4) Pursuant to 2-4-611(4), MCA, the POST Council may disqualify a hearing examiner if a party shows by affidavit the existence of personal bias, lack of independence, disqualification by law, or other ground for disqualification.

(5) If a hearing examiner recuses himself or herself for good cause, the director or POST Council may appoint a replacement.

(6) For guidance on the POST Council's past actions on cases and penalties imposed, a hearing examiner may inspect POST's integrity report, available on POST's web site or from POST staff, and may examine any POST file not containing privileged, ex parte, or other protected or constitutionally private material.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403(3), MCA

REASON: See Reason following Proposed New Rule XII.

NEW RULE VIII CONTESTED CASE HEARING (1) The contested case hearing will be conducted before the POST Council or a hearing examiner, at the council's discretion.

(2) The director will set the venue for the hearing.

(3) At the contested case hearing, the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action.

(4) The director may be represented by contested case counsel during the contested case process.

(5) The hearing examiner must ensure that the respondent and counsel for POST are afforded the opportunity to respond and present evidence and argument on all issues involved.

(6) Absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:

(a) opening statements by both parties;

(b) presentation of evidence by the respondent;

(c) cross examination by POST;

(d) presentation of evidence by POST;

(e) cross examination by the respondent; and

(f) rebuttal testimony.

(7) All testimony must be given under oath or affirmation.

(8) Exhibits must be marked and must identify the party offering the exhibits. The exhibits will be preserved by the hearing examiner and then by POST as part of the record of the proceedings.

(9) The hearing examiner may hear closing arguments, request written argument, order a schedule for parties to submit a prehearing memorandum, a final prehearing order, proposed findings of fact and conclusions of law, or any other writings that might assist the hearing examiner.

(10) The hearing examiner may grant recesses or continue the hearing.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE IX CONTESTED CASES, EVIDENCE (1) All evidence introduced in a contested case hearing will be received and evaluated in conformance with common law and statutory rules of evidence, including the Montana Rules of Evidence.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE X CONTESTED CASES, EX PARTE COMMUNICATIONS

(1) Pursuant to 2-4-613, MCA, ex parte communication by a party or a party's agent with the hearing examiner, the council, any individual member of the council, or any person authorized to participate in the decision of the contested case, is expressly prohibited unless otherwise authorized by law.

(2) An unauthorized ex parte communication may be treated as a default and may constitute a waiver of the party's rights to proceed.

(3) If an ex parte contact occurs, the person receiving the communication must state on the record the nature and content of the communication and a summary of its contents. The presiding officer or hearing examiner may, in the exercise of discretion, make any order that is appropriate.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-613, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE XI CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE (1) Pursuant to 2-4-631(3), MCA, if the director or the council determines that public health, safety, or welfare requires emergency action, the director or council may immediately suspend a certification. The order must include findings justifying emergency action, and regular proceedings must be promptly initiated.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-631(3), 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE XII CONTESTED CASES, SETTLEMENT OR STIPULATION AND PROCESS FOR REVIEW BY THE POST COUNCIL (1) If, in the course of the MAPA contested case proceeding, the parties reach a stipulated agreement or settlement, the parties must:

(a) put the agreement into writing, signed by the respondent or the respondent's legal representative and the director;

(b) present the agreement to the POST Council for acceptance or rejection:

(i) if the council accepts the agreement by motion, then the agreement becomes the POST Council's final agency action;

(ii) if the council rejects the agreement, then the parties must provide the hearing examiner an excerpt of the official record of the POST meeting in which the council rejected the agreement. The contested case proceeds as though there had been no agreement.

(2) By signing a stipulation or settlement agreement, all parties:

(a) indicate their understanding that all agreements reached during the contested case process are subject to the POST Council's approval and are not binding until the council has approved the agreement by seconded motion;

(b) waive their rights or privileges to raise any argument, objection, complaint, or attempt to disqualify or remove any POST Council member or hearing examiner based on that individual's having heard, discussed, or ruled on the agreement. By submitting an agreement to the hearing examiner and the council, all parties agree not to attempt to disqualify that hearing examiner or any member of the POST Council who considers the agreement or prevent them from ultimately hearing the case on the merits if the agreement is rejected.

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

REASON: NEW RULES IV through XII are reasonably necessary to set forth the procedural rules that govern POST contested case proceedings and to clarify the roles of the parties, the hearing examiner, POST, and others. Based on past experience, the absence of administrative rules governing POST contested cases has resulted in confusion regarding how proceedings are initiated, what rules apply

(MAPA, rules of evidence, Attorney General model rules, etc.), what authority a hearing examiner possesses, what authority POST continues to exercise during a contested case, and other matters. These new rules attempt to address this confusion. These rules are necessary to establish that POST contested cases are formal matters that, procedurally, closely parallel state district court proceedings. Similarly, incorporation of evidentiary rules and discovery rules serve to further clarify the process for fact-finding within the case proceeding. These rules attempt to provide parties a fair process for resolving disputes and, at the same time, eliminate the uncertainty and unnecessary disputes over process that occurred in the past.

NEW RULE XIII NOTICE TO THE PUBLIC OF POST COUNCIL ACTIONS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, POST will afford reasonable opportunity for public participation. Reasonable opportunity for public participation may be afforded by:

(a) any of the agency actions allowed pursuant to 2-3-104, MCA; or

(b) a notice of the proposed agency action published in the register in accordance with template 102a (www.armtemplates.com). POST may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter within the jurisdiction of POST must be allowed at any public meeting under 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, defining "public matter" and "meeting" and stating the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-3-103, 2-3-104, 2-3-203, 44-4-403, MCA

REASON: Section 2-3-103, MCA, requires each agency to adopt by rule procedures "for permitting and encouraging the public to participate." This proposed rule adopts Attorney General Model Rule ARM 1.3.102, with minor grammatical changes.

NEW RULE XIV PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS (1) Except as provided in (2), the standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field.

(2) The standards set forth in (1) do not apply to reserve officers.

(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers.

AUTH: 2-15-2029(2), MCA
IMP: 7-32-303, 44-4-403(1), MCA

REASON: The council proposes to adopt this new rule to add needed clarity for readers as to the source of requirements for education and training for public safety officers and the obligation by employing agencies to notify the POST Council in case of a change in status of a public safety officer. Section 7-32-303(5), MCA, states the circumstances under which an experienced peace officer can achieve certification through equivalency. POST believes this opportunity should be extended to public safety officers, with the exception of reserve officers, and this rule accomplishes this goal. This rule also extends the requirement in 7-32-303(4), MCA that an employing agency notify POST within ten days after hiring a peace officer to all public safety officers. Section 7-32-303(4), MCA currently requires ten-day notice for hiring and termination of peace officers. This requirement allows POST to keep track of officers who are terminated for poor conduct or misconduct, and helps prevent these officers from obtaining employment with another Montana agency. The proposed rule extends this protection to all public safety officers. It also allows POST to track continuous employment by officers for purposes of implementing 7-32-303(5), MCA. Because POST and employing agencies currently use the ten-day notification process for peace officers, adopting this requirement is a convenient method that allows POST to be informed of the employing agencies with public safety officers.

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

23.13.101 ORGANIZATION AND GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS ~~(1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.~~

~~(2) The council membership is defined in 44-4-402, MCA.~~

~~(3) As used in ARM 23.13.101 through 23.13.712, the definitions set forth in 44-4-401, MCA, apply.~~

(1) The organization and function of the Public Safety Officers Standards and Training Council ("POST" or "POST Council") are described in ARM 23.1.101(1)(d), (2)(k), and (4).

(2) POST will maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders must be available for public inspection on request. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(1), 2-4-623(6), 2-15-2029, MCA

REASON: A description of the agency's organization and purpose is required by 2-4-201, MCA. Section (1) shortens the existing rule and eliminates unnecessary duplication. An index of agency decisions is required by 2-4-623(6), MCA. Section

(2) is necessary to address this requirement, and follows the provisions of Model Rule ARM 1.3.233. Prior to this amendment, POST did not have a rule addressing the requirements of 2-4-623(6), MCA, which requires each agency to index decisions in contested cases and make the decisions available to the public. This proposed amendment fills that gap in POST's rules and brings the rules into compliance with statute.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) ~~Public~~ All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, ~~as defined in 44-4-401, MCA,~~ all public safety officers ~~shall~~ must:

(a) be a citizen of the United States or may be a registered alien if unsworn;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;

(e) be a high school graduate or have ~~passed the general education development test and have~~ been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; ~~and~~

(g) be in good standing with any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;

~~(g)~~ (h) possess a valid driver's license if driving a vehicle will be part of the officer's duties~~.~~;

(i) take an oath containing the code of ethics and abide by the code of ethics contained in ARM 23.13.203; and

(j) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:

(i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Sanction, Suspension, and Revocation ARM 23.13.702;

(ii) review of the annual POST integrity report;

(iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;

(iv) review of agency policy and procedure regarding ethical and moral codes of conduct;

(v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

(3) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(i) and (2)(j). The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(i) and (2)(j). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: The POST Council has adopted a policy, POST Resolution 11-001, requiring in-service training for certified public safety officers. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. This amendment implements that policy as rule, making it enforceable through a disciplinary action. However, based on past experience, the council believed that the number of in-service hours should be reduced from 40 hours to 20 hours, and this amendment reflects that judgment. The change to (2)(e) is necessary because the Office of the Superintendent of Public Instruction no longer recognizes the GED test. New (2)(g) requires an officer to remain in good standing with all agencies of other states that have certified or licensed the officer. This amendment prevents an officer from losing certification in another state and then being certified in Montana. New (2)(i) clarifies the existing rule that the code of ethics applies to officers who were certified before the code was originally adopted as rule in 2008. This change is needed to prevent a double standard and to clarify that ethics do not vary based on an officer's hire date; an officer who deviates from the code of ethics has violated the ethics code regardless of when the offending officer was hired. New (2)(j) clarifies that the in-service training must include specified ethics topics.

New (3) is necessary to remove any confusion over which agency must maintain records, and it clarifies that the employing agency is responsible for maintaining records of the administration of the oath containing the code of ethics and the completion of in-service training required by (2)(i) and (2)(j). The amendments also make minor changes in grammar for clarity.

23.13.203 CODE OF ETHICS ~~(1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.~~

(1) All public safety officers who have been hired or employed by any agency or entity in Montana, or who have been certified by POST, or who have attended an MLEA basic class must be administered an oath regarding the code of ethics contained herein.

(2) The procedure for administration of the code of ethics is as follows:

(a) each ~~applicant for certification~~ officer will attest to this code of ethics and the oath shall be administered by the ~~head of the public safety agency for which they~~

~~serve~~ officer's employing authority, or by the ~~Montana Law Enforcement Academy (academy)~~ MLEA administrator or designee, or by the POST director or POST staff;

(b) the ~~applicant~~ officer and the ~~administrator~~ individual administering the oath will sign ~~two copies of~~ the public safety code of ethics; and

(c) at least one copy will be retained by the ~~applicant~~ officer or the officer's employing authority and ~~the other copy~~ will be ~~retained in the applicant's academy student file, which will be~~ made available for inspection by ~~the council~~ POST staff at any reasonable time.

(3) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule, even if it was not previously administered to them as an oath. Continued employment as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for suspension, sanction, or revocation of any POST certificate.

~~(3)~~ (4) The oath of the public safety officers' code of ethics is:

(a) "My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged~~.~~;

(b) "I ~~shall~~ will perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct~~.~~;

(c) "I will enforce or apply all laws and regulations appropriately, courteously, and responsibly~~.~~;

(d) "I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person~~.~~;

(e) "Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise~~.~~;

(f) "I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and ~~shall~~ will disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties~~.~~;

(g) "I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice~~.~~;

(h) "I will be responsible for my professional development and will take reasonable ~~opportunities~~ steps to improve my level of knowledge and competence~~.~~;

(i) "I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303(2), 44-4-403(1)(a), MCA

REASON: The proposed amendment is necessary to clarify that the code of ethics applies to all officers, regardless of when they were hired or certified. This

amendment also makes minor changes in procedure to promote efficiency and in language and format to promote clarity.

23.13.204 PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting ethical behavior, professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council ~~shall have~~ has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence as determined by the council.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303(7), 44-4-403(1)(a), MCA

REASON: The proposed amendments are necessary to clarify the broad purposes served by POST Council certificates and the standard of proof for sanctions. POST finds that adding a standard of proof is necessary to promote fairness to the officers the POST Council has certified.

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal agency, state, tribal entity, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers ~~shall~~ must complete the required basic training as set by the council.

(3) All public safety officers must ~~shall attest that they~~ subscribe to the code of ethics as prescribed in ARM 23.13.203. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

(4) Prior to issuance of any certificate, the public safety officer ~~shall~~ must have completed the designated combinations of education, training, and experience as computed by the credit hour system established ~~annually~~ by the council.

(5) To maintain certification the officer must:

(a) abide by all laws and rules of Montana, including those set forth herein;

(b) maintain ethical conduct by upholding and abiding by the code of ethics set forth in ARM 23.13.203 and refrain from engaging in any behavior that constitutes a ground for sanction, suspension, or revocation under ARM 23.13.702;

(c) maintain the continuing education and training requirements set forth by the council and ARM 23.13.201(2)(j).

~~(5)~~ (6) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies ~~shall~~ will be determined by the council, and requires notice of application for credit.

(7) In calculating the training hours for an intermediate, advanced, or supervisory certificate, no more than 25% of the required training hours will be allowed from any college or military training credits and no more than 15% will be allowed from in-service training.

(a) The POST Council is not responsible for maintaining records of in-service training hours acquired to satisfy the requirements of this rule. The employing agency must maintain records of in-service training hours acquired to satisfy this rule and provide those records with the application for intermediate or advanced certificates.

(8) In calculating the training hours for an intermediate, advanced, or supervisory certificate, military training will be accepted hour for hour only with a written explanation of how the training relates to civilian law enforcement and other supporting documents requested by the director.

(9) In calculating the training hours for an intermediate, advanced, or supervisory certificate, college education will be credited for individual class work only. Credit will be given using the formula of ten hours for one semester credit hour and six hours for one quarter credit hour, and must be accompanied by a written explanation of how the higher education course relates to public safety officer work and supporting documents including a transcript.

~~(6)~~ (10) Applicable discipline-specific experience in any public safety agency will be considered by the council when determining the minimum standards for certification of each discipline.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: Amendments to (1) through (5) are necessary to clarify that the code of ethics applies to all officers, regardless of hire date. The amendments in (6) make minor changes in wording for clarity. The proposed amendments in (7) through (10) set out the manner in which the council accounts for training hours for purposes of certification. These amendments implement Resolution 08-001, adopted August 21, 2008, and Resolution 10-001, adopted February 14, 2011. The resolutions can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. The resolutions are reasonably necessary to provide criteria for local agencies and notice to officers of how POST calculates training hours. The new rule language is needed to make those policies enforceable.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation ~~shall~~ must have completed:

(i) the probationary period prescribed by law or by the current employing agency, but in any case have a minimum of one year discipline-specific employment experience with the current employing agency; and

(ii) the basic course or the equivalency as defined by the council~~; and~~.

~~(iii) application for the basic certificate.~~

(b) Public safety officers hired before the effective date of this regulation ~~shall~~ must have:

(i) completed the probationary period prescribed by the employing agency, and ~~shall have~~ served a minimum of one year with the present employing agency;

(ii) completed the basic course at the ~~academy~~ MLEA, or an equivalency as defined by the council; or

(iii) remains the same.

(c) Public safety officers with out-of-state ~~experience and~~ training or who have been formerly employed by a designated federal agency, state, tribal entity, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) ~~shall~~ must have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training ~~and~~ or service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the ~~academy~~ MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training ~~and~~ or service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course~~; and~~.

~~(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.~~

(d) remains the same.

(e) The council may grant a one-time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) through (g) remain the same.

(2) An officer meeting the qualifications outlined above will be issued a basic POST certificate. POST will consider the completion of the above requirements to constitute the officer's application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment clarifies that POST considers an officer's completion of the training and experience requirements an implied request for a certificate, and POST will issue a certificate once the requirements are satisfied. This amendment is reasonably necessary to address past abuses from officers who exploited a loophole in the rules to attempt to avoid disciplinary action. For example, prior to this amendment, an officer could avoid a POST certificate simply by not applying for a certificate. Then, if the officer engaged in conduct that could result in disciplinary action, the officer could argue that POST had no authority because the officer had no certificate to suspend or revoke. This amendment forecloses this tactic. Additionally, this amendment is necessary to clarify the probationary period for a basic certificate, makes the rule consistent with 7-32-303(5)(c), MCA, and makes minor grammatical changes for clarity.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) ~~shall~~ must possess the discipline-specific basic certificate; and

(c) ~~shall~~ must have four years discipline-specific experience and 200 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an intermediate certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines as a matter of discretion that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an intermediate certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and basic certificate of the officer seeking intermediate certificate must be "discipline-specific," i.e., must be in the same discipline for which the intermediate certificate is sought.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the advanced certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate; and

(b) ~~shall~~ must have eight years' discipline-specific experience and 400 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an advanced certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an advanced certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking advanced certificate must be "discipline-specific," i.e., must be in the same discipline for which the advanced certificate is sought.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the supervisory certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate;

(b) ~~shall~~ must have successfully completed a ~~40~~ 32-hour POST-approved management course; and

(c) ~~shall~~ must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first-level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities~~, and most commonly is the rank of sergeant~~.

(3) Officers who believe they are eligible for a supervisory certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a supervisory certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking supervisory certificate must be "discipline-specific," i.e., must be in the same discipline for which the supervisory certificate is sought. Additionally, to avoid confusion, this amendment removes the reference to "commonly affected rank" because this language could be read as a limitation, which was not the intention.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the command certificate:

(a) ~~shall~~ must possess the discipline-specific supervisory certificate;

(b) ~~shall~~ must have completed a professional development course or courses cumulating a minimum of 200 hours or more of POST-approved, supervisory, management or leadership topic matter; and

(c) ~~shall~~ must have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

(2) Officers who believe they are eligible for a command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and supervisory certificate of the officer seeking command certificate must be "discipline-specific," i.e., must be in the same discipline for which the command certificate is sought.

23.13.211 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADMINISTRATIVE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the administrative certificate:

(a) ~~shall~~ must possess the discipline-specific advanced and command certificate; and

(b) ~~shall~~ must have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) remains the same.

(3) Officers who believe they are eligible for an administrative certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an administrative certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and advanced and command certificates of the officer seeking the administrative certificate must be "discipline-specific," i.e., must be in the same discipline for which the administrative certificate is sought.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES ~~(1) For the purposes of ARM 23.13.302, 23.13.304, and 23.13.401, the following definitions apply:~~

~~(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;~~

~~(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;~~

~~(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and~~

~~(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.~~

~~(2) The council is responsible for the approval of all public safety officer training programs:~~

~~(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and~~

~~(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.~~

(1) The director may approve any request for POST training credit or course content accreditation. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.

~~(3)~~ (2) ~~The course requirements for POST approved training include~~ To obtain the status of POST-approved training, training courses must:

(a) ~~meeting~~ meet the requirements ~~contained in (2), the requirements~~ for trainee attendance and performance, and the instructor requirements contained in these rules;

(b) ~~being~~ be based upon generally recognized best practices;

(c) ~~comporting~~ comport with Montana laws and court decisions; ~~and~~

(d) ~~being~~ be at least two hours or more in length~~.~~ ;

(e) be advertised and open to all public safety agencies; and

(f) contain course content that has been reviewed and approved by the director, either before or after the training occurs, through the procedures set forth in (3).

(3) To receive POST training credit, employing agencies or any person or entity seeking course credit for POST-certified officers must submit to the director:

(a) application for accreditation;

(b) instructor certification or training record and an instructor biography;

(c) material showing course content, including a syllabus and/or lesson plan and student handouts.

~~(4) Approval requirements for training courses presented or sponsored by public safety agencies are:~~

~~(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and~~

~~(b) each course must be advertised and open to all public safety agencies.~~

(4) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to follow the required reporting procedures set forth in these rules and as set by the director and monitor the standards for training, trainee attendance, and performance as set by the council.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: More public safety officer training is being offered by private vendors, and the manner in which individual public safety agencies authorize and approve training differs from agency to agency. The POST Council finds that rules that describe how it approves training programs and applications for accreditation will promote consistency for training vendors and agencies, while at the same time help

ensure that officers receive the appropriate training. Accordingly, this proposed rule amendment is necessary to promote fairness for officers and agencies while clarifying the POST Council's responsibilities and providing clear guidelines for POST staff. The definitions in ARM 23.13.301(1) have been transferred to the general definition rule, ARM 23.13.102, so that they will be applicable to all of the POST Council's rules.

23.13.304 THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course ~~shall~~ will be prescribed by the council.

(2) Students in any basic public safety officers' course ~~shall be~~ are required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council ~~shall annually~~ will review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(a) All lesson plans submitted to the POST Council for accreditation must contain, at a minimum:

(i) the title of the lesson plan;

(ii) the training goal of the lesson plan;

(iii) application level performance objectives;

(iv) the method of evaluation;

(v) the student materials and handouts;

(vi) course content references.

(4) The council may approve changes from the course content established at the last ~~annual~~ review upon written application from the MLEA administrator ~~of the academy~~ providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: This amendment is necessary to set forth the criteria for basic training courses. The goal of including these criteria is to help vendors and agencies know what their lesson plans must include, thus facilitating POST-approval of their courses. The amendment implements Resolution 09-002, adopted on April 16, 2009, in order to make the policy enforceable. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. It also deletes the requirement for annual review by the POST Council of the basic curriculum, and makes minor changes in grammar.

23.13.702 GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The executive director or the council ~~shall~~ will consider ~~and rule on~~ any ~~complaint~~ legitimate allegation made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of ~~material~~ any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the ~~person's~~ officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) ~~addiction to or~~ the unlawful use of or addiction to any controlled substances or other drug(s) that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable treatment;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) ~~the commission~~ conviction of a felony, or an offense which would be a felony if committed in this state~~, or an offense involving dishonesty, unlawful sexual conduct, or physical violence~~;

(f) conviction of any offense involving unlawful sexual conduct or unlawful physical violence;

~~(f)~~ (g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

~~(g)~~ (h) willful violation of the code of ethics set forth in ~~these rules~~ ARM 23.13.203;

~~(h)~~ (i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

~~(i)~~ (j) failure to meet the minimum standards for employment as a public safety or peace officer set forth in these rules or Montana law;

~~(j)~~ (k) failure to meet the minimum training requirements ~~provided in~~ or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules; ~~or~~

~~(k)~~ (l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the ~~agency's~~ employing authority's or officer's reputations, or to the public's confidence in the profession~~.~~;

(m) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of public safety officers;

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

(o) the sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.

~~(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a~~

~~federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.~~

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(c), MCA

REASON: This amendment is reasonably necessary to clarify that sanctions are related to behaviors that negatively affect an officer's abilities or that negatively affect the public's confidence in public safety officers. This amendment, along with others, including the amendments to the code of ethics, reflects POST's finding that officers must hold themselves and their profession to high standards. POST also finds that officers deserve to know what is expected of them. POST's goals in expressly clarifying the existing grounds for sanctions and including additional grounds for sanctions, are to provide guidance to officers, to promote fairness for officers who have been accused of wrongdoing, and to provide guidance to the council so that its decisions will bear meaningful appellate review. Additionally, there are grammatical changes to promote clarity.

23.13.703 ~~PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION~~ PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR

~~(1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.~~

~~(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.~~

~~(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:~~

~~(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);~~

~~(b) name and place of employment of the person complained against; and~~

~~(c) a full and complete description of the incident.~~

~~(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.~~

~~(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:~~

~~(a) file a formal complaint with the council on their own behalf;~~

~~(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;~~

~~(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;~~

~~(d) accept the voluntary surrender of a certificate issued by the council; or~~

~~(e) for good cause, recommend closure of the investigation of a complaint.~~

~~(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.~~

(1) The POST Council will create, maintain, and adopt in public meetings a "flow chart" policy and procedure for processing and responding to allegations. The flow chart policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.

(2) Any allegation made against a public safety officer that states potential grounds for sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the employing authority of the allegation. This requirement does not apply if the allegation has been made against the highest ranking officer in the agency, who would otherwise constitute the employing authority, and there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

(4) After being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, preferably in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director.

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation.

(a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.

(b) The allegation must provide at least the following information:

(i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;

(ii) the name and place of employment of the officer;

(iii) a complete description of the incident;

(iv) the remedy sought, including a recommendation for a sanction, suspension, or revocation of the officer's POST certification;

(c) A person or entity making an allegation is encouraged to use the allegation form available from POST staff.

(6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the employing authority.

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

(a) All such correspondence must be copied to the employing authority, unless the exception noted in (3) applies.

(b) The flow chart and accompanying policy provided in (1), will outline the number and nature of these letters.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the director and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(8) After an allegation is made by or filed with the director, the director, contested case counsel for POST, the POST compliance officer and investigator, or other POST staff or designees will investigate the complaint.

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

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council;

(b) accept the voluntary surrender of a certificate;

(c) make one of the following findings:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations made or the investigation conclusively proved that the act or acts complained of did not occur.

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) made.

(d) issue the appropriate sanction, suspension, or revocation of a certificate;

(e) if a sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for revocation and suspension pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the

hearing examiner must grant a stay based on an application by the director or counsel for POST.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's employing authority must also be maintained in the officer's POST file.

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

REASON: This amendment is reasonably necessary to implement the POST Council's new process for handling complaints against certified officers. An explanation of the need for the new process follows Proposed New Rule XII above. This rule replaces the existing rule and describes the new process. The procedures set forth in this rule provide fundamental due process to officers against whom allegations have been made while providing POST a workable means of processing its workload. The procedures in this rule precede the process described in proposed amended ARM 23.13.704.

23.13.704 ~~COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION~~ REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA FOLLOWING SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION BY THE DIRECTOR ~~(1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.~~

~~(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.~~

~~(3) In formal proceedings, the respondent must file an answer, or be in default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.~~

~~(4) Service shall be made in a manner consistent with Montana law.~~

~~(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.~~

~~(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.~~

~~(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.~~

~~(8) A representative from the office of the Attorney General may present the case of the complainant.~~

~~(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.~~

~~(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.~~

(1) If the director sanctions, suspends, or revokes an officer's POST certification pursuant to ARM 23.13.703(9) and the officer receives a notice of agency action, then the officer has the right to request a formal contested case proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

(2) The proceedings and hearing can only be initiated by a request from the officer whose certificate was sanctioned, suspended, or revoked, and not by any other person or entity.

(3) To request a hearing, the officer must follow the instructions contained in the "notice of agency action" and notify the appropriate individual or the director that the officer requests a hearing within 30 days of the officer receiving the notice of agency action.

(4) Failure to notify and request a hearing within 30 days of receiving the notice of agency action will constitute a waiver of the right to a hearing.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to implement the POST Council's new policy for handling requests for contested case hearings. A full explanation of the need for the new process follows Proposed New Rule XIV above. The goals of the new policy are to provide more due process to officers seeking contested case hearings and also to clarify the applicable process. If an officer requests a hearing under this part, the hearing process is established in MAPA and in the Attorney General Model Rules to be adopted in Proposed New Rule V above.

23.13.711 CONTESTED CASES, RECORD ~~OF PROCEEDINGS~~ ~~(1) The record shall consist of the items enumerated in 2-4-614, MCA, and an audio recording of oral proceedings shall be the official record of the proceedings.~~

(1) The hearing examiner in the contested case proceeding is responsible for maintaining the official record of the contested case until its conclusion. The record must include:

(a) all pleadings, motions, and rulings;

(b) all evidence, either written or oral, received, or considered by the presiding officer;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings on objections;

(e) proposed findings and exceptions; and

(f) any decision, opinion, or report, and any proposed findings of fact, conclusions of law, and proposed order, entered by the hearing examiner, which must be in writing.

(2) The hearing examiner must number the docket and maintain it like the docket of a court of record.

(3) At the request of any party, all or part of the hearing proceedings must be transcribed. The cost of transcription is the responsibility of the requesting party.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: MAPA requires maintenance of the record of contested case proceedings. This proposed rule amendment would govern the record of proceedings before POST. The new process supplants the existing rule, which is too brief to be very helpful. The amended rule adopts Attorney General's Model Rule ARM 1.3.220. Section (2) is new and obligates the hearing examiner or presiding officer to maintain the record as though in the office of a clerk of the district court. Following this practice will ensure that the record is complete for appellate review.

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

23.13.401 (23.13.212) INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) remains the same.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have successfully completed a 40-hour minimum instructor development course or equivalent approved by the ~~council~~ director;

(d) remains the same.

(e) must submit the specific lesson plan that is at least two hours in length, and which includes performance objectives, instructional strategies, and complete course content.

(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have an endorsement from ~~a professional instructor and~~ the POST director, or designee, attesting to the applicant's competencies; and

(d) remains the same.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the

person shall apply to the council on a form approved by the council, and shall meet the following requirements:

(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; ~~and~~

(b) must have endorsement from the POST director or designee and agency administrator; and

(c) meet all of the requirements necessary to qualify as a master instructor as required by (3).

(5) The council will certify approved primary and master instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor ~~shall~~ will be listed in an official register of the council, and for each primary and master instructor, each subject that instructor is certified to teach ~~shall~~ will be noted in ~~said~~ the register.

(6) remains the same.

(7) After four years of continuous certification, ~~master~~ all instructors may be recertified for a four-year period.

(8) remains the same.

~~(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.~~

(9) Officers who believe they are eligible for any instructor certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

~~(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to ARM 23.13.712.~~

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an instructor certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to

move this rule from subchapter 4 to subchapter 2. The amendment to this rule will also provide clarity and consistency by establishing the time limit for lesson plans, clarifying the roles of the "director" and the council as they pertain to instructor training courses, and removing language that conflicted with certification and disciplinary procedures.

23.13.501 (23.13.213) REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION (1) remains the same.

(2) The council ~~shall~~ will issue incident command certificates designated by:

(a) emergency response specialty; and

(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to ARM 23.13.203 and 23.13.205, applicants for an award of a designated incident command certificate:

(a) ~~shall~~ must possess an intermediate certificate;

(b) ~~shall~~ must have completed an approved ICS course;

(c) ~~shall~~ must have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;

(d) ~~shall~~ must be trained within a specialized area of emergency response;

(e) ~~shall~~ must have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and

(f) ~~shall~~ must be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

(4) Officers who believe they are eligible for an incident command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-209, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an incident command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to move this rule from subchapter 5 to subchapter 2. These amendments

will also promote consistency in the rules by making the procedures for incident command certification the same as for other certifications.

23.13.701 (23.13.102) DEFINITIONS As used in this ~~sub~~chapter, the following definitions apply:

(1) "Allegation" means:

(a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;

(b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;

(c) the document or statement, prior to the notice of agency action, that initiates the informal revocation, suspension, or sanction proceeding against an officer.

~~(2) "Complainant" means:~~

~~(a) any person or entity making a complaint against a public safety officer to the council; or~~

~~b) the POST executive director acting upon any credible knowledge, information, or belief.~~

~~(1)~~ (2) "Certification" or "certificate" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.

(3) "Contested case" means:

(a) a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules; or

(b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.

~~(3)~~ (4) "Council" or "POST Council" or "POST" means the full 13-member public safety officer standards and training council as created by 2-15-2029, MCA.

~~(4)~~ (5) "Director" or "executive director" means the executive director of the public safety officer standards and training council~~, as established by these rules~~.

~~(5) "Formal Proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.~~

(6) "Employing authority," "employing agency," or "~~Governmental~~ governmental unit" means any ~~governmental~~ entity ~~which~~ that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

(7) "Field training" means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment.

(8) "Hearing examiner" means the chair or the council's designated representative, who regulates the course of a contested case proceeding or other hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.

(9) "In-service training" means training provided within a law enforcement and/or public safety agency to review and develop skills and knowledge for the specific agency's needs.

~~(7)~~ (10) "Informal proceeding~~s~~" means ~~proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding~~ a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.

(11) "MAPA" means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(12) "Misconduct" means any action or conduct that could potentially result in sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

(13) "MLEA" or "Academy" means the Montana Law Enforcement Academy.

(14) "Notice of agency action" means the document that:

(a) gives an officer the notice required under 2-4-601, MCA;

(b) informs the officer of the suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.

(15) "Party" means one side, or its representative, in an informal or contested case proceeding, usually the respondent and/or POST.

(16) "POST-approved training" means training reviewed and approved by the director or council for which POST gives training credit, including but not limited to basic, regional, and professional courses.

~~(8)~~ (17) "Presiding officer" means the chair of the council ~~or their designated representative, who shall regulate the course of hearings held by the council~~ who holds all same powers as a hearing examiner for the purpose of contested cases.

~~(9)~~ (18) "Public safety officer" means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303(5), (8) or 44-4-403, MCA to an elected official.

~~(10)~~ (19) "Respondent" means the public safety officer against whom ~~a complaint~~ an allegation of misconduct has been made, or ~~their~~ the officer's legal representative.

~~(11)~~ (20) "Revocation" means the permanent cancellation by the council of a public safety officer's POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(21) "Roll call training" means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

~~(12)~~ (22) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, ~~or the accepted norms of being a public safety officer~~ 23.13.203, or the laws or rules of Montana.

~~(13)~~ (23) "Suspension" means the annulment, for a ~~period of time~~ time period set by the director or council, of a public safety officer's POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.

~~(14) "Uncertifiable officer" means a public safety officer who:~~

~~(a) is employed as a public safety officer, but does not possess the required basic certificate, as required in ARM 23.13.206;~~

~~(b) has been the object of a complaint filed pursuant to ARM 23.13.703;~~

~~(c) has been afforded the process due by law;~~

~~(d) has been found to be subject to suspension or revocation pursuant to ARM 23.13.702.~~

AUTH: 2-15-2029, 44-4-402(2), MCA
IMP: 44-4-403, 2-15-2029, MCA

REASON: These amendments are reasonably necessary to clarify existing terminology, delete unnecessary definitions, and to establish that the defined terms apply to the entire chapter, rather than only a subchapter. POST proposes to renumber the rule to place it at the beginning of POST's rules, and thereby emphasize that the definitions apply to all the rules.

23.13.710 (23.13.706) DECISION AND ORDER, STAYS ~~(1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.~~

~~(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.~~

~~(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.~~

(1) After completing a contested case proceeding, the hearing examiner shall, within 30 days of the hearing, issue findings of fact and conclusions of law that would, if adopted by the council, meet the requirements of 2-4-623, MCA.

(2) Within 15 days after the hearing examiner has issued findings, conclusions, and a proposed decision, an adversely affected party may submit exceptions to the hearing examiner's decision. The council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA. The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ten days. No reply brief will be received.

(3) For the period between the submission of the hearing examiner's decision and the hearing before the council, general counsel for the council or another person designated by the council chair will act as a special master for purposes of resolving any issue arising before the council hearing.

(4) After deliberating, the council will decide to adopt, reject, or modify the hearing examiner's findings and recommendation. The council will issue a decision and order pursuant to 2-4-623, MCA, and mail a copy of this decision to respondent or the respondent's legal representative.

(5) If a party has filed exceptions to the decision of the hearing examiner, the contested case is not considered to be submitted for decision under 2-4-623(1), MCA, until oral arguments are concluded before the council.

(6) If a certificate was revoked or suspended by the director before the hearing, the certificate will remain revoked or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the suspension or revocation for good cause shown.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to clarify how the new disciplinary policy culminates in a proposed order that can either become final or that can be appealed to the full council and then to the Board of Crime Control. The amendments also clarify the effect of the orders pending review and the process for seeking a stay of the proposed order from the council. With these amendments, the rule will promote fairness for officers and also will result in decisions from the council that allow for meaningful appellate review. POST proposes renumbering this rule for purposes of continuity.

23.13.712 (23.13.718) APPEALS ~~(1) If requested by the respondent an appeal may be made to the Montana Board of Crime Control pursuant to ARM 23.14.1004. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.~~

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

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(1), MCA

REASON: Unlike most agency decisions, POST decisions are subject to an additional layer of administrative review before a petition may be filed in district

court. This amendment is necessary to clarify the availability of appeal. POST proposes renumbering this rule for purposes of continuity.

6. The POST Council proposes to repeal the following rule:

23.13.202 REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED BEFORE THE EFFECTIVE DATE OF THIS REGULATION

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

REASON: The repeal of this rule is necessary to remove any inconsistency or confusion as to which officers are subject to the code of ethics. This rule clarifies the existing rule that the requirements of the code of ethics apply to officers employed before the effective date of the code's adoption in 2008. ARM 23.13.202 is inconsistent with ARM 23.13.201, 23.13.203, 23.13.204, 23.13.205, and 23.13.206 as proposed for amendment above.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., September 18, 2014.

8. Chris D. Tweeten, Attorney at Law, has been designated to preside over and conduct this hearing.

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

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PUBLIC ACCOUNTANTS
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 renewal dates and requirements, 24.201.202 public participation, 24.201.301 definitions, 24.201.401 board meetings, 24.201.410 fee schedule, 24.201.415 use of CPA/LPA designation, 24.201.501, 24.201.502, 24.201.510, 24.201.516, 24.201.517, 24.201.524, 24.201.528, 24.201.529, 24.201.531, 24.201.535, and 24.201.537 licensing and examinations, 24.201.704, 24.201.705, 24.201.707 acts, 24.201.708, 24.201.718, and 24.201.720 professional conduct rules, 24.201.1103 peer review enrollment, 24.201.1108 alternatives and exemptions, 24.201.2101, 24.201.2106, 24.201.2114, 24.201.2120, 24.201.2124, 24.201.2136, 24.201.2137, 24.201.2138, 24.201.2145, 24.201.2148, and 24.201.2154 renewal and continuing education, 24.201.2401 anonymous complaints, 24.201.2402 exercise of practice privilege, 24.201.2410 enforcement against licensees, the adoption of NEW RULE I applicant by exam, and the repeal of 24.201.518 examination credits, 24.201.536 requirements for previously held certificates, 24.201.2108 who must comply, 24.201.2113 nonresident holders, 24.201.2121 standards for CPE program development, and 24.201.2411 enforcement procedures	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 28, 2014, at 1:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants (board) no later than 5:00 p.m., on August 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or dlibsdpac@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board convened a task force to assist in streamlining and simplifying the board rules. As a result of this review, the task force made recommendations to the board to amend the rules in several areas and more clearly reflect actual requirements for licensing, fees, educational requirements and experience, peer review, retired status, and other matters that generate questions to the board staff. The board has combined several sections of amendments in this notice for cost efficiency by avoiding the expense of multiple rule notices. Unless otherwise stated, the amendments only clarify requirements, but add no additional burden to current licensees, registered firms, or new applicants.

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

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ae) remain the same.

(af)	Public Accountants	Certified Public Accountant	Annually	December 31
		Licensed Public Accountant	Annually	December 31
		Firm Registration	Annually	December 31

(ag) through (7) remain the same.

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

REASON: The board determined it is reasonably necessary to add the annual firm registration deadline date to the renewal rule. The annual registration of firms is mandatory by board statute, but the deadline had been previously set by policy. The department is amending this rule to place the date in rule and provide notice to firms and the general public of the annual registration requirement deadline.

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

24.201.202 PUBLIC PARTICIPATION RULES (1) The ~~board of public accountants~~ Board of Public Accountants ~~hereby~~ adopts and incorporates by this reference, the public participation rules of the Department of Commerce as listed in Title 8, chapter 2, ~~of Title 8~~ except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in the licensing decisions and other contested cases as allowed by law.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 2-3-102, MCA

REASON: The board determined it is reasonably necessary to amend its public participation rule to reflect the ability for the public to observe the deliberations of the board, but not participate in contested cases. The authority for contested cases lies with the board and the public does not have a right to participate in the decision-making process.

24.201.301 DEFINITIONS (1) "AICPA" means the American Institute of Certified Public Accountants.

~~(1)~~(2) "Certificate holder" means a person holding a ~~CPA~~ certificate issued by the board pursuant to 37-50-302, MCA, who has met the educational, but not the experience requirement and cannot practice public accounting in Montana.

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

(4) "Commission" means compensation for recommending or referring any product or services to be supplied by another person or entity.

(5) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged, unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or in tax matters, if determined based on the result of judicial proceeding or the finding of governmental agencies. A firm's permit holder's or practice privilege holder's fees may vary depending, for example, on the complexity of services.

(6) "CPAES" means NASBA CPA Examination Services.

(7) "Engagement review report" means a peer review where the peer reviewer evaluates and reports on whether engagements submitted for review by the firm are performed and reported on in conformity with applicable professional standards in all material respects.

~~(3)~~ (8) "Engagement ~~peer~~ review report rating of 'Fail'" means the engagements submitted for review by the review ~~practice unit~~ firm for the peer review year ended were not performed and/or reported on in conformity with applicable professional standards in all material respects.

~~(4)~~ (9) "Engagement ~~peer~~ review report rating of 'Pass'" means that nothing came to the reviewer's attention that caused him/her to believe that the engagements submitted for review by the review ~~practice unit~~ firm for the peer

review year ended were not performed and reported on in conformity with applicable professional standards in all material respects.

~~(5)~~ (10) "Engagement ~~peer~~ review report rating of 'Pass with deficiencies'" means except for the deficiencies described in the report, nothing came to the reviewer's attention that caused him/her to believe the engagements submitted for review by the review ~~practice unit~~ firm for the peer review year ended were not performed and reported on in conformity with applicable professional standards in all material respects.

(6) remains the same, but is renumbered (11).

~~(7) "Firm" means a proprietorship, partnership, or professional corporation engaged in the practice of public accounting.~~

~~(8) "Licensee" means a certificate, license, or permit holder.~~

~~(9) "License holder" means a person holding a license issued by the board pursuant to 37-50-303, MCA.~~

(12) "GAAP" means the generally accepted accounting principles.

(13) "Hour" of instruction is equal to 50 minutes of instructional time. One-half continuing education credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(14) "IQAB" means the International Qualifications Appraisal Board.

(15) "MSCPA" means the Montana Society of Certified Public Accountants.

(10) remains the same, but is renumbered (16).

(17) "PCAOB" means the Public Company Accounting Oversight Board that conducts firm inspections of certified public accounting firms' SEC issuer practices and other engagements subject to its inspection process.

~~(11)~~ (18) "Peer review" means a ~~review under a formal peer review program sponsored by the American Institute of Certified Public Accountants (AICPA), or the Montana Society of Certified Public Accountants (MSCPA) or their successors, or such other formal peer review programs approved by the Board of Public Accountants (board)~~ board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a permit holder of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction, and who are not affiliated with the person or firm being reviewed.

~~(12) "Peer review report 'Failed'" means the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has not been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.~~

~~(13) "Peer review report 'Pass'" means the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.~~

~~(14) "Peer review report 'Pass with deficiencies'" means except for the deficiencies described in the report, the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm~~

~~with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.~~

(19) "Peer review programs" means the sponsoring organization's entire peer review process, including, but not limited to, the standards for administering, performing, and reporting on peer reviews, oversight procedures, training, and related guidance materials.

(20) "Peer review reports" means reports issued by the peer reviewer/reviewing firm in accordance with the peer review standards.

(21) "Peer review standards" means the board-approved professional standards for administering, performing, and reporting on peer reviews.

(22) "Peer reviewer/reviewing firm" means a certified public accountant/accounting firm responsible for conducting the peer review holding a valid and active license to practice public accounting in good standing by this state or some other state and meets the peer reviewer qualifications to perform peer reviews established in the board-approved peer review standards.

~~(15)~~ (23) "Permit holder" means a person ~~holding~~ who meets the educational and the experience requirement and holds an ~~annual~~ active permit to practice public accounting issued by the board pursuant to 37-50-314, MCA.

(16) and (17) remain the same, but are renumbered (24) and (25).

~~(18) "Practice unit" means:~~

~~(a) each licensee who practices public accounting as an individual or sole proprietor;~~

~~(b) a sole proprietorship, partnership, or professional corporation that practices public accounting; or~~

~~(c) a governmental organization that employs a licensee in a public accounting capacity.~~

(19) and (20) remain the same, but are renumbered (26) and (27).

(28) "Report acceptance body (RAB)" means the sponsoring organization's committee responsible for, but not limited to, the acceptance of peer review documents.

(29) "SSARS" means the statements on standards for accounting and review services.

(30) "Sponsoring organization" means a board-approved professional society or other organization responsible for the facilitation and administration of peer reviews through the use of its peer review program and peer review standards.

(31) "System review" means a peer review intended to provide the peer reviewer with a reasonable basis for expressing an opinion on whether, during the year under review:

(a) the reviewed firm's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards; and

(b) the reviewed firm's quality control policies and procedures were being complied with to provide the practice unit with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(32) "System review report with a rating of 'Failed'" means that due to the significant deficiencies identified in the report, the system of quality control for the

accounting and auditing practice of the reviewed firm, in effect for the year most recently ended, has not been suitably designed or complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(33) "System review report with a rating of 'Pass'" means the system of quality control for the accounting and auditing practice of the reviewed firm, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(34) "System review report with a rating of 'Pass with deficiencies'" means that except for the deficiencies described in the report, the system of quality control for the accounting and auditing practice of the reviewed firm, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: The board is amending the definitions rule to clearly describe various terms that are used throughout board rules. The accounting profession references and uses acronyms in the general course of daily practice and defining these terms will provide licensees and public with the information necessary to understand the procedures and requirements of the board.

Further defining "Certificate holder" will clarify that such person has not met all the requirements to be issued a permit to practice in Montana and provide the added clarity when determining the level of licensure of an individual.

The board is adding "Commission" and "Contingent fee" definitions to clarify the terms as used in the Professional Conduct Rules. These definitions will help the practitioner determine when these types of fees can or cannot be used for public accounting services.

It is reasonably necessary to add definitions of "Engagement review report" at (7)-(10), and "System review report" at (31)-(34), and the possible ratings of those reports, to specify what is evaluated in a peer review. The board concluded that current rules lump all types of services requiring peer review and associated ratings into one general peer review rating system. Separating these two types of reviews and the possible ratings will provide more detailed information on the type of peer review performed on practitioner work product and the meaning of the individual work product rating.

To consolidate all definitions, the board is relocating the definition of "Hour of instruction" from the continuing education rules to (13) of this rule.

The board is deleting the definition of "Licensee" to reduce confusion caused by using similar terminology with multiple meanings. Public accounting statutes reference two distinct license licensee types: a CPA (certified public accountant) and a LPA (licensed public accountant). The current definition of licensee, which includes both a certificate holder and a license holder, as well as someone who holds a permit to practice, is confusing.

The board is deleting the generic "peer review" report definitions from (12)-(14) and instead defining the specific types of peer review reports in (7)-(10) and (31)-(34).

It is reasonably necessary to amend the "peer review" definitions in (18)-(20) to align with the terms used in the Uniform Accountancy Act and in response to licensees practicing in multiple jurisdictions.

The board is adding a definition of "Peer review standards" at (21) to identify the professional standards to be used when completing a peer review. The board must approve such standards and outline how the peer review program is administered and the associated reporting requirements.

It is reasonably necessary to define "Peer reviewer/reviewing firm" to clearly delineate who is qualified and eligible to perform peer reviews. The reviewing firm must meet the qualifications specified by the board-approved peer review standards and must have an active permit to practice to qualify as a reviewer.

The board is amending "Permit holder" at (23) to clarify that this practitioner meets all education and experience requirements to hold a permit to practice.

The board is deleting the definition of "Practice unit" as the term is confusing. Board statutes require a "firm," as defined in statute, to register with the board, but the term "practice" unit means the same as "firm." It is unnecessary to define and use the term "practice unit" when "firm" clearly identifies to whom a rule applies.

It is reasonably necessary to add the definition of "Report acceptance body" to identify the committee authorized to accept peer review report documents. This is the body that will collect and track the receipt of peer review documents for the board-approved organization responsible for performing peer reviews.

The board is adding the definition of "Sponsoring organization" to identify the entity responsible for administering a board-approved peer review program. The sponsoring organization has a peer review program and standards in place that meet the requirements of the board and have been approved to offer a board-approved peer review program.

24.201.401 BOARD MEETINGS (1) The presiding officer shall preside at all meetings and shall perform such duties as the board may direct. At any meeting at which the presiding officer is absent, the ~~members present will, by a majority vote, select a temporary~~ secretary will serve as the presiding officer ~~for the meeting~~.

(2) and (3) remain the same.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-50-201, 37-50-203, MCA

REASON: The board determined it is reasonable to specify that the secretary will serve as the presiding officer in the absence of the board-elected presiding officer. While this has been the board's practice for some time, the board is now placing the process in rule to clearly delineate who will preside over such meetings.

24.201.410 FEE SCHEDULE (1) remains the same.

(a) ~~Certified public accountant out-of-state application~~

Permit by credentialing application (transfer of grades and licensure) $~~150~~ 300

~~(b) Transfer of grades (all parts)~~ ~~150~~

(b) Permit by examination application 150

(c) Permit by international reciprocity application 300

(d) Certificate by credentialing application (transfer of grades and licensure) 225

(e) Certificate by examination application 75

(f) Certificate by international reciprocity application 225

~~(c)~~ (g) ~~Annual~~ Renewal fee for ~~nonpermit~~ certificate holder, license holder, and inactive permit holder 75

~~(d)~~ (h) ~~Annual~~ Renewal fee for permit to practice 150

~~(e) Application as applicant for examination~~ ~~50~~

(i) Examination fees are payable to the national testing service under contract with the board.

~~(f)~~ (j) ~~Late fee for failure to comply with CPE requirements in accordance with ARM 24.201.2106~~ CPE extension request 125

~~(g) Late fee for failure to submit CPE reporting form within one month following the end of the CPE reporting year~~ ~~50~~

~~(h) Fees for profession monitoring program reviews:~~

~~(i) audits~~ ~~600~~

~~(ii) reviews~~ ~~350~~

~~(iii) compilations with disclosures~~ ~~350~~

~~(iv) compilations without disclosures~~ ~~200~~

~~(i) Late fee for failure to timely file quarterly reports by practice units under pre-issuance review~~ ~~125~~

~~(j) Late fee for failure to timely file profession monitoring program reports~~

~~(i) less than 31 days late~~ ~~150~~

~~(ii) more than 30 days late~~ ~~600~~

(k) Permit holder restored to active status 150

(l) Upgrade certificate/license to permit holder 150

(2) remains the same.

(3) ~~Fees~~ Application fees, renewal fees, and fees paid directly to a contractor are not refundable by the board.

AUTH: 37-1-134, 37-50-203, 37-50-204, MCA
IMP: 37-1-134, 37-1-141, 37-50-204, 37-50-314, MCA

REASON: The board is amending the fee schedule to reflect the true charge assessed to each application type. Currently, an out-of-state or transfer of grade permit or certificate applicant is assessed the out-of-state or transfer fee in addition to an application fee. It is confusing for applicants who are assessed both fees when someone could interpret the current fee schedule as only requiring one fee. The board is amending (1)(a) – (h) to clearly set forth these fees, combining into a

single fee where applicable, and give clear notice of the true costs of applying for the certificate/permit.

The board contracts with NASBA to administer the examination program and all examination fees are charged by NASBA and paid directly to that entity. The board is adding (1)(i) to clarify that the fees charged by NASBA for examination applications are set and collected by NASBA.

It is reasonably necessary to add (1)(j) and establish a fee for CPE extension requests. This fee will cover the cost of processing extension requests and for the board to review, follow up, and track the requests as allowed by ARM 24.201.2154. This is not a new fee, but was formerly identified as a fee for failure to meet current CPE requirements. The board is amending this to clearly identify the actual nature of the fee and when it applies.

The board is eliminating the fee charged for late filing of the CPE reporting form. The board no longer requires the form, which has not been used in over a year. This fee was inadvertently left in place at the time of the process change.

It is reasonably necessary to strike former (1)(h)-(j) and eliminate all fees associated with the board-sponsored profession monitoring program. That program has been eliminated and replaced with board-approved mandatory peer review administered by a board-approved entity.

The board determined it is reasonably necessary to add (1)(k) and set a fee to restore an inactive permit to active. This activity requires processing and analysis by the Education/Audit Unit and board time to review the application and CPE documentation and ensure the application meets all requirements. The renewal fee for an inactive permit is half of the renewal fee for an active permit holder, and current practice is to charge restoration applicants the difference between the active and inactive renewal fee. The new fee will cover board/staff expenses in evaluating and processing these applications. This change will affect approximately 15 licensees and result in additional revenue of $1,125.00.

It is reasonable to establish a fee for a current certificate holder to apply for an initial permit to practice since this is an elevation in license status. Currently, the board charges a fee to obtain the permit that equals the difference between the certificate fee and the permit fee. This additional application requires additional board review and analysis which justifies the proposed increase in application fee. This change will affect ten licensees and generate additional revenue of $750.00.

The board is amending (3) to clarify that application fees and renewal fees are not refundable by the board. Application fees cover the board's expenses associated with receiving, processing, and reviewing applications. Once an application is received, those fees are earned. Renewal fees are set by the department and cannot be waived by the board.

24.201.415 USE OF CPA/LPA DESIGNATION (1) ~~Montana certificate or license holders~~ An individual whose principal place of business is in Montana, who ~~are~~ is not otherwise in the practice of public accounting, but providing financial or consulting services to the public, must have ~~permits~~ a permit to practice if they hold themselves out to the public in any manner as a CPA or LPA.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-301, 37-50-325, 37-50-335, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clarify that a person who holds a certificate or license issued by the board and who is offering financial or consulting services, even in private industry, must have a permit to practice if they represent to the public that they are a CPA or LPA. If a person holds a certificate and does not perform public accounting, but wants to hold themselves out as a CPA or LPA, they must have a permit to practice. Current rule language has resulted in confusion among certificate holders and numerous questions to board staff.

24.201.501 EDUCATION REQUIREMENTS (1) An applicant who has examination scores for an examination administered prior to or in May 1996~~, or an applicant who wishes to transfer grades for an examination taken prior to or in May 1996,~~ must~~, prior to certification or licensure,~~ have:

(a) graduated from a college or university accredited ~~then (or~~ at the time of the applicant's graduation~~) to offer~~ with:

~~(a)~~ (i) a baccalaureate degree, with a concentration in accounting, including 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The other areas of business shall include no more than six semester hours (nine quarter hours) in one area; or

~~(b)~~ (ii) a baccalaureate degree, with a concentration other than accounting~~, if supplemented by~~ and five years of employment experience ~~which the board considers to be an equivalent education~~ at a public accounting firm, or in industry or government in a responsible financial position; or

~~(c)~~ (iii) a baccalaureate degree, with a concentration other than accounting~~, if supplemented by~~ and related courses in other areas of business administration which the board considers to be ~~an~~ equivalent education~~;~~, including 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance.

~~(d) a concentration in accounting will be interpreted by the board to include 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The 18 semester hours (27 quarter hours) shall include no more than six semester hours (nine quarter hours) in one area;~~

~~(e) supplemental experience will be interpreted by the board to be five years of employment by a public accounting firm, or five years of employment in industry or government in a responsible financial position;~~

~~(f) a concentration other than accounting, if supplemented by related courses in other areas of business, will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses and nine semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The nine semester hours (14~~

~~quarter hours) shall include no more than three semester hours (five quarter hours) in one area.~~

(2) An applicant who has examination scores for an examination administered in November 1996 or May 1997~~, or an applicant who wishes to transfer grades obtained for November 1996 or May 1997 examinations,~~ must have:

(a) completed 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The 18 semester hours (27 quarter hours) shall include no more than six semester hours (nine quarter hours) in one area~~.~~; and

~~(a)~~ (b) ~~Subsequent to successful passage of the exam, the applicant, to be certified or licensed as a public accountant, must have~~ graduated from a college or university then accredited to offer a baccalaureate degree subsequent to passing the exam.

(3) An applicant who has examination scores for an examination administered in November 1997 or thereafter: ~~, or an applicant whose approved application for examination has expired and is making reapplication for an examination after November 1997, or an applicant who applies by transfer of grades who has examination scores for an examination administered in November 1997 or thereafter,~~

(a) must have completed the following education from an accredited four-year institution at the time of applying~~,~~ to sit for the exam:

~~(a)~~ (i) at least 24 semester hours (36 quarter hours) of accounting courses ~~taken from a four-year institution and~~ above the introductory level, to include one course in each of the following:

(i) through (iv) remain the same, but are renumbered (A) through (D).

~~(b)~~ (ii) at least 24 semester hours (36 quarter hours) in nonaccounting, general business courses. Examples of business courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business, and communication skills~~.~~; and

(iii) practical experience may not be used to fulfill any part of the academic requirement.

~~(4) Subsequent to successful passage of the examination, the applicant, to be certified or licensed as a public accountant, must have:~~

~~(a) graduated from an accredited college or university with a baccalaureate degree; and~~

~~(b) successfully completed at least 150 semester hours (225 quarter hours) of credit.~~

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

~~(6)~~ (5) Any foreign-obtained education must be evaluated by ~~the Foreign Academic Credentials Service, Inc. (FACS) in reference~~ NASBA International Evaluation Services and be determined equivalent to Montana's education requirements. That evaluation must be provided to CPAES.

~~(7)~~ (6) Applicants who did not sit for the exam as a Montana candidate must submit official transcripts for all domestic education to ~~NASBA's CPA Examination Services (~~CPAES~~)~~ for evaluation in reference to Montana's education requirements.

~~(8) Montana exam candidates should be aware that the requirements outlined in (3) do not meet the requirements to obtain initial licensure in several U.S. jurisdictions and may inhibit the individual from seeking initial licensure in other U.S. jurisdictions if not licensed in Montana first.~~

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

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

REASON: The board determined it is reasonably necessary to amend this rule to simplify and clarify the education requirements needed to qualify for the examination. As the examination and education requirements have changed over the years, the board has attempted to identify what those education requirements would have been in respect to when an examination was taken and passed. The board is amending the order and format to provide a simplified method to determine education requirements at the time of examination passage.

24.201.502 ACCOUNTING AND AUDITING EXPERIENCE REQUIREMENTS (1) To be issued an initial permit to practice ~~under 37-50-203, MCA~~, an applicant must provide evidence of acceptable accounting and auditing experience.

(2) remains the same.

(a) is attested to by a holder of a permit to practice that was current at the time of attestation ~~or for military experience evaluated by the board based on information provided by the applicant's commanding officer~~; and

(b) and (c) remain the same.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-325, MCA

REASON: The board is amending this rule to clarify the experience acceptable to obtain a permit to practice after concluding that the current format is confusing and cumbersome. The board is attempting to streamline and clarify the language, but is not changing the intent or substance of the requirements.

24.201.510 ~~EXAMINATIONS~~ CERTIFIED PUBLIC ACCOUNTANT EXAMINATION (1) ~~All applicants shall~~ Prior to submitting an application to sit for the examination, the examination candidate must meet the educational requirements of ARM 24.201.501. ~~prior to submission of an application and~~ All examination candidates must be approved by the board or its designee to sit for the examination.

~~(2) Before being issued a certificate as a certified public accountant or registered as a licensed public accountant (except applicants being registered as licensed public accountants under 37-50-304, MCA), all applicants shall pass the professional ethics for CPAs course developed by the American Institute of Certified Public Accountants (AICPA).~~

~~(3) The board adopts the development and scoring services of the AICPA and the computer delivery and digital photograph services by the board's contractors.~~

(2) The Uniform Certified Public Accountant exam is the recognized and acceptable qualifying examination.

~~(4)~~ (3) Each examination candidate application must be accompanied by a non-refundable fee and all required supporting documents~~, including three moral character references,~~ and transcripts ~~and Foreign Academic Credentials Service, Inc. (FACS) evaluations of foreign credentials, as appropriate~~.

(4) In addition to all other supporting documents, all foreign credentials must be accompanied by an evaluation by NASBA International Evaluation Services.

(5) The passing score on each section is 75~~, subject to the granting of credit requirements of ARM 24.201.516~~.

(6) remains the same.

(7) Eligible ~~applicants~~ examination candidates shall ~~make the necessary contacts to~~ schedule the ~~time and place for~~ examination at an approved test site ~~and pay all applicable fees~~. Once the ~~applicant~~ examination candidate obtains a notice to schedule ~~from the board or the board's contractor~~, the ~~applicant~~ examination candidate has six months to sit for the scheduled test section(s). If the time expires without sitting for the test section(s) applied for, the ~~applicant~~ examination candidate shall reapply.

(8) An ~~applicant~~ examination candidate who fails to take the examination as scheduled forfeits all application fees.

AUTH: 37-1-131, 37-50-204, MCA
IMP: 37-1-131, 37-50-204, 37-50-302, 37-50-303, MCA

REASON: The board is amending the catchphrase to clearly identify that the examination referenced in the rule is the certified public accountant exam. The board is amending (1) to specify that, although the board retains the responsibility of approval of exam candidates, they have determined that delegation of this responsibility at times is appropriate.

The board is amending the rule throughout to utilize terminology that differentiates between an exam candidate and a licensure applicant. An exam candidate is someone still in the examination phase, while an applicant has passed the exam and is applying with the board for a certificate license or permit.

It is reasonably necessary to strike (2) and relocate the ethics course requirement to New Rule I in this notice.

The board is striking (3) as unnecessary because the board contracts with NASBA for exam processing, and it is actually NASBA who works with AICPA.

The board is amending the rule to transfer the evaluation of foreign credentials to the NASBA International Evaluation Services from the Foreign Academic Credentials Service. Since exam candidates must apply to NASBA when taking the exam, this change will further streamline the process and decrease fees to the candidate.

24.201.516 GRANTING OF EXAMINATION CREDIT (1) ~~Upon implementation of the computer-based~~ An examination~~, an applicant~~ candidate may take test sections individually and in any order. ~~Credit for any~~ Any test section~~(s)~~ passed is valid for 18 months from the actual date the ~~applicant~~ examination candidate took the test section.

~~(a)~~ (2) ~~An applicant for a certificate as a certified public accountant needs to pass all~~ All four test sections must be passed within ~~a rolling~~ an 18-month period, which begins on the date the first test section that was passed was taken, and ends on the last day of the last month of that 18-month period. An ~~applicant~~ examination candidate may take any section of the examination up to four times during a one-year period but cannot retake any failed test section in any one three-month testing period. In the event all four test sections are not passed in ~~the rolling~~ an 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

~~(b) An applicant for a license as a licensed public accountant needs to pass any three test sections within a rolling 18-month period, which begins on the date the first test section was passed and ends on the last day of the last month of that 18-month period. An applicant may take any section of the examination up to four times during a one-year period, but cannot retake any failed test section in any one three-month testing period. In the event three test sections are not passed in the rolling 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.~~

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

AUTH: 37-50-204, MCA
IMP: 37-50-204, 37-50-302, 37-50-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate confusion and clarify the granting of exam credits by updating for current terminology and processes.

The board is deleting (1)(b) to eliminate exam requirements for the licensed public accountant level of licensure since the category is no longer recognized and there are very few LPAs currently practicing. The board intends to seek future legislation to update board statutes similarly.

24.201.517 ACCEPTANCE OF EXAMINATION CREDITS (1) ~~In order for credits for passing the Uniform Certified Public Accountant Examination to be recognized by the board, an~~ An applicant who has never held a certificate as a certified public accountant~~, or a license as a licensed public accountant~~ in any jurisdiction must have ~~earned those credits~~ passed the examination under circumstances comparable to those applicable to Montana applicants at the time ~~those credits were earned~~ of examination. ~~Those circumstances and conditions include the conditioning requirements for accumulation of examination credits, if the applicant did not pass all required parts of the examination on the first attempt.~~

AUTH: 37-1-131, 37-50-203, 37-50-309, MCA
IMP: 37-50-302, 37-50-303, 37-50-309, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that applicants for a certificate, license, or permit to practice who have not been licensed in another jurisdiction, must pass the exam under conditions imposed on Montana exam candidates. The current language is confusing for applicants.

The board is also amending this rule to remove language regarding the licensed public accountant level of licensure since the category is no longer recognized and there are very few LPAs currently practicing. The board intends to seek future legislation to update board statutes similarly.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

24.201.524 CHEATING (1) Cheating, falsifying, or misrepresentation of information by an ~~applicant~~ examination candidate in applying for, taking, or subsequent to taking the examination will invalidate any score otherwise earned ~~by an applicant~~ on any test section of the examination and shall disqualify the examination candidate from taking the examination for a period of time. Examination candidates must adhere to the requirements of the examination provider found in the NASBA Candidate Handbook. ~~Cheating may warrant summary expulsion from the test site, and disqualification by the board from taking the examination for a specified period of time. For purposes of this rule, the following actions or attempted activities, among others, are considered cheating:~~

~~(a) falsifying or misrepresenting education credentials or other information required for admission to the examination;~~

~~(b) communication between applicants inside or outside the test site or copying another applicant's answers while the examination is in progress;~~

~~(c) communication with others inside or outside the site while the examination is in progress;~~

~~(d) substitution of another person to sit in the test site in place of an applicant;~~

~~(e) reference to crib sheets, textbooks or other material, or electronic media (other than that provided to the applicant as part of the examination) inside or outside the test site while the examination is in progress;~~

~~(f) violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; or~~

~~(g) retaking or attempting to retake a test section by an individual holding a valid certificate or by an applicant who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to board order or unless the individual has been expressly authorized by the board or testing service to retake the test section.~~

AUTH: 37-50-204, MCA
IMP: 37-50-204, 37-50-302, 37-50-303, MCA

REASON: The board is amending this rule to remove specific examples of cheating behavior, as the conduct of exam candidates during an exam is the sole purview of

the exam provider. The board should notify exam candidates that they must adhere to those established rules, but the board does not set such rules.

24.201.528 ~~LICENSURE OF~~ OUT-OF-STATE APPLICANTS SEEKING A MONTANA CERTIFICATE, LICENSE, OR PERMIT (1) The board may issue a certificate, license, or permit to practice to a certificate holder ~~of a current and unencumbered certificate~~, license holder, or permit holder in good standing from ~~to practice issued under the laws of~~ another jurisdiction ~~upon the applicant's meeting the applicable~~ who meets the requirements established ~~under 37-50-203,~~ in 37-50-302~~,~~ or 37-50-303, and 37-50-314, MCA~~, and the rules established thereunder~~.

~~(2) An individual whose principal place of business is out of state and who qualifies for the practice privilege is exempt from permitting or licensing requirements pursuant to 37-50-325, MCA.~~

~~(3)~~ (2) The board may waive the education requirements and issue a certificate, license, or permit to practice to a holder of a certificate, license, or permit issued by another jurisdiction. ~~upon the applicant's showing that~~ The applicant must show they:

(a) ~~the applicant~~ passed the examination required for issuance of the ~~applicant's~~ certificate, ~~or~~ license, or permit with grades that would have been passing grades at the time in this state;

(b) ~~the applicant has~~ had ~~five~~ four years' experience in the practice of public accountancy after passing the examination upon which the ~~applicant's~~ certificate, ~~or~~ license, or permit was based, within the ten years immediately preceding the application;

(c) ~~the applicant's~~ maintained a certificate, license, or permit ~~was issued~~ for more than four years prior to the application for issuance of an initial certificate, license, or permit in this state; ~~and~~

(d) passed the professional ethics for CPAs course developed by the AICPA; and

~~(d)~~ (e) ~~the applicant has~~ fulfilled the requirements of continuing professional education established under ARM 24.201.2106.

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

AUTH: 37-50-203, 37-50-309, MCA
IMP: 37-1-304, 37-1-306, 37-50-309, 37-50-311, 37-50-312, 37-50-313, 37-50-314, 37-50-325, MCA

REASON: The board determined it is reasonable to amend the rule to clarify requirements for out-of-state licensees seeking licensure in Montana. These amendments are intended to streamline the rules and align with other amendments.

The board is removing the reference to the 37-50-203, MCA, as the statute allows the board to adopt rules and is more appropriately located in the rulemaking authority citations following the rule.

The board is striking (2) as it is redundant to state that out-of-state individuals may practice in Montana under practice privilege when it is adequately provided in statute.

24.201.529 ~~LICENSURE OF~~ FOREIGN-TRAINED APPLICANTS SEEKING A MONTANA CERTIFICATE, LICENSE, OR PERMIT (1) ~~The board may grant a certificate, license, or permit to practice to a~~ A foreign-trained applicant ~~if all of the~~ must meet the requirements established under ARM 24.201.528 ~~regarding out-of-state applicants have been met,~~ or ~~by meeting~~ the following requirements:

(a) ~~the applicant has~~ met the issuing body's education requirement and ~~has~~ passed the issuing body's examination used to qualify its ~~domestic~~ applicants in a foreign jurisdiction. The board ~~may, in its discretion,~~ will rely on the ~~International Qualifications Appraisal Board (~~IQAB~~)~~ for evaluation of foreign credential equivalency or NASBA International Evaluation Services;

(b) ~~the applicant's~~ provide evidence that the foreign and/or domestic credentials ~~must be~~ are valid and in good standing at the time of application;

(c) ~~the applicant must successfully have passed~~ pass a uniform qualifying examination to ensure that the holder possesses adequate knowledge of national practice standards. The board may~~, in its discretion,~~ rely on the ~~National Association of State Boards of Accountancy (~~NASBA~~)~~, ~~the American Institute of Certified Public Accountants (~~AICPA~~)~~, or other professional bodies to develop, administer, and grade such a qualifying examination;

(d) ~~the applicant must take and~~ pass the ~~open book~~ professional ethics for CPAs course developed by the AICPA ~~ethics course~~;

(e) ~~the applicant must~~ provide evidence of having met an equivalent experience requirement obtained under the supervision or direction of a chartered accountant, Instituto Mexicano de Contradores Publicos, Hong Kong Institute of Certified Public Accountants, certified public accountant, or licensed public accountant permitted to practice in the original jurisdiction in order to be issued an initial permit to practice; and

(f) ~~the applicant must~~ meet the continuing professional education requirements established under 37-1-306 ~~and 37-50-314~~, MCA, in order to be issued an initial permit to practice~~; and~~.

~~(g) the foreign authority granting the designation to the applicant must extend reciprocity to a person who holds a valid certificate, license, or permit to practice issued by this state.~~

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-306, 37-50-311, 37-50-312, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to amend this rule and simplify the requirements for foreign-trained applicants to obtain Montana licensure. The amendments outline current processes and streamline the requirements so they are easily understood and correspond with amendments elsewhere in this notice.

The AICPA ethics course language is amended to mirror the course identification language found elsewhere in the rules. The amendment does not identify a different course but clarifies the currently required course.

The board is amending (1)(e) to add the Hong Kong Institute of Certified Public Accountants as a location of acceptable experience for foreign-trained applicants. The Hong Kong Institute now has a Mutual Recognition Agreement with NASBA, and the board recognizes all jurisdictions with such an agreement.

The board is deleting (1)(g) as unnecessary because only those jurisdictions with reciprocity meet the experience requirement and the IQAB requirements needed to qualify under this method of licensure.

24.201.531 PRACTICE PRIVILEGE (1) remains the same.

(2) The board has determined that all jurisdictions approved by NASBA are deemed to be "substantially equivalent~~"~~." As of ~~October 2009~~ July 1, 2013, the following jurisdictions are "substantially equivalent":

(a) through (c) remain the same.

(d) all of the states in the United States of America~~, except Colorado~~.

AUTH: 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-325, MCA

REASON: The board determined it is reasonably necessary to update this rule to include Colorado as one of the jurisdictions determined by NASBA to be substantially equivalent.

24.201.535 ~~REACTIVATION OF~~ INACTIVE ~~STATUS~~ TO ACTIVE PERMIT - RESTORATION (1) A ~~licensee~~ permit holder may place the ~~license~~ permit to practice on inactive status ~~(certificate/license maintenance)~~ by ~~indicating on the renewal form that inactive status is desired, or by~~ informing the board office, in writing, that an inactive status is desired~~, and paying the appropriate fee~~. It is the sole responsibility of the inactive ~~licensee~~ permit holder to keep the board informed ~~as to any change~~ of current ~~address~~ contact information during the period of time the ~~license~~ permit to practice remains on inactive status.

(2) A ~~licensee~~ permit holder may not practice accounting in the state of Montana while the ~~license~~ permit to practice is on inactive status.

(3) An inactive permit holder is required to renew on an annual basis.

~~(3)~~ (4) ~~Upon application and payment of the appropriate fee, the board may reactivate an~~ An inactive ~~license if the applicant presents~~ permit may be restored to active status by applying for active status, paying the restoration fee, and providing documentation verifying ~~that the applicant has complied~~ compliance with the continuing education rules of the board under ARM 24.201.2106, within the three years immediately preceding the application for ~~reactivation~~ restoration to active status.

~~(4)~~ (5) Montana ~~holders of certificates, licenses, or permits~~ permit holders who use their Montana permit to avail themselves of practice privileges in other jurisdictions, may not place the Montana ~~certificate, license, or~~ permit to practice on inactive status while using the practice privilege.

AUTH: 37-1-319, 37-50-203, MCA
IMP: 37-1-319, 37-50-325, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that only a permit to practice holder may place the permit on inactive status and restore the permit to active status. A license or certificate cannot be placed on

inactive status as those levels of licensure are not eligible to practice public accounting and have no other requirement to maintain their status except to renew.

The board is amending this rule to correct usage of the term "reactivate" to "restore." Reactivation is a term defined in 37-1-141, MCA, and refers to renewing a lapsed or expired license. Restoration refers to changing an inactive permit to practice back to active status.

The board is amending (4) to clarify that a Montana permit holder who uses a Montana permit to practice in other jurisdictions under practice privilege cannot continue to practice in another jurisdiction if the Montana permit is on inactive status.

24.201.537 RETIRED STATUS (1) ~~The holder of a~~ A certificate holder, ~~or~~ license holder, or permit holder who is fully retired from active employment in the practice of public accounting ~~as defined in 37-50-101, MCA,~~ may submit a retired status request ~~form~~ to the board. Upon approval of the request, the individual will be exempt from paying annual renewal fees and CPE requirements. ~~Holders of a permit to practice in retired status will also be exempt from CPE requirements and~~ They may use the designation "CPA (Retired)" or "LPA (Retired)."

(2) An individual on retired status may apply for their certificate, license, or permit to practice to be ~~reactivated~~ restored to active status within two years ~~of the date their license was placed on retired status~~ of the last time the certificate, license, or permit to practice was renewed by complying with all current year renewal requirements. A retired certificate, license, or permit to practice that is not ~~reactivated~~ restored to active status within two years of ~~the date the license was placed on retired status~~ the most recent renewal date automatically terminates. ~~In accordance with 37-1-141, MCA, once~~ Once a certificate, license, or permit to practice status has terminated, it may not be ~~reactivated~~ restored to active status and a new original license must be obtained through application, and all current licensing requirements must be met.

(3) ~~Holders of~~ Montana ~~certificates, licenses, or permits~~ permit holders who use their Montana permit to practice to avail themselves of practice privileges in other jurisdictions~~, or who are practicing public accounting as defined in 37-50-101, MCA, in other jurisdictions in which they are licensed,~~ may not place their Montana ~~certificate, license, or~~ permit to practice on retired status.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-1-141, 37-50-101, 37-50-325, MCA

REASON: The board is amending this rule to simplify the process for retired status, which allows an individual to use the "CPA retired" or "LPA retired" designation for two years. The board notes that the two-year period provides some time to decide whether to remain on retired status or return to active licensure again. The amendments further clarify that individuals may restore to active status within two years of the last renewal by complying with current year renewal requirements.

24.201.704 INDEPENDENCE (1) Independence, where required by professional standards, is essential to establishing and maintaining the public's faith and confidence in, and reliance on, the information reported on by the ~~licensee,~~

permit holder~~,~~ or practice privilege holder. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder in the practice of public accounting shall be independent in fact and appearance when engaged to provide services where independence is required by professional standards.

(a) Independence in fact is the state of mind that permits a ~~licensee,~~ permit holder~~,~~ or practice privilege holder to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing the ~~licensee,~~ permit holder~~,~~ or practice privilege holder to act with integrity and exercise objectivity and professional skepticism.

(b) Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third-party, having knowledge of all relevant information, to reasonably conclude that the integrity, objectivity, or professional skepticism of the ~~licensee,~~ permit holder~~,~~ or practice privilege holder had been compromised.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-325, MCA

REASON: It is reasonably necessary to amend this rule and ARM 24.201.705, 24.201.707, and 24.201.708 because "licensee" is not a generic term for this board. The board is removing the term "licensee" because it indicates a type of license and does not accurately reflect the ability to practice public accounting in Montana.

24.201.705 INTEGRITY AND OBJECTIVITY (1) Integrity is a character trait demonstrated by acting honestly, candidly, and not knowingly misrepresenting facts, accommodating deceit, or subordinating ethical principles. Acting with integrity is essential to maintaining credibility and public trust. It incorporates both the spirit and substance in the application of the ethical and technical standards that govern the profession, or in the absence thereof, what is just and right. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall act with integrity in the performance of all professional activities in whatever capacity performed.

(2) Objectivity is a distinguishing feature of the accounting profession and is critical to maintaining the public's trust and confidence. It is a state of mind that imposes the obligation to be impartial and free of bias that may result from conflicts of interest or subordination of judgment. Objectivity requires a ~~licensee,~~ permit holder~~,~~ or practice privilege holder to exercise an appropriate level of professional skepticism in carrying out all professional activities. Although a ~~licensee,~~ permit holder~~,~~ or practice privilege holder may serve multiple interests in many different capacities, objectivity must be maintained. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall make a careful assessment of the effects on objectivity of all professional relationships and activities. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall maintain objectivity in the performance of all professional activities in whatever capacity performed.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-325, MCA

24.201.707 DISCREDITABLE ACTS (1) A firm, permit holder~~, certificate holder, license holder,~~ or practice privilege holder shall not commit any act discreditable to the profession. A discreditable act will be considered to have occurred if, for example:

(a) and (b) remain the same.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-325, MCA

24.201.708 DUE PROFESSIONAL CARE (1) Due care imposes upon the ~~licensee,~~ permit holder~~,~~ or practice privilege holder the obligation to perform professional activities with concern for the best interest of those for whom the activities are performed and consistent with the profession's responsibility to the public. It is essential to preserving the public's trust and confidence. Due care requires the ~~licensee,~~ permit holder~~,~~ or practice privilege holder to discharge professional responsibilities with reasonable care and diligence and to adequately plan and supervise all professional activities for which the ~~licensee~~ permit holder or practice privilege holder is responsible. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall act with due care in the performance of all professional activities in whatever capacity performed.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-1-131, 37-50-203, 37-50-325, MCA

24.201.718 APPLICABLE STANDARDS (1) A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall comply with the standards set forth in this rule as applicable under the circumstances and at the time of service when providing professional services. In addition to the applicable standards set forth below, a ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall comply with the standards issued by other professional or governmental bodies, including international standards-setting bodies with which a ~~licensee,~~ permit holder~~,~~ or practice privilege holder is required by law, regulation, or the terms of engagement to comply.

(2) The board incorporates by reference the following standards, as they exist as of July 1, ~~2010~~ 2013:

(a) remains the same.

(b) all of the standards promulgated by the ~~Public Company Accounting Oversight Board (~~PCAOB~~)~~;

(c) all of the auditing standards issued by the ~~American Institute of Certified Public Accountants (~~AICPA~~)~~;

(d) all of the standards and technical guidance for accounting, valuation, and review services issued by AICPA, including, but not limited to, cash basis, income tax basis, and financial reporting framework for small and medium-sized entities;

(e) through (h) remain the same.

(i) all of the standards for governmental accounting issued by the Government Accounting Standards Board (GASB); ~~and~~

(j) all of the Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board (FASB)~~.~~;

(k) all statements of financial accounting standards issued by the International Accounting Standards Board (IASB); and

(l) all other standards dictated by governmental bodies.

(3) through (3)(c) remain the same.

(d) www.gasb.org; ~~and~~

(e) www.fasb.org~~.~~; and

(f) www.ifrs.org.

AUTH: 37-50-203, MCA
IMP: 2-4-307, 37-50-203, 37-50-325, MCA

REASON: It is reasonably necessary to amend this rule because "licensee" is not a generic term for this board. The board is removing the term "licensee" because it indicates a type of license and does not accurately reflect the ability to practice public accounting in Montana.

The board is amending (2)(d) to provide technical guidance issued by AICPA which a licensee utilizes when conducting accounting, valuation, and review services within the practice of public accounting. The board is adding (2)(k) to recognize the International Accounting Standards Board as the standard setter for international accounting. It is reasonably necessary to add (2)(l) to require public accountants performing auditing or other services for government bodies to use the correct standard that applies to the type of governmental accounting being performed. These additions are relatively new and as the CPA profession expands into other areas of practice, it is necessary for the board to maintain the list of standards upon which a licensee can rely while performing their licensed activity.

The board is amending (3) simply to identify where the newly added standards in (2) can be located.

24.201.720 CONFIDENTIALITY (1) A ~~licensee,~~ permit holder~~,~~ or practice privilege holder has an obligation to maintain the confidentiality of information obtained in the performance of all professional activities. Maintaining such confidentiality is vital to the proper performance of the ~~licensee's,~~ permit holder's~~,~~ or practice privilege holder's professional activities. A ~~licensee,~~ permit holder~~,~~ or practice privilege holder shall not use or disclose, or permit others within the ~~licensee's,~~ permit holder's~~,~~ or practice privilege holder's control to use or disclose any confidential client or employer information without the consent of the client or employer. This obligation of confidentiality continues after the termination of the relationship between the ~~licensee,~~ permit holder~~,~~ or practice privilege holder and the client or employer and extends to information obtained by the ~~licensee,~~ permit holder~~,~~ or practice privilege holder in professional relationships with prospective clients and employers.

(a) This rule must not be construed to prohibit a ~~licensee,~~ permit holder~~,~~ or practice privilege holder from disclosing information as required to meet professional, regulatory, or other legal obligations.

(2) remains the same.

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

IMP: 37-1-131, 37-50-203, 37-50-325, MCA

REASON: See reasonable necessity for ARM 24.201.704.

24.201.1103 PEER REVIEW ENROLLMENT (1) ~~Practice units~~ Firms shall enroll in ~~and meet board-approved~~ an approved peer review program ~~standards,~~ and pay the required fees associated with the administration of the peer review, if they perform any of the following services:

(a) through (c) remain the same.

(d) any examination, review, or agreed upon procedures engagements to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE).

~~(2) If a practice unit is required to enroll in a board-approved peer review program, the practice unit must provide to the board the name of the approved peer review program in which the practice unit is enrolled, and the period covered by the practice unit's most recent peer review.~~

~~(3) At renewal of the practice unit, it must provide the results of its most recent peer review.~~

(2) The following peer review documents shall be made available to the board by the sponsoring organization via a secure web site.

(a) The following must be made available within thirty days of the acceptance date:

(i) the peer review report accepted by the sponsoring organization;

(ii) the firm's letter of response, if applicable, accepted by the sponsoring organization; and

(iii) the acceptance letter from the sponsoring organization.

(b) The letters signed by the firm accepting the documents with the understanding that the firm agrees to take any action required by the sponsoring organization, if applicable, must be made available within 30 days of the firm signing the document.

(c) The letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable, must be made available within 30 days of the date of the letter.

~~(4)~~ (3) Every Montana ~~practice unit~~ firm that is required to enroll in a peer review program shall enroll ~~with~~ in the AICPA Peer Review Program or the ~~Montana Society of Certified Public Accountants (~~MSCPA~~)~~ Peer Review Program or other such board-approved program ~~and have a completed peer review within~~ that uses AICPA Standards for Performing and Reporting on Peer Reviews or standards deemed equivalent by the board.

(4) A firm's due date for its initial peer review shall be 18 months ~~of establishing the practice unit~~ from the date it enrolled or should have enrolled in a board-approved peer review program, except as provided in (5).

(6) The permit holder shall not be required to become a member of any organization administering a board-approved peer review program.

~~(5) A practice unit enrolled in a peer review program that receives a "pass" or "pass with deficiencies," and completes all remediation actions must have a peer~~

~~review completed every three years. A practice unit that receives a "fail" rating must follow peer review program requirements for subsequent peer reviews.~~

~~(6) The peer review completion date for each practice unit enrolled under (2) will be determined by the board, based on the reporting schedule established under the previous board-sponsored profession monitoring program.~~

~~(7) Practice units under the pre-issuance review requirement of the board's previous profession monitoring program will remain under board-monitored pre-issuance review until their next peer review is completed. At that time, (4) will apply.~~

(5) For firms under the board's previous profession monitoring program, the board may determine that the due date for an initial peer review is earlier than the sponsoring organization's peer review standards and guidance.

(a) Firms that were under the board's previous profession monitoring program are required to enroll in a board-approved peer review program by the deadline established by the board.

(b) Firms under the pre-issuance review requirement of the board's previous profession monitoring program will remain under the board monitored pre-issuance review until the initial peer review is completed.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: The board determined it is necessary to amend this rule to update to current processes and eliminate references to the practice unit. This is an artificial term created for peer review program purposes. According to statute, it is a firm that is required to register with the board.

The board is clarifying in (1) that the firm enrolled in peer review is responsible for paying the fees associated with the administration of the peer review. Such fees are not set by the board, but are the responsibility of the firm and can be negotiated with the peer reviewer.

The board is amending (1)(d) to reflect the current determination of who must enroll in a peer review program. The board concluded that any work performed under SSAE should fall under the peer review enrollment requirement, not just agreed upon procedures engagements. This amendment simply clarifies what is currently under peer review and is not a change in the procedure.

It is reasonably necessary to add (2) and specifically require that the results of peer reviews be made available to the board electronically through a secure web site. This will allow the board to access the reports without the firm having to send them to the board office, will eliminate confusion on who is reporting the results of a peer review, and allow for timely reporting of the peer review outcomes. While the board has anticipated that the sponsoring organization's acceptance of the peer review report, the firm's response, the firm's acceptance of the results, and the agreement to any follow-up would be part of the report to the board, it was never specified that these are, at a minimum, what is expected and required. The addition of (2) will clearly set forth what must be provided to the board in reporting the results of a peer review.

The board is amending (3) to reiterate that any approved peer review program must meet or be determined equivalent to the AICPA standards for

performing and reporting on peer review. Although not a new requirement, it is not very clear, and the board believes this amendment will clarify the peer review rules adopted in August 2013 and address some of the comments received during that rulemaking process.

The board is striking old (5) because frequency of peer reviews is now dictated by the peer review program, not by the board. When the board approves a program, the board is also accepting this frequency as set by the program.

The board is adding (5) to clarify that the board will set a deadline date for initial peer review of those firms previously under the board-sponsored profession monitoring program. The amendments do not change the intent of the rules, but will clarify current requirements.

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) remains the same.

(a) out-of-state ~~practice units~~ firms that do not have a physical location in this state, but perform attest or compilation services in this state, and have a peer review in the state in which they are located, and are otherwise qualified for practice privileges; or

(b) ~~practice units~~ firms that prepare financial statements which do not require reports under ~~Statements on Standards for Accounting and Review Services (~~SSARS~~)~~ 8 as codified in SSARS 19 (management use only compilation reports) and that perform no other attest or compilation services. Such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(2) remains the same.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: The board is substituting references to "practice unit" with the statutorily defined "firm." It is confusing to use practice unit when referencing peer review requirements since it is actually a firm that must have a peer review.

24.201.2101 RENEWALS ~~(1) Renewal notices will be sent as specified in ARM 24.101.414.~~

~~(2) All certificates, licenses, and permits to practice must be renewed on or before the date set by ARM 24.101.413.~~

(3) remains the same, but is renumbered (1).

~~(4) The provisions of ARM 24.101.408 apply.~~

~~(5)~~ (2) Every ~~practice unit~~ firm must submit a statement to the board on their original application and at each renewal, which describes the ~~practice unit's~~ firm's level of association with financial statements.

~~(6) A practice unit shall be required to file a statement with the board if they:~~

~~(a) issue reports which indicate an expert knowledge of accounting or auditing; or~~

~~(b) allow their name and designation as a CPA or LPA practice unit to be included on a report that indicates expert knowledge of accounting or auditing.~~

~~(7) A practice unit shall not be required to file a statement with the board if they:~~

~~(a) do not issue reports which indicate an expert knowledge of accounting or auditing; or~~

~~(b) do not allow their name and designation as a CPA or LPA practice unit to be included on a report that indicates expert knowledge of accounting or auditing.~~

AUTH: 37-1-131, 37-50-201, 37-50-203, MCA
IMP: 37-1-141, 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate redundancies with department rules.

The board is deleting the provisions regarding "practice units" as the term is being eliminated in the rules. Determining what firms are required to register and renew with the board is found in statute and does not need to be repeated in rule.

24.201.2106 BASIC CONTINUING EDUCATION REQUIREMENT

(1) ~~Holders of a permit to practice~~ Permit holders are required to have 120 hours of continuing professional education (CPE) with a subset of two hours in ethics in any rolling three-year period, ending December 31 of each year, except as ~~otherwise~~ provided under ARM ~~24.201.2108 and/or~~ 24.201.2154.

(a) Beginning with the 2012 period, the rolling three-year period will be based on the calendar year. To make the change from fiscal year to calendar year, ~~licensees~~ permit holders will be able to count CPE obtained between July 1, 2011 and December 31, 2012, toward the 2012 year.

(2) remains the same.

(3) Applicants for a permit to practice ~~who have never been licensed in any jurisdiction~~ must meet the basic requirement of CPE by December 31 of the third year following the year of the initial issuance of the Montana permit (example: If an individual received their permit to practice in 2010, they must meet the basic CPE requirement by December 31, 2013).

~~(a) Applicants for a permit to practice who are transferring into Montana via licensure in another jurisdiction, who have been licensed for less than three years, are granted the same time period in which to meet Montana's basic CPE requirement, based on their original licensure date in the other jurisdiction.~~

~~(b) Applicants for a permit to practice who are transferring into Montana via licensure in another jurisdiction, who have been licensed for more than three years, must submit proof of having met Montana's basic CPE requirement at the time of application.~~

(4) Any individual who qualifies for the practice privilege in this state must meet the CPE requirements applicable in the jurisdiction of his or her principal state.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

REASON: The board is amending the catchphrase of this rule to more clearly identify that the basic requirement relates to the continuing professional education

(CPE) required from active permit holders. The current title provides little guidance on the content of the rule.

It is reasonably necessary to strike the reference to ARM 24.201.2108 as the board is proposing to repeal the rule in this notice.

Changing "licensees" to "permit holders" will clarify what level of licensure must complete CPE. It is inaccurate to reference licensees when only holders of a permit to practice are required to maintain CPE.

The CPE requirements for applicants are adequately addressed in the application rules at ARM 24.201.528 and 24.201.529. Once an applicant obtains a permit in Montana, they must meet the same CPE requirement during the same timeframes as any other Montana permit holder.

The board is adding (4) to require practice privilege holders to maintain CPE in their resident jurisdiction and ensure that individuals practicing in Montana are qualified. The practice privilege statute requires individuals coming to Montana to maintain a valid license. This is not an additional requirement for those individuals, but simply reiterates that a valid license includes meeting the individual's resident CPE requirements.

24.201.2114 OUT-OF-STATE APPLICANTS SEEKING A MONTANA PERMIT TO PRACTICE - CONTINUING EDUCATION REQUIREMENT (1) An individual who ~~holds a valid and unrevoked certified public accountant certificate or public accountant license issued by any jurisdiction, and who makes application under the appropriate provisions of the statutes for a certificate or license in this state, and who~~ receives a ~~certificate or license~~ permit to practice from this state by transfer of license~~,~~ shall be required to comply with the basic requirement ~~before being issued a permit to practice~~ in ~~this state~~ Montana.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

REASON: The board determined it is reasonably necessary to simplify and clarify the CPE requirements for someone obtaining a permit to practice in Montana by transfer of license. Montana CPE requirements apply to all permit holders, regardless of how they originally applied for the permit.

24.201.2120 STANDARDS FOR FORMAL CONTINUING EDUCATION PROGRAMS, PROGRAMS WHICH QUALIFY, AND ACCEPTABLE SUBJECT MATTER AND PROGRAMS ~~(1) To ensure that accounting professionals receive the quality continuing education necessary to satisfy their professional obligation to serve the public interest, the board has adopted standards for continuing professional education.~~

~~(2)~~ (1) A program qualifies as acceptable continuing education if it is a formal group or self-study program of learning, which contributes directly to the professional competence of an individual permitted to practice public accounting~~, and such program meets the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the most recently issued version of the Statement of Standards for Continuing Professional Education (CPE) issued~~

~~jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) as adopted by reference in ARM 24.201.2121, or such other educational standards as may be established from time to time by the board~~.

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

~~(4)~~ (3) The following are examples of group programs that qualify for credit ~~provided they meet the standards adopted in (2) and (3)~~ - this list is not all-inclusive:

(a) through (h) remain the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to strike (1) to eliminate unnecessary introductory language that is not regulatory.

Currently, the board is not requiring that all CPE be evaluated using the Statement of Standards for Continuing Professional Education issued by AICPA and NASBA. The board is amending new (1) to align the rule with current practice.

All CPE must comply with the rules and it is redundant to specify that certain programs must meet qualifications. The board is amending renumbered (3) to prevent the misunderstanding that not all CPE must comply with all requirements.

24.201.2124 STANDARDS FOR CPE REPORTING (1) Participants in group or self-study programs must obtain documentation of their participation (i.e., a certificate of completion or other correspondence from the sponsor). ~~Documentation~~ All acceptable documentation must include the following information:

(a) through (f) remain the same.

(g) NASBA Registry ID or NASBA QAS Sponsor ID (~~if applicable~~ applies to self-study).

(2) and (3) remain the same.

(4) ~~For courses taken for academic credit in universities and colleges, evidence of satisfactory completion of the course and receipt of academic credit will be sufficient (i.e. transcripts); for noncredit courses, a statement of the hours of attendance, signed by the instructor, must be obtained by the individual.~~ Alternative documentation for academic courses must include:

(a) satisfactory completion of the course and evidence of receipt of academic credit for courses taken for academic credit in universities and colleges; or

(b) a statement of the hours of attendance signed by the instructor for noncredit courses.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board is amending this rule to more clearly delineate what information must appear on all acceptable CPE documentation. This is a current requirement, but the rule is not clear that if the documentation lacks required information, it will not be accepted.

The board is seeking to clarify the documentation requirements for alternative academic education. While these courses differ from standard group or self-study courses, they are acceptable CPE and documentation requirements apply.

24.201.2136 CREDIT HOURS GRANTED - GROUP STUDY PROGRAMS

~~(1) Continuing education credit will be given with a minimum of 50 minutes constituting one hour. One-half continuing education credit increments (equal to a minimum of 25 minutes) are permitted after the first credit has been earned in a given learning activity.~~

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

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

REASON: The board determined it is reasonable to eliminate (1) as the definition of "hour of instruction" has been moved to the definition rule at ARM 24.201.301.

24.201.2137 CREDIT FOR FORMAL SELF-STUDY PROGRAMS

(1) remains the same.

(a) All other formal self-study programs receive continuing education credit equal to half of the credit amount granted by the sponsor. ~~These programs are calculated on a 100-minute hour.~~

(2) Individuals claiming credit for such formal self-study courses are required to obtain evidence of satisfactory completion from the program sponsor ~~as outlined in ARM 24.201.2124~~.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

REASON: The board is amending (1)(a) since the calculation of formal self-study instruction is included in the definition of hour of instruction in ARM 24.201.301.

The board determined it is redundant to refer back to the acceptable documentation section of ARM 24.201.2124 when all acceptable documentation is required to meet this standard.

24.201.2138 CREDIT FOR SERVICE AS LECTURER, INSTRUCTOR, SPEAKER, OR REPORT REVIEWER (1) remains the same.

~~(2) Continuing education credit may be claimed for serving as a report reviewer under the board's profession monitoring program established in ARM 24.201.1101, or under other structured report review programs to be approved on a case-by-case basis by the board. Once approved, one hour of credit shall be granted for every hour spent reviewing reports. The maximum credit for such reviews shall be no more than 16 hours in any given calendar year.~~

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: It is reasonably necessary to delete (2), which allows CPE credit for reviewers under a board-sponsored PMP, since the PMP program no longer exists.

24.201.2145 REPORTING REQUIREMENTS (1) ~~Holders of a permit to practice are required to affirm their compliance with the basic CPE requirement as outlined in ARM 24.201.2106, upon annual renewal. This affirmation will be for the three calendar years immediately preceding the renewal year.~~ Reporting of actual courses/credits is not required, unless the ~~CPE is dictated by the board as a result of the profession monitoring program, the~~ individual is selected for a random CPE audit as outlined in ARM 24.201.2148, or the individual must otherwise prove compliance for licensure purposes (i.e., renewing an expired license, reactivating a license, transfer of license).

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board is amending (1) since the CPE affirmation requirement is adequately set forth in ARM 24.201.2106 and in statute at 37-1-131, MCA.

The board is striking reference to CPE from the PMP because the PMP program no longer exists.

24.201.2148 VERIFICATION (1) ~~The board will verify compliance with the basic CPE requirement by annual random audit of up to 50 percent of licensees.~~

~~(a) Licensees~~ Permit holders notified that they have been randomly selected for an audit of their basic CPE requirement must comply with the deadline for submitting documentation.

(b) remains the same, but is renumbered (2).

~~(2) The board will review all cases in which compliance with the basic CPE requirement could not be verified by staff.~~

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-131, 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to amend (1) regarding random audits, as the audit provisions are adequately addressed in 37-1-131, MCA.

The board is amending this rule to identify permit holders as those who are eligible for a random CPE audit and who must comply with audit requests. It is inaccurate to indicate that licensees are part of the random CPE audit.

It is the board's responsibility to complete the CPE audit and it is unnecessary to state that the board will review CPE that cannot be verified. The board will review all questionable documentation to determine compliance.

24.201.2154 EXTENSION OR HARDSHIP EXCEPTION (1) remains the same.

(a) To request an extension or exception, an individual must submit the appropriate form and fees. The board will ~~review requests~~ grant a hardship exception on a case-by-case basis.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board is amending this rule to clearly state that the board reviews all requests for hardship exceptions and will grant such exceptions on a case-by-case basis. It is inaccurate to state that the board will review requests on a case-by-case basis.

24.201.2401 ANONYMOUS COMPLAINTS (1) The board ~~shall review~~ may accept anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter must be dismissed for lack of sufficient information.

AUTH: 37-50-203, MCA
IMP: 37-1-307, 37-1-308, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that the board may accept anonymous complaints. Once a complaint is accepted it is reviewed by the board. It is unnecessary to state that the board will review anonymous complaints. It is appropriate for the board to determine if they will accept anonymous complaints.

24.201.2402 EXERCISE OF PRACTICE PRIVILEGE IN OTHER JURISDICTIONS (1) Any ~~licensee~~ permit holder of this board offering or rendering services in or to another jurisdiction pursuant to practice privilege, based upon their license from this board, is deemed to have consented to the administrative jurisdiction of the other board of accountancy.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-1-307, 37-1-308, 37-50-325, MCA

REASON: The board determined it is reasonable to clarify that permit holders are the only category that is able to practice public accounting in Montana or other jurisdictions under practice privilege.

24.201.2410 ENFORCEMENT AGAINST ~~LICENSEES~~ CERTIFICATE HOLDER, LICENSE HOLDER, PERMIT TO PRACTICE HOLDERS, AND PRACTICE PRIVILEGE HOLDERS (1) remains the same.

(a) continues to practice public accounting, or uses the designation CPA or LPA, after failure ~~on the part of a holder of a certificate, license, or permit~~ to comply with the requirements for ~~issuance of a certificate, license, or~~ annual ~~permit including~~ renewal;

(b) failure to comply with the ~~profession monitoring~~ peer review rules of subchapter 11;

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

~~(d)~~ (e) failure of a Montana permit holder or practice privilege holder to meet the continuing education requirements established by the board;

(e) through (g) remain the same, but are renumbered (f) through (h).

~~(h)~~ (i) failure of a Montana ~~licensee~~ permit holder who is using the practice privilege in another jurisdiction to cooperate with another jurisdiction's board of accountancy's investigation into acts of the ~~licensees~~ permit holder in that other jurisdiction.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, 37-50-325, MCA

REASON: The board determined it is reasonable to amend the rule title to reflect that the enforcement actions can apply to certificate holders, license holders, and permit holders, not just license and permit holders. All levels of licensure are required to comply with the applicable rules for their level of licensure.

Amending the rule to clarify that continuing to practice or represent to the public that an individual is a CPA or LPA after failing to meet CPE requirements or renew is a violation that will result in board action.

The board has eliminated the board-sponsored PMP and now requires firms to undergo mandatory peer review if they perform services requiring peer review. Failure to comply with the peer review requirements of the mandatory peer review can result in board action.

The board determined it is reasonable to identify permit holders and practice privilege holders as those individuals who may have board action filed against them for failure to meet CPE requirements to maintain an active license. Certificate holders are not required to complete CPE. The clarification is necessary to avoid confusion regarding CPE violations.

Only Montana permit holders are eligible to use practice privilege to practice in other jurisdictions without obtaining a license from those jurisdictions. It is necessary to clarify that this violation would only apply to Montana permit holders.

6. The board is proposing to adopt the following rule:

NEW RULE I APPLICANT BY EXAM (1) All applicants for a certificate or permit to practice must:

(a) meet the requirements of 37-50-302, MCA;

(b) submit a complete application and pay all fees;

(c) meet the education requirements of ARM 24.201.501;

(d) pass the Uniform Certified Public Accountant exam in accordance with ARM 24.201.516; and

(e) pass the professional ethics for CPAs course developed by the AICPA.

(2) Incomplete applications for licensure or certification that are older than 12 months will be considered invalid and void. The applicant will be required to reapply and pay another fee.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-50-302, 37-50-305, MCA

REASON: The board is proposing to adopt this new rule to consolidate the requirements of various statutes and rules and make it easier for applicants to determine what is needed to obtain a certificate or permit to practice. It is difficult for applicants to determine the requirements when they have to refer to a number of different areas.

7. The board is proposing to repeal the following rules:

24.201.518 EXAMINATION CREDITS - OUT-OF-STATE APPLICANTS SEEKING A CERTIFICATE/LICENSE IN MONTANA found at ARM page 24-22580.

AUTH: 37-50-204, MCA
IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-309, MCA

REASON: The board is repealing this rule as unnecessary and confusing to those seeking licensure in Montana. The requirements in this rule are already set forth in ARM 24.201.517.

24.201.536 REQUIREMENTS FOR PREVIOUSLY HELD CERTIFICATES, LICENSES, AND/OR PERMITS TO PRACTICE found at ARM page 24-22585.

AUTH: 37-50-203, MCA
IMP: 37-1-141, 37-50-310, 37-50-314, MCA

REASON: The board is proposing to repeal this rule as the requirements to apply for and obtain licensure after a revocation or termination are adequately set forth in 37-1-141 and 37-1-314, MCA.

24.201.2108 WHO MUST COMPLY – GENERAL found at ARM page 24-22869.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, 37-50-325, MCA

REASON: The board determined it is reasonably necessary to repeal this rule since the material is adequately addressed in ARM 24.201.2106 and 24.201.2154.

24.201.2113 NONRESIDENT HOLDERS OF A PERMIT TO PRACTICE – COMPLIANCE found at ARM page 24-22875.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-50-203, 37-50-314, 37-50-325, MCA

REASON: The board is proposing to repeal this rule as all active permit holders must comply with CPE requirements, whether they reside in Montana or elsewhere. If they maintain an active permit in Montana, they must meet the requirement. It is

redundant to have a rule for out-of-state permit holders when the CPE requirement is already addressed in ARM 24.201.2106.

24.201.2121 STANDARDS FOR CPE PROGRAM DEVELOPMENT - PRESENTATION AND MEASUREMENT found at ARM page 24-22882.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board determined it is necessary to repeal this rule as the board does not apply these standards when evaluating whether CPE is appropriate or not.

24.201.2411 ENFORCEMENT PROCEDURES - INVESTIGATIONS AND PROFESSION MONITORING PROGRAM (PMP) REVIEW found at ARM page 24-22956.

AUTH: 37-1-136, 37-1-319, 37-50-203, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board has eliminated the board-sponsored PMP and an enforcement coordinator is no longer needed. The board currently has the authority to contract for investigations if an expert is needed to complete the investigation.

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to dlibsdpac@mt.gov, and must be received no later than 5:00 p.m., September 5, 2014.

9. An electronic copy of this notice of public hearing is available at www.publicaccountant.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking

proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdpac@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.201.202, 24.201.401, 24.201.415, 24.201.501, 24.201.502, 24.201.510, 24.201.516, 24.201.517, 24.201.524, 24.201.528, 24.201.529, 24.201.531, 24.201.535, 24.201.537, 24.201.704, 24.201.705, 24.201.707, 24.201.708, 24.201.718, 24.201.720, 24.201.2101, 24.201.2106, 24.201.2114, 24.201.2120, 24.201.2124, 24.201.2136, 24.201.2137, 24.201.2138, 24.201.2145, 24.201.2148, 24.201.2154, 24.201.2401, 24.201.2402, and 24.201.2410 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.201.301, 24.201.410, 24.201.1103, and 24.201.1108 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.201.518, 24.201.536, 24.201.2108, 24.201.2113, 24.201.2121, and 24.201.2411 will not significantly and directly impact small businesses.

Documentation of the department's and board's above-stated determinations is available upon request to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to dlibsdpac@mt.gov.

13. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
LINDA HARRIS, CPA,
PRESIDING OFFICER

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

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

Certified to the Secretary of State July 28, 2014

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.401 incorporation by reference of national electrical code, and 24.301.461 electrical inspections fees	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 28, 2014, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 August 22, 2014, to advise us of the nature of the accommodation that you need. Please contact Dave White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2009; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dlibsdbcb@mt.gov.

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

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department, by and through the Building Codes Bureau, adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2011~~ 2014 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: The department determined it is reasonably necessary to amend this rule to adopt and incorporate by reference the new 2014 edition of the National Fire Protection Association Standard NFPA 70, National Electrical Code, referred to as the National Electrical Code (NEC).

24.301.461 ELECTRICAL INSPECTIONS FEES (1) through (1)(n) remain the same.

(o) Renewable energy system: net metering system or off-grid electrical generating system (photovoltaic (PV) system, wind generator, hydro turbine, etc.)

(i) Commercial or residential installations 65

(o) and (p) remain the same but are renumbered (p) and (q).

(2) remains the same.

AUTH: 50-60-104, 50-60-203, 50-60-603, 50-60-604, MCA
IMP: 50-60-104, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The department is amending this rule to reflect the department's movement to include the consideration of public safety relating to the regulation of the sources of alternative energy systems, specifically identified herein with examples such as (photovoltaic (PV) systems, wind generator, hydro turbine, etc.) for commercial or residential installations. It is reasonably necessary to establish a new fee of $65 to maintain the statutory requirement that fees must be commensurate with costs related to regulatory purposes. The department estimates that the new fee will affect 25 people and result in a $1,625 increase to annual revenue.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dave White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov, and must be received no later than 5:00 p.m., on September 5, 2014.

5. An electronic copy of this notice of public hearing is available at www.buildingcodes.mt.gov (program's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written requests may be sent or

delivered to Dave White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dlibsdbcb@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.301.401 and 24.301.461 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to Dave White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov.

9. Colleen White, attorney, has been designated to preside over and conduct this hearing.

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

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

Certified to the Secretary of State July 28, 2014

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

In the matter of the amendment of ARM 37.50.315 pertaining to the addition of a new supervision level within the foster care classification model system	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 27, 2014, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 20, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.50.315 FOSTER CARE CLASSIFICATION MODEL (1) Each facility ~~shall~~ must be classified according to the department's classification model. The model identifies ~~seven~~ eight levels of supervision and three levels of treatment. A model rate has been assigned to each level of supervision and treatment.

(2) Each facility wishing to contract with the department ~~shall~~ must be classified according to ARM 37.50.316 to determine the daily rate the department would offer the facility for foster care services provided by the facility. The daily rate will be a percentage of the model rate for the facility's classification. The department may pay less than the daily rate if the facility requests less than the daily rate.

(3) There are ~~seven~~ eight levels of supervision in the classification model:

(a) through (c) remain the same.

(d) In Level IV the facility provides the basic living needs of the youth and employs shift staff who ~~provide~~ provides 24-hour structured supervision of the youth and administrative personnel. This level of supervision utilizes planned structured supervision by trained staff. The facility provides activities and supervision based upon an assessment of the youth's needs and a specific written case plan that is

monitored to determine its effectiveness in reducing the need for structured supervision.

(e) In Level V the facility provides the basic living needs of the youth, and employs shift staff who ~~provide~~ provides 24-hour intensive supervision with backup staff available. The facility also employs administrative personnel. The facility provides constant control of the youth by highly trained staff in a planned treatment environment. This level of supervision requires individual assessment of the youth and the development, implementation, and monitoring of an individual written treatment plan by professional staff.

(f) In Level VI the facility provides the basic living needs of the youth including food, shelter, transportation, and clothing. The ~~Montana~~ department ~~of public health and human services~~ pays licensed providers for the treatment portion of the per diem payment for therapeutic youth group homes currently classified as Level VI under this subsection. Therefore, no level of treatment in (4) of this rule applies to therapeutic youth group homes. However, as a prerequisite to licensure under the department's licensing rules in ARM Title 37, chapter 97, therapeutic youth group homes must abide by the applicable child/staff ratios for all staff including but not limited to program managers and lead clinical staff persons. For the purpose of calculating the ratio to check for compliance under the licensing requirements, only full-time contracted or employed program managers and lead clinical staff persons, or the equivalent number of part-time program managers and lead clinical staff persons, may be counted as "one" program manager or lead clinical staff person. Full-time program manager or lead clinical staff person means a program manager or lead clinical staff person who normally works for the therapeutic youth group home 40 hours per week.

(g) In Level VII, a facility must be licensed as a child care agency-maternity home. A facility at this level provides the basic living needs of pregnant and parenting youth, including food, shelter, transportation, recreation, and clothing. The facility also provides the basic living needs of the child or children of the parenting youth, including food, shelter, baby formula, diapers, transportation, clothing, and access to day care services. Shift staff shall be employed to provide 24-hour intensive supervision in a home-like environment with back-up staff available. The facility may reduce the number of shift staff required for intensive supervision during hours in which the youth attend public school when a professional staff is on the premises who is able to perform all shift staff duties as necessary. In addition, the facility will employ a program manager who provides program oversight and the functions described in ARM 37.97.206~~(10)~~(6), and administrative support personnel. Professional staff ~~shall~~ must be employed to provide counseling and case management services, to include:

(i) individual and group counseling designed to address the youth's mild delinquent, emotional, social, and~~/or~~ behavior problems;

(ii) development, implementation, and monitoring of individualized written case plans for each youth;

(iii) to assist shift staff in the initial and ongoing assessment of the safety and well-being of each youth and child in residence; and

(iv) will assist shift staff in teaching skill-building techniques, parenting, and life management skills to parenting youth to facilitate the acceptable adjustment to a community ~~and/~~or family setting.

(h) In Level VIII, a transitional living program for parents and children, a facility must be licensed as a child care agency-maternity home. A facility at this level provides the basic living needs of the parenting youth, age 16 to 21 years of age, including food, shelter, transportation, recreation, and clothing. The facility also provides the basic living needs of the child or children of the parenting youth, including food, shelter, baby formula, diapers, transportation, clothing, and access to day care services. The child of the parenting youth must be under the custody of the state or the parenting youth must be working with the state under a voluntary agreement under 41-3-302, MCA. Shift staff must be employed to provide 24-hour intensive supervision in a home-like environment with back-up staff available. In this level, therapeutic treatment of the parenting youth may be provided as an ancillary service. In addition, the facility will employ a program manager who provides program oversight and the functions described in ARM 37.97.206(6), and administrative support personnel. The facility must employ professional staff to:

(i) provide counseling and case management services with an emphasis on the relationship between the parenting youth and the child(ren) being the central focus;

(ii) assist shift staff in the initial and ongoing assessment of the safety and well-being of each parenting youth and child(ren) in residence; and

(iii) assist shift staff in teaching skill-building techniques, parenting, and life management skills to parenting youth to facilitate the acceptable adjustment to a community or family setting.

(4) There are three levels of treatment in the classification model:

(a) In basic treatment, professional staff employed by the facility provide structured individual and group therapeutic services designed to address the youth's mild delinquent, emotional, social, and~~/or~~ behavior problems. Staff implements skill-building techniques to assist the youth in progressing toward an acceptable adjustment to his family, school, and~~/or~~ community. This level of treatment requires more than the day-to-day supervision by caretakers.

(b) In intermediate treatment, trained shift staff~~,~~ under the supervision of professionals, perform assessments, develop and implement planned interventions designed to address an individual youth's serious delinquent, emotional, social, and~~/or~~ behavior problems. Structured group and individual therapeutic services are provided according to the youth's written case plan.

(c) In intensive treatment, intensive group and individual therapeutic services are provided by the facility to youth experiencing severe delinquent, emotional, social, and~~/or~~ behavior problems which prevent an acceptable adjustment to the youth's family, school, and~~/or~~ community. Treatment strategies are based upon an individual assessment of the youth and are administered according to a written treatment plan developed by the facility's professional staff. Group, individual, and family therapy are provided by the facility's professional staff. The youth's medical and psychological needs are addressed in the youth's treatment plan and qualified, professional staff monitors the medical and psychological needs of the youth. All services are provided by the facility as part of the regular services provided.

(5) Facilities ~~shall~~ will be classified by the department according to the above criteria. Each level of supervision and treatment is assigned a model rate on the model rate matrix of the department. Each classified facility will be offered a daily rate, which is a percentage of the model rate assigned to facilities in that classification.

(6) ~~The department's model rate matrix, effective May 1, 2002, is hereby adopted and incorporated by this reference.~~ The department adopts and incorporates by reference the department's model rate matrix, effective July 1, 2014. A ~~Copies~~ copy of the model rate matrix of the department ~~are~~ is available upon request from the Department of Public Health and Human Services, Child and Family Services Division, Operations and Fiscal Bureau, ~~Cogswell Building,~~ 1400 Broadway, P.O. Box 8005, Helena, MT 59604-8005. A copy may also be obtained at this web site: http://www.dphhs.mt.gov/cfsd/. The department ~~shall~~ will review and revise its model rate matrix at least once every two years.

AUTH: 41-3-1103, 52-1-103, 52-2-603, MCA
IMP: 41-3-1103, 41-3-1122, 52-1-103, 52-2-611, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.50.315 by adding an additional level of care to the Foster Care Classification Model. The transitional living program will allow parenting youth, 16 years of age through 20 years of age, to remain with their child if the child is in custodial care of the state or if the parenting youth is working with the state under a voluntary agreement, pursuant to 41-3-302, MCA. This proposed amendment is necessary to allow the parenting youth and the child to remain unified, while the mother receives services.

The department is proposing minor corrections and revisions to the rule to ensure consistent use of terminology and to comply with current grammar and formatting requirements. The department is also updating the model rate matrix adoption date to correspond with the current rates. The model rate matrix may be obtained at the following web site: http://www.dphhs.mt.gov/cfsd/.

ARM 37.50.315

The proposed amendment to the transitional living program will allow parenting youth, 16 years of age through 20 years of age, to remain with their child if the child is in custodial care of the state or if the parenting youth is working with the state under a voluntary agreement, pursuant to 41-3-302, MCA. This proposed amendment is necessary to allow the parenting youth and the child to remain unified, while the mother receives services.

Fiscal Impact

This rule would impact youth of mothers age 16 to 21, where the Child and Family Services Division (CFSD) has temporary legal custody of their children. Based on a 50% utilization of care days available under this rule, the net annual fiscal impact would be $919,975. Of this, $714,719.53 is general fund, $205,255.67 is federal fund. It is expected that this impact will be positively offset by the cost of care that would otherwise be incurred if the youth was placed in family foster care.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 4, 2014.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Susan Callaghan
Susan Callaghan
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 28, 2014.

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

In the matter of the amendment of ARM 37.85.403 and 37.86.2907 pertaining to date changes to ICD CM and PCS Services-ICD-10	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 27, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 20, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.403 ICD CLINICAL MODIFICATION (CM) AND PROCEDURAL CODING SYSTEM (PCS) SERVICES (1) The department adopts and incorporates by reference the Diagnosis coding practice of International Classification of Diseases (ICD) published by the World Health Organization. The ICD is used as a health care classification system for diseases and health conditions.

(a) For dates of service on or before ~~September 30, 2014~~ September 30, 2015 , the ICD edition being utilized will be the ninth revision (ICD-9) to code the diagnosis of services.

(b) For dates of service ~~October 1, 2014~~ October 1, 2015 and thereafter the ICD edition being utilized will be the tenth revision (ICD-10) to code the diagnosis of services. ICD-10 consists of the following codes sets:

(i) and (ii) remain the same.

(c) For inpatient claims with a discharge date on or after ~~October 1, 2014~~ October 1, 2015 , the tenth revision (ICD-10) must be utilized.

(d) remains the same.

(e) Per 45 CFR 162.1002, ICD-10 will replace ICD-9 for dates of service ~~October 1, 2014~~ October 1, 2015 and after. A copy of the ICD codes may be obtained at http://www.medicalcodingbooks.com/.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, is stated in the department's APR-DRG fee schedule adopted and effective at ARM 37.85.105. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) The department will assign an APR-DRG to each Medicaid client discharge in accordance with the current APR-grouper program version, as developed by 3M Health Information Systems. The assignment and reimbursement of each APR-DRG is based on:

(i) the ICD-9-CM principal diagnoses for dates of discharge prior to and including ~~September 30, 2014~~ September 30, 2015 , and the ICD-10-CM principal diagnoses for dates of discharge ~~October 1, 2014~~ October 1, 2015 and thereafter;

(ii) all ICD-9-CM secondary diagnoses for dates of discharge prior to and including ~~September 30, 2014~~ September 30, 2015 , and the ICD-10-CM secondary diagnoses for dates of discharge ~~October 1, 2014~~ October 1, 2015 and thereafter;

(iii) all ICD-9-CM medical procedures performed during the client's hospital stay for dates of discharge prior to and including ~~September 30, 2014~~ September 30, 2015 , and the ICD-10-PCS medical procedures performed during the client's hospital stay for dates of discharge ~~October 1, 2014~~ October 1, 2015 and thereafter;

(iv) through (2) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The International Classification of Disease (ICD) is a set of codes published by the World Health Organization (WHO). In 1990 the WHO updated the ICD code set creating the tenth edition (ICD-10); other countries began adopting this code set in 1994. The transition from ICD-9 to ICD-10 for the U.S. is covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under previous enactments the department was required to implement ICD-10 October 1, 2014. The department adopted the current rule under this law; however, implementation has been postponed by Congress. All covered entities under HIPAA are now required to adopt the new ICD-10 codes for services provided on or after the compliance date of October 1, 2015.

The Department of Public Health and Human Services (the department) is proposing amendments to delay the implementation of ICD-10 in ARM 37.85.403 and 37.86.2907.

ARM 37.85.403 and 37.86.2907

Within the current rules the description of ICD is listed as the ninth revision (ICD-9). With the proposed amendments to ARM 37.86.2907 and ARM 37.85.403 the ICD language will be updated to include the effective date as well as clarification of the ICD-9 effective dates.

Fiscal Impact

The implementation of ICD-10 is required for all covered entities under HIPAA. The fiscal impact on a provider practice can vary based on the size of the practice and the amount of changes to the business operations that are necessary. The estimated costs can be anywhere from $83,290 up to $2,728,780. However, this cost will be amortized over the provider's practice, because all insurers who must be HIPAA-compliant will be using the ICD-10 codes.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 4, 2014.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.104, 42.4.2602, 42.4.2801, 42.4.2802, 42.4.2803, 42.4.2905, 42.4.3103, and 42.4.4107 pertaining to the revision of the names corporation license tax and corporation income tax	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 8, 2014, the Department of Revenue proposes to amend the above-stated rules.

2. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 18, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The department proposes amending the rules in this notice to properly implement Senate Bill 361, L. 2013, which changed the name of the "corporation license tax" to the "corporate income tax" and the name of the "corporation income tax" to the "alternative corporate income tax." This general statement of reasonable necessity applies to the following proposed actions and will be supplemented as appropriate for any additional proposed rule change.

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

42.4.104 ENERGY GENERATING SYSTEMS (1) through (2)(c) remain the same.

(d) if the energy generating system is a geothermal system described in (2)(c), that is installed by a builder constructing a new residence to heat or cool the dwelling, a credit against the builder's individual or ~~corporation license~~ corporate income tax liability, as applicable, equal to a portion of the installation costs of the system, not to exceed $1,500, as provided in 15-32-115, MCA;

(e) through (9) remain the same.

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA
IMP: 15-6-224, 15-6-225, 15-32-102, 15-32-105, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.2602 ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals, and partnerships, may take an additional 10~~%~~ percent deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain recycled material at a level consistent with industry standards and/or standards established by the Federal Environmental Protection Agency when such standards exist. The department may request the assistance of the Montana Department of Environmental Quality to determine if the product qualifies as a recycled product. Due to continuing technological advances in the recycling industry, the standards will be subject to constant change. The industry standards to be used will be those in effect at the time the product was purchased.

(2) remains the same.

(3) For a corporation paying ~~income/license~~ the corporate income tax/alternative corporate income tax, the deduction is an adjustment to federal taxable income for ~~corporation income/license~~ the corporate income tax/alternative corporate income tax.

(4) and (5) remain the same.

AUTH: 15-32-609, 15-32-611, MCA
IMP: 15-32-603, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The department further proposes amending ARM 42.4.2602(2) to change % to percent in the language text, in keeping with current department ARM formatting practices.

42.4.2801 DEFINITIONS The following definitions apply to this subchapter:

(1) and (2) remain the same.

AUTH: 15-1-201, ~~15-31-150~~ 15-31-501, MCA
IMP: 15-31-132, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.2801 to correct a number transposition in a statute citation.

42.4.2802 HEALTH INSURANCE FOR UNINSURED ~~MONTANAN'S~~ MONTANANS CREDIT (1) Montana law provides two different tax credits for health insurance purchased by employers for employees. A program administered by the commissioner of insurance, and referred to as the Insure Montana Credit, provides incentives, including a refundable tax credit provided in 15-30-2368 and 33-22-2006, MCA, for eligible, prequalified small employers. The rules related to that program are located in ARM Title 6, chapter 6, subchapter 52. No tax form is required to claim the preauthorized, refundable credit. Rather, the prequalified employers claim it as a line item on their individual income or ~~corporation license~~ corporate income tax return or, if they are taxed as an S corporation or partnership, they report it as a line item on their information returns and the pass-through entity owners claim their part as a line item on their individual income tax or ~~corporation license~~ corporate

income tax returns, including a copy of the certificate issued by the Montana State Auditor's Office, verifying the amount of the credit.

(2) The rules in this subchapter apply to a second credit, referred to as the Health Insurance for Uninsured Montanans Credit, provided in 15-30-2367 and 15-31-132, MCA. The credit under 15-30-2367, MCA, against individual income tax, and 15-31-132, MCA, against ~~corporation license~~ corporate income tax, is subject to specific conditions and limitations listed in 15-31-132, MCA. It is not refundable, and any unused credit amount may not be carried over to another tax year. An employer ~~can not~~ cannot claim both the small ~~employers~~ employer credit provided in Title 33, chapter 22 and the Title 15, chapter 30 and 31, MCA tax credit.

(3) through (10) remain the same.

AUTH: 15-31-501, MCA
IMP: 15-30-2367, 15-30-2368, 15-31-132, 33-1-207, MCA

REASONABLE NECESSITY: The department further proposes amending ARM 42.4.2802 to make a grammatical correction in the rule title and in (2).

42.4.2803 DETERMINING NUMBER OF EMPLOYEES (1) remains the same.

AUTH: 15-1-201, ~~15-31-150~~ 15-31-501, MCA
IMP: 15-30-2367, 15-31-132, 33-1-207, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.2803 to correct a number transposition in a statute citation.

42.4.2905 CLAIMING THE HISTORIC PRESERVATION CREDIT

(1) Except as provided in (2) and (3), federal Form 3468, the federal form used in claiming the federal rehabilitation credit, must be attached to the applicable Montana tax returns. S corporations and entities taxable as partnerships must attach the form to their information returns and the owners of the pass-through entities must also attach a copy to their individual income or ~~corporation license~~ corporate income tax returns.

(2) and (3) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2342, 15-31-151, MCA

42.4.3103 CREDIT FOR CONTRACTOR'S GROSS RECEIPTS TAX - ~~CORPORATION LICENSE~~ CORPORATE INCOME TAX (1) A direct credit against the tax is allowed for "public contractor's gross receipts tax" paid pursuant to the provisions of 15-50-205 and 15-50-206, MCA. The credit is allowed with respect to the corporation's Montana ~~corporation license~~ corporate income tax liability determined for the taxable period within which the net income from contracts subject to the gross receipts tax is reported. If the corporation reports its income from contracts on a percentage of completion basis, the credit must be allocated

accordingly.

(2) The amount of credit allowable is the net public contractor's gross receipts tax (after personal property tax credit) actually imposed against and paid by the corporation but not in excess of its Montana ~~corporation license~~ corporate income tax liability. The credit is allowed without regard to the fact that the public contractor's gross receipts tax is an allowable deduction in determining net income subject to the Montana ~~corporation license~~ corporate income tax.

(3) and (4) remain the same.

AUTH: 15-31-501, MCA
IMP: 15-50-207, MCA

42.4.4107 COMMERCIAL USE AND OTHER REQUIREMENTS FOR COMMERCIAL AND NET METERING SYSTEMS ELIGIBLE FOR THE INCOME TAX CREDIT (1) The credit against individual income and ~~corporation license~~ corporate income taxes provided in 15-32-402, MCA, is limited to 35 percent of the eligible costs for investments in depreciable commercial systems and net metering systems. Property placed in service for personal use does not qualify for this credit, but may qualify for the alternative energy system credit provided in 15-32-201, MCA, and ARM 42.4.104.

(2) and (3) remain the same.

AUTH: 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, 15-32-406, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laurie Logan at the above address no later than 5:00 p.m., September 5, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,600 persons based on approximately 16,000 corporate income tax payers.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 361, L. 2013, Senator Bruce Tutvedt, was notified by regular mail on February 4, 2014, and subsequently notified by regular mail on July 9, 2014.

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

/s/ Laurie Logan	/s/ Mike Kadas
LAURIE LOGAN	MIKE KADAS
Rule Reviewer	Director of Revenue

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.302 pertaining to the Montana elderly homeowner/renter tax credit calculation	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 16, 2014, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 25, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.4.302 COMPUTATION OF ELDERLY HOMEOWNER/RENTER TAX CREDIT (1) through (6) remain the same.

(7) If a claimant lives in a healthcare facility, long-term care facility, or a residential care facility as defined in 50-5-101, MCA, but does not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed will be limited to $20 a day. For claims for periods beginning after December 31, 2014, the rent allowed will be limited to $30 a day.

AUTH: 15-30-2620, MCA
IMP: 15-30-2340, 50-5-101, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.302(7) to specify that the daily calculation applies to residents of care facilities and not to traditional rental arrangements. The department further proposes amending the rule to increase the allowable rent from $20 to $30 per day for claims for periods beginning after December 31, 2014.

Originally set in 1993, the purchasing power of the $20 rent limit for long-term care has declined significantly over the past 20 years. If the rent limit had been adjusted each year to keep pace with rising prices in the overall economy due to inflation, the rent limit would have been $29.25 per day, or $10,676 per year, in

calendar year 2013. Based on projections of inflation for calendar years 2014 and 2015, the rent limit would need to be $30.10 per day in 2015 to have a similar amount of purchasing power as the $20 per day limit had in 1993. Therefore, the department has determined it is reasonably necessary to amend the rule to increase the daily allowable claim limit.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 23, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

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

/s/ Laurie Logan	/s/ Alan Peura, Deputy Director, acting for
LAURIE LOGAN	MIKE KADAS
Rule Reviewer	Director of Revenue

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.204, 42.4.209, 42.4.1702, and 42.4.2403 pertaining to tax credits regarding energy conservation installation, temporary emergency lodging, and health insurance claims	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 16, 2014, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 25, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.4.204 CAPITAL INVESTMENTS FOR QUALIFYING ENERGY CONSERVATION CREDIT (1) The following capital investments are those that exclusively qualify for the conservation of energy credit:

(a) through (n) remain the same.

(o) replacement of an existing domestic water heater or heating or cooling system with:

(i) a new one of the same style or type that has a higher efficiency rating, whether or not the new water heater or heating or cooling system meets or exceeds the established standards for new construction provided in ARM ~~42.4.205~~ 42.4.206; and

(ii) through (3) remain the same.

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.204 as a matter of housekeeping to correct an internal rule reference error.

42.4.209 STANDARDS AND RATINGS (1) remains the same.

(2) For doors and windows installed on or after January 1, 2015, only the additional cost expended to exceed the requirements of the IECC as amended and adopted by the Montana Department of Labor and Industry qualifies for the credit. An individual calculates the additional cost by comparing the actual amount expended to the estimated, retail cost of installing an item that is substantially similar in style and design and that also meets the required rating. For example, the credit cannot be based on comparing the retail cost of an ornate, solid-wood door to the cost of a less ornate, fiberglass door.

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: ARM 42.4.208 provides for periodic review of the rules in this subchapter, including taking into consideration recommendations from the Montana Department of Environmental Quality (DEQ). Therefore, the department proposes amending ARM 42.4.209 to add in new (2) based on a recommendation from DEQ.

Information provided by the DEQ shows that the ratings prescribed in the rule for doors, windows, and skylights are only slightly better than what current building codes require for new construction. The difference in cost between a window that meets the current building code and the rating required in this rule can be as little as $25. Because the purpose of the credit is to provide an incentive to take extra steps in the interest of energy conservation, only the additional cost of exceeding building codes qualifies for the credit.

42.4.1702 CREDIT FOR TEMPORARY EMERGENCY LODGING (1) The owner or operator of an establishment in Montana that is licensed by the Montana Department of Public Health and Human Services (DPHHS) to provide lodging may claim the credit described in (2) against the taxes imposed in 15-30-2103, or 15-31-101, MCA, for furnishing temporary lodging in Montana, at no cost, to an individual who has been referred by a DPHHS designated charitable organization because the individual is in temporary immediate danger from an assault or potential assault by a partner or family member. ~~The list of organizations designated by DPHHS as authorized to make a referral is available at http://www.dphhs.mt.gov/PHSD/Food-consumer/emergency-lodging.shtml.~~ Additional information regarding the program is ~~also~~ available at ~~this web site~~ www.dphhs.mt.gov/publichealth/fcs/emergencylodging.shtml.

(2) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2103, 15-30-2381, 15-31-101, 15-31-102, 15-31-171, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.1702 as a matter of housekeeping to update a web site address and reference.

42.4.2403 REDUCTION OF DEDUCTIONS ALLOWED FOR INSURANCE CLAIMS (1) through (1)(b) remain the same.

(c) The reduction of the deduction by an employer that is a C corporation must be made by entering the appropriate amount on Form ~~CLT-4~~ CIT, line 2(f), "~~Additions~~ Premiums used to calculate the Insure Montana Credit".

(d) remains the same.

(e) The reduction of the deduction by an employer that is an S corporation must be made by entering the appropriate amount on Form CLT-4S, line 15c, "Other additions", and on the Montana Schedule K-1s of the shareholders, line ~~13~~ 3, "Other additions".

(f) and (2) remain the same.

AUTH: 15-30-2104, MCA
IMP: 15-30-2368, 15-31-130, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.2403 as a matter of housekeeping to update a form name and line reference detail in (1)(c), and to change an incorrect line reference in (1)(e).

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 23, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its

web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

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

/s/ Laurie Logan	/s/ Alan Peura, Deputy Director, acting for
LAURIE LOGAN	MIKE KADAS
Rule Reviewer	Director of Revenue

Certified to the Secretary of State July 28, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to returned check service fees	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 28, 2014, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on August 21, 2014, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I RETURNED CHECK SERVICE FEES (1) The following fees will be charged for insufficient funds checks, checks returned from the bank unpaid, and returned e-checks:

(a) first returned check $15.00

(b) each subsequent returned check by the same payer 25.00

(2) The returned check service fees apply to checks returned because of insufficient funds, closed accounts, stop payments, incorrect date, inconsistency in amounts, incorrect signature, and/or lack of signature.

(3) The following exceptions apply:

(a) the payer of the check presents the secretary of state with written confirmation by the payer's financial institution that the check was returned to the secretary of state by the financial institution due to an error on the part of the financial institution; or

(b) the check is a returned e-check from the secretary of state's online payment processor that states the customer entered an invalid routing/account number.

AUTH: 2-15-405, MCA
IMP: 2-15-405, 27-1-717, MCA

REASON: This rule is reasonably necessary to impose a service charge on returned checks in order to compensate the Secretary of State's office for the additional time

spent on collection efforts and to act as a deterrent to future writers of bad checks. Pursuant to 2-15-405, MCA, fees charged by the Secretary of State must be commensurate with the overall costs of the office and must reasonably reflect the prevailing rates charged in the public and private sectors for similar services.

4. Pursuant to 2-4-302, MCA, the Secretary of State has determined the cumulative dollar amount for all persons of the proposed fee is $2,850 and the number of persons affected is 190 based on the average number of returned checks per fiscal year.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., September 5, 2014.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 28th day of July, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3727 pertaining to the administration of the 2013-2014 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 26, 2014, the Department of Commerce published MAR Notice No. 8-94-126 pertaining to the proposed amendment of the above-stated rule at page 1312 of the 2014 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State July 28, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.112.101, 8.112.102, 8.112.105, 8.112.106, 8.112.109, 8.112.110, 8.112.201, 8.112.202, 8.112.205, 8.112.206, and 8.112.209 pertaining to the Montana Heritage Preservation and Development Commission	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 12, 2014, the Department of Commerce published MAR Notice No. 8-112-125 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1147 of the 2014 Montana Administrative Register, Issue Number 11.

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

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

COMMENT #1: The Baldwin Engine No. 12 and Bovey assets should not be sold.

RESPONSE #1: The proposed rule amendments do not encompass the sale of the No. 12 steam engine or Bovey assets. The proposed rule amendments address the requisite procedure for selling personal property. Those procedures require the commission to consider the historical value of personal property prior to its sale and provide public notice of the sale.

COMMENT #2: There needs to be public notice prior to the sale of property.

RESPONSE #2: The proposed rule amendments do not eliminate public notice. In regards to real property, ARM 8.112.205 requires the establishment of a date, time, and location for public hearing. The public hearing will be held in the geographic region of the proposed sale and the hearing will provide the public with an opportunity to comment on the proposed sale.

In regards to personal property, ARM 8.112.210 requires the commission to provide public notice of the sale of personal property.

COMMENT #3: "Bovey assets" should not be defined as the inventory prepared at the time of purchase generally known as the Gordon inventory.

RESPONSE #3: The Gordon inventory is the only known document that itemized the property for sale by the Bovey estate.

COMMENT #4: The commission has too much discretion.

RESPONSE #4: The authority of the commission is outlined in 22-3-1003, MCA. The proposed rule amendments do not alter the commission's statutory authority.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State July 28, 2014.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.7.111 pertaining to bus drivers	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 22, 2014, the Superintendent of Public Instruction published MAR Notice No. 10-7-123 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1005 of the 2014 Montana Administrative Register, Issue Number 10.

2. The Superintendent has amended ARM 10.7.111 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.7.111 BUS DRIVER CERTIFICATION REQUIREMENTS FOR REIMBURSEMENT (1) and (2) remain as proposed.

(3) The first aid certificate required by ARM 10.64.201 must include ~~certification~~ instruction in adult and pediatric CPR, be signed by a certified instructor, and be received after an initial in-person training of at least four hours. The certificate must be renewed ~~with annual renewals~~ every two years. The renewal course may be in-person or online.

(4) through (8) remain as proposed.

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

COMMENT 1: Donell Rosenthal, Montana Director of Pupil Transportation, commented that in (3) the requirement should be for biannual renewals, not annual. She also submitted a written comment requesting that the first aid/CPR certification be for both adults and children.

COMMENT 2: Mike Kraut of Majestic Bus Service from Hamilton, Montana commented that the requirement for their drivers to be certified in CPR was very expensive. He asked that the requirement be changed to "receiving instruction in CPR."

COMMENT 3: Pat Matthew from Matthew Transportation in Big Sandy, Montana commented that the requirement for CPR certification would allow them to teach CPR and they only needed the first aid course with CPR instruction.

COMMENT 4: Tracie Hoffman from Beach Transportation in Missoula asked for clarification on whether only the initial training had to be "in-person" while the renewals could be online or if the renewal training had to be "in-person" as well.

COMMENT 5: Larry Woodring from B & L Transfer in Townsend concurred with the comments from Mike Kraut and Pat Matthew stating that this would have a huge financial impact on his business.

COMMENT 6: Written comments were received from John Hannay, Transportation/Maintenance Supervisor from Eureka Public Schools; Becky Mangun from Hellgate Transportation in Missoula, Montana; Wade Fish, Transportation Supervisor from Columbia Falls, Montana; Robert Mitchell, Beach Transportation; and Douglas Reisig, Hellgate Elementary Superintendent. These persons objected to the requirement for annual first aid/CPR certification stating that it was unnecessary since both the Red Cross and American Heart Association certification in first aid and CPR were good for two years. Several persons also questioned the need for CPR certification.

RESPONSE: The Superintendent thanks the commenters for their written and oral testimony and after conferring with the American Red Cross has determined that the rule should be amended as provided above.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State July 28, 2014.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.64.201 pertaining to school bus drivers	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 22, 2014, the Board of Public Education published MAR Notice No. 10-64-266 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1009 of the 2014 Montana Administrative Register, Issue Number 10.

2. The board has amended ARM 10.64.201 as proposed.

3. The following comment was received.

COMMENT 1: Mike Kraut from Majestic Bus Service in Hamilton, Montana stated that their company had been approved to receive background checks from the Department of Justice and he was concerned that the language in (1)(b) would prohibit them from being able to get the background reports.

RESPONSE: The board thanks the commenter for his comment and does not feel that the rule will prohibit bus contractors from receiving background check reports. However, local boards of trustees and bus contractors will need to work together to implement the requirements of ARM 10.64.201.

/s/ Peter Donovan	/s/ Sharon Carroll
Peter Donovan	Sharon Carroll, Chair
Rule Reviewer	Board of Public Education

Certified to the Secretary of State July 28, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.345 and 17.38.101 pertaining to adoption by reference and plans for public water supply or public sewage system	)	NOTICE OF AMENDMENT (WATER QUALITY) (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On February 13, 2014, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-354 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 267, 2014 Montana Administrative Register, Issue Number 3.

2. The department has amended ARM 17.36.345 exactly as proposed and the board has amended ARM 17.38.101 exactly as proposed. The only changes made in response to these comments are made to the Circulars and not the rules.

3. The following comments were received and appear with the board's and department's responses:

COMMENT NO. 1: In DEQ-1 Standard 3.2.1.3(a)(2), if the "well exclusion zone" and "well continued protection zone" mean the same thing, only one term should be used.

RESPONSE: The board and department concur with this recommendation and, to ensure clarity and consistency between public water and subdivision rules, have replaced both terms with "well isolation zone" and have added the statutory definition of "well isolation zone" found in 76-4-102, MCA, to the Glossary.

COMMENT NO. 2: Sources of viral contamination should be identified in DEQ-1 Standard 3.2.5.2(d) and DEQ-3 Standard 3.2.5.1(d).

RESPONSE: The board and department concur with this recommendation and have changed the language to state "sources of viral or bacterial contamination from human or animal waste."

COMMENT NO. 3: In DEQ-1 Standard 3.2.5.7(b)(3) and DEQ-3 Standard 3.2.5.5(b)(2)(c), the period of time that work is to be discontinued is specified by the Board of Water Well Contractors in ARM 36.21.654(1)(d) and should be referenced in this standard.

RESPONSE: The board and department concur with this recommendation and have added the language "in accordance with ARM 36.21.654(1)(d)" to these standards.

COMMENT NO. 4: In DEQ-1 Standard 3.2.5.7(b)(4) and DEQ-3 Standard 3.2.5.5(b)(2)(d), for sealing materials, the proper density and percent should be as specified by the Board of Water Well Contractors in ARM 36.21.634(34).

RESPONSE: The board and department concur with this recommendation and have added the language "and must be applied in accordance with the definitions in ARM 36.21.634" to these sections.

COMMENT NO. 5: Two commenters stated that, in DEQ-1 Standard 3.2.5.7(b)(6) and DEQ-3 Standard 3.2.5.5(b)(2)(f), there are some soil conditions where the drill and drive method provides the best surface seal. There is no proof that the drill and drive method does not provide a good surface seal. The method of drill and drive placement of bentonite is allowed by the Board of Water Well Contractors for private wells. The drill and drive method saves money and time.

RESPONSE: The board and department concur that there may be situations where the drill and drive method provides an appropriate surface seal, depending on the specific lithology at a proposed well site. The board and department prefer to address those situations through the deviation process to ensure site-specific information can be analyzed. In order to clarify that the board and department may consider a deviation to allow drill and drive, in lieu of the required 1.5 inches of exterior grout, DEQ-1 Standard 3.2.5.7(b)(6) and DEQ-3 Standard 3.2.5.5(b)(2)(f) have been deleted.

COMMENT NO. 6: Regarding DEQ-1 Standard 3.2.5.7(b)(6), the Missoula Water Quality District feels the addition of improved grouting requirements in Chapter 3 is considerably more protective of ground water quality and public health than the previous requirement of continuous feed grouting. The Missoula Water Quality District fully supports this change to Circular DEQ-1.

RESPONSE: The board and department concur that the proposed grouting standard is more protective of ground water quality in most circumstances, but has deleted DEQ-1 Standard 3.2.5.7(b)(6) and DEQ-3 Standard 3.2.5.5(b)(2)(f) to clarify that deviations from this standard may be considered under appropriate circumstances. See Response to Comment No. 5, above.

COMMENT NO. 7: With regard to DEQ-1 Standard 3.2.6.5(c), gravel refill pipes are not typically used and this option should be eliminated.

RESPONSE: The board and department concur with this recommendation and have deleted DEQ-1 Standards 3.2.6.5(c) and (d).

COMMENT NO. 8: In DEQ-1 Standard 3.2.7.4, the description of the pitless adapter and pitless unit are combined in description and use. This section should be rewritten to match industry standards and definitions.

RESPONSE: The department interprets this comment to mean that, although the title in DEQ-1 Standard 3.2.7.4 is "pitless well units," it includes both pitless well

units and pitless adapters. This section should be rewritten to clarify that the standards in (a), (b), and (c) only apply to pitless well units and that pitless adapters can be used in lieu of pitless well units. Definitions for pitless well units and pitless adapters also should be added.

The board and department concur with this recommendation and have amended the title of this section to state "Pitless Well Units and Adapters," added definitions for both "pitless adapter" and "pitless unit" to the glossary, and added a new (d) that states "pitless adapters may be used in lieu of pitless units."

COMMENT NO. 9: In DEQ-1 Standard 3.2.7.8, clarify what types of liners are covered under this standard.

RESPONSE: The board and department concur with this recommendation and have changed the title of this section to "Well Liners" to clarify the intent of the standard.

COMMENT NO. 10: In DEQ-3 Standard 3.2.5.2(b), this section should match DEQ-1 Standard 3.2.5.3(b) and require a drive shoe when driven.

RESPONSE: The board and department concur with this recommendation and have changed this standard to match the language in DEQ-1 to ensure consistent standards.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, July 28, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I pertaining to nutrient standards variances	)))	NOTICE OF ADOPTION (WATER QUALITY)

TO: All Concerned Persons

1. On February 13, 2014, the Department of Environmental Quality published MAR Notice No. 17-355 regarding a notice of public hearing on proposed adoption of the above-stated rule at page 275, 2014 Montana Administrative Register, Issue Number 3.

2. The board has adopted New Rule I (ARM 17.30.660) exactly as proposed, but has amended Department Circular DEQ-12B in response to public comments as indicated below.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The department should develop case studies of available technologies and alternative wastewater practices and best management practices for small communities as soon as possible to inform evaluation of variances under Department Circular DEQ-12B. The department should help communities with funding to install these novel systems.

RESPONSE: The department has already begun this work. The department, in 2014, will be undertaking a review of the technical literature regarding optimization methods and best management practices for reducing ammonia, TN, and TP concentrations in facultative lagoon discharges without conversion to a full-scale mechanical facility. Emerging, innovative technologies will be considered along with more-established approaches. Using the results from this technical review, the department is planning to implement the most promising methods in cooperation with several Montana communities starting in 2015. Resulting changes in water quality will be monitored and reported. The results of this work will help guide other communities in their selection of lagoon best management practices and/or alternative approaches to reducing these pollutants.

COMMENT NO. 2: In carrying out triennial reviews of the general variance treatment levels, the department should consider currently available low-cost technologies that are more effective than lagoons.

RESPONSE: The department agrees. This is required by 75-5-313(7)(b), MCA. In 2014, the department will be undertaking a review of the technical literature regarding optimization methods and best management practices for reducing ammonia, TN, and TP concentrations in facultative lagoon discharges without conversion to a full-scale mechanical facility. Emerging, innovative technologies will be considered along with more-established approaches. Using the results from this

technical review, the department is planning to implement the most promising methods in cooperation with several Montana communities starting in 2015. Resulting changes in water quality will be monitored and reported. The results of this work will help guide other communities in their selection of lagoon best management practices and/or alternative approaches to reducing these pollutants and will inform the department in the triennial review of the general variance treatment levels for lagoons.

COMMENT NO. 3: The optimization study that is required in order to receive a general variance should be conducted before or concurrent with the issuance of a general variance. It should not be done after the general variance is issued.

RESPONSE: Section 75-5-313(9)(a), MCA, requires that a permittee receiving a variance complete an optimization study. Section 75-5-313(9)(b), MCA, provides that the department can request the results of the optimization study within two years of receipt of the variance. Thus, the department does not have authority to require the optimization before or concurrent with the issuance of the general variance.

COMMENT NO. 4: The department will have to spend a great deal of time on variance requests and triennial variance reviews. How does the department plan to address this workload?

RESPONSE: With the passage of Senate Bill 367 (now codified at 75-5-313, MCA) and the allowance for general variances, the large workload that would have been associated with carrying out individual variances in all cases was alleviated. General variances can easily be implemented by the MPDES permitting unit without the need to consult with the water quality standards unit. In those cases where an individual variance is requested, staff from permitting, standards, department wastewater engineers, and the department's economist will be working together, distributing the workload and increasing available staff. Triennial reviews are a normal part of all water quality standards updates. The updates associated with nutrient standards and variances should not be more burdensome than similar work already undertaken by the department in this regard.

COMMENT NO. 5: We oppose the widespread, categorical use of variances, particularly general variances, as water quality tools in this rulemaking. Twenty years is too long a period to not comply with a standard. We urge the DEQ to consider alternative approaches, particularly the use of compliance schedules. Compliance schedules should be limited to five years.

RESPONSE: The department does not agree with the comment. Compliance with nutrient standards, particularly nitrogen, may take a significant amount of time and the 20-year variance period will allow technology, facility optimization, and other strategies time to improve and take effect. In addition, capital cost is a significant issue, especially for small communities. In proposed rulemaking in the Federal Register (September 4, 2013), EPA stated that it had found that variances are underutilized. For example, since EPA began tracking water quality standards variance submittals in 2004, four EPA regions have never received a single water quality standards variance submittal. There is general agreement between the state

of Montana and the EPA that more than five years is needed to address nutrient pollution, conforming with technological advancements and cost improvements. In some instances, compliance schedules may also be used for the purpose of meeting nutrient standards.

COMMENT NO. 6: Variances are an unnecessary tool for allowing time for a waterbody to come into compliance with base numeric nutrient standards because TMDLs, once approved by EPA, do not have time requirements in them by which the waste load allocation must be achieved.

RESPONSE: The department does not agree with the comment. Federal and state laws require that TMDL waste load allocations (WLAs) be incorporated into permits when renewed, which effectively involves a timeline that generally should be no more than five years from completion of the TMDL (and conforming with permit renewal cycling). The exception is if the TMDL provides for a 20-year staged WLA implementation that is not only consistent with the variance process, but also relies on the variance process once numeric standards are approved. The variance process provides a critical framework to justify and base the staged WLA implementation upon. Furthermore, TMDLs will not always be available at the time of permit renewal. Thus the variance process is a critical tool to address the economic and technical limitations while at the same time striving toward water quality protection.

The availability of a variance process for implementing point source improvements within the context of numeric nutrient standards has been a critical and necessary requirement for advancing numeric nutrient standards within Montana based on consultation and involvement of state agencies, federal agencies, the nutrient work group, and the Montana Legislature. This process has been developed in a way that complements TMDL and associated WLA development.

COMMENT NO. 7: We are concerned that section 2.0 of Department Circular DEQ-12B states that variance limits take precedence over limits imposed by a waste load allocation in a TMDL. This violates federal TMDL case law.

RESPONSE: Waste load allocations are made to achieve standards on streams that do not meet the standards. Variances can be granted where compliance with the standard would cause substantial and widespread economic impacts. Requiring compliance with a waste load allocation made to meet a standard from which a variance had been granted would render the variance process meaningless. The commenter has not cited any specific case or judicially established principle that would be violated by this provision.

COMMENT NO. 8: The variance rules must be clear that variances have a specific expiration and are subject to review every three years.

RESPONSE: Triennial review is required by 75-5-313(8), MCA. It is not necessary to repeat this requirement in the rule. Section 2.0 provides that the general variances authorized in Table 12B-1 expire on July, 1, 2017. For individual variances, a separate rulemaking is required. Expiration dates can be considered in those proceedings.

COMMENT NO. 9: It should be specified in the variance rule that a variance cannot be obtained if the water quality criterion can be achieved with a combination of technology-based requirements and aggressive permit requirements for best management practices.

RESPONSE: Including such a broad-brush statement in the variance rule would be, in some cases, contradictory to statute. Section 75-5-313(5)(a), MCA, indicates that, for existing dischargers, meeting the base numeric nutrient standards now is too economically burdensome. For this reason, the statute establishes the general variance levels, which are economically achievable for existing dischargers in the vast majority of cases. To include the commenter's blanket statement in the variance rules would effectively negate this statute because limits of technology may, in some cases, allow for meeting the standards; but the technology is far too expensive to install. In cases where an individual variance is appropriate, the department is required, by statute and by New Rule I (5), to consider reasonable alternatives that preclude the need for a variance; and those alternatives may include those listed by the commenter. Going forward, the department will be adjusting the general variance treatment levels conforming with improvement and technological advances as required by 75-5-313(7)(b), MCA.

COMMENT NO. 10: The variance rule should specify that a variance can never be an option for a new or expanding source. This would violate federal water quality law and regulations. In Friends of Pinto Creek v. EPA, the Ninth Circuit held that, without a plan to achieve water quality standards, a permitting agency cannot allow a new discharge that will exacerbate existing water quality.

RESPONSE: Nothing in 75-5-313, MCA, indicates that variances are not available to new dischargers. In comments regarding this rulemaking, EPA has indicated that there may be situations in which new dischargers may demonstrate that a variance will protect existing uses and receive a variance. The Pinto Creek case did not deal with a situation in which a variance process had been used. Furthermore, variances provide a process to eventually achieve water quality standards.

COMMENT NO. 11: With regard to Tier II high-quality waters, any variance that would authorize degradation of high-quality water below a currently attained designated beneficial use is inconsistent with antidegradation and the requirements of the Clean Water Act.

RESPONSE: The department agrees that a demonstrable impact to an attained beneficial use in a Tier II high-quality water would not be consistent with the federal Clean Water Act. Furthermore, 75-5-303(1), MCA, provides that existing uses of state waters and the water quality necessary to protect those uses must be maintained. This is a statutory requirement and it is not necessary to repeat it in the rule. However, there may be situations where it would be possible for a new discharger to show that a variance (e.g., an individual variance) protects the existing beneficial use while providing temporary relief from meeting the underlying nutrient standards. In such cases, a variance may be justified. Strong control of one nutrient, effectively rendering the stream limited for that nutrient, may be one method by which a variance for the other nutrient is justifiable.

COMMENT NO. 12: Also with regard to Tier II high-quality water, 75-5-303, MCA, prohibits degradation without an authorization to degrade.

RESPONSE: That is correct with regard to new or increased discharges. There is no need to repeat this statutory requirement in the rule.

COMMENT NO. 13: The department's rules fail to contain an explicit requirement that permittees seeking variances must submit a pollutant-reduction plan that includes any actions to be taken by the permittee that would result in reasonable progress toward meeting the underlying base numeric nutrient standards. Required studies and monitoring should be structured such that the DEQ and the public can determine whether or not water quality is improving or deteriorating and whether any reasonable progress has been achieved.

RESPONSE: The department does believe that the comment accurately reflects the statute or the draft rules. All recipients of general variances, the type of variance the department expects to be most widely used, have to complete a facility optimization study. The study results can be requested by the department and will likely inform future MPDES permitting decisions. Monitoring of nutrients will be part of the requirements in all future permits addressing nutrients (including permits with general variances). ARM 17.30.1342 and 17.30.1351 require monitoring for pollutants that have a reasonable potential to violate a standard. When an individual variance is applied for, a demonstration is first required of the permittee in advance of the receipt of the variance. This demonstration includes information which would allow the department to determine if reasonable alternatives, such as reuse, recharge, trading, etc., are available and which preclude the need for the individual variance. New Rule I lays out a clear set of pollution-reduction requirements that must be met before an individual variance is issued. This information is available to the public.

COMMENT NO. 14: The Legislature's finding that "treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts" precludes the need for individual or alternative variances. The department should not rely on the EPA's 1995 draft guidance on economic impacts.

RESPONSE: The finding by the Legislature that meeting base numeric nutrient standards would have been economically burdensome to Montanans does not, in and of itself, preclude the value or necessity of individual variances. The Legislature created the three general variance categories, along with their associated nutrient-removal treatment requirements, as a means of establishing the treatment levels that would not cause substantial and widespread economic impacts statewide. No additional showing of economic impact will be required of current permittees who can't meet the underlying standards but can meet the general variance concentrations. Nevertheless, some permittees may find meeting the general variance concentrations difficult. For them, the individual variance provides a means by which they may receive treatment requirements less stringent than those required for the general variances. But to be considered, individual variances will require an economic analysis, because the permittee requesting such a variance would be requesting a treatment level relaxed from that which the Legislature identified as generally acceptable, i.e., the general variance treatment levels.

The department will not rely exclusively on the EPA's 1995 guidance when making economic impact decisions for applicants of individual variances. The EPA guidance was substantially modified during early meetings with stakeholders and has been customized to Montana. Further, EPA provides little guidance on what expenditure a private firm should be expected to make towards water pollution control if they qualify for an individual variance. Therefore, that determination will be made as part of the issuance of the individual variance.

COMMENT NO. 15: The guidance that the department has developed for implementation of variances should have been submitted for public comment concurrent with this rulemaking.

RESPONSE: The guidance is not binding on the department or permittees. It was available at the same time and many commenters, including the person who submitted this comment, also submitted suggestions regarding that document.

COMMENT NO. 16: Please clarify implementation of nondegradation for existing and future permits. The department should recognize the seasonal nature of the nutrient standards when implemented in permits and nondegradation provisions.

RESPONSE: This process is clearly set out in ARM Title 17, chapter 30, subchapter 7, which has been amended by the Board of Environmental Review to specifically provide for application of nondegradation to nutrients. Nondegradation requirements do not apply to existing permittees unless they become increased sources as defined in ARM 17.30.702(18). For new or increased sources, as defined in ARM 17.30.702(18), nondegradation for base numeric nutrient standards will be applied following the requirements in ARM 17.30.715. If this process results in a finding that degradation will occur, the applicant can apply for an authorization to degrade. Department Circular DEQ-12A clearly provides that the standards are seasonal in nature. The department would, therefore, be legally bound to recognize this seasonal nature in permitting, including application of nondegradation.

COMMENT NO. 17: Please clarify the definition of monthly and annual averages provided in Department Circular DEQ-12B.

RESPONSE: Section 75-5-313(5)(b), MCA, provides that general variances are to be "calculated as a monthly average during the period in which the base numeric nutrient criteria apply." The period during which the base numeric nutrient standards will apply extends across several months each summer and fall. Therefore, the variance treatment levels in statute are best considered as long-term averages (LTAs). "Long-term average" has a specific definition in permits, one that pertains to effluent quality over an extended time period, and is used (via a standardized process) to calculate a permittee's Average Monthly Limit (AML). The AML is the average concentration that the permittee must meet each calendar month during the time the nutrient standards apply. This implements the "calculated as a monthly average" aspect of the statute. The conversion of an LTA to an AML accounts for the variability in concentration in the permittee's effluent. Thus, the "monthly average" definition in Department Circular DEQ-12B provides the definition

by which a permit writer derives a permittee's LTA. That LTA is then used to calculate the AML, which goes in the permit.

The on-the-ground effect of this definition is that, in all cases, the nitrogen and phosphorus limits, with which a permittee must comply each month, are somewhat higher (less stringent) than if the values in statute were directly considered to be AMLs. For example, a particular permittee who discharges more than one million gallons per day and collects four samples per month as part of the compliance requirements would need to meet 10.8 mg TN/L to comply with a general variance. Without the definition provided in Department Circular DEQ-12B, the permittee would have to meet 10.0 mg TN/L, because no accounting for effluent variability over the long-term would be allowed.

Annual averages are not included in the circular.

COMMENT NO. 18: An alternative variance should be included in the parenthetical in Department Circular DEQ-12B, Section 2.0, 2nd paragraph, last sentence on page 1.

RESPONSE: It is correct that the referenced sentence applies to all types of variances. The sentence has been modified by eliminating the specific adjectives that modify "variance."

COMMENT NO. 19: The fact that the basis for an individual variance can also be limits of technology, or both economics and limits of technology, should be noted in Department Circular DEQ-12B, Section 3.1, 3rd paragraph.

RESPONSE: The department agrees and has added language recognizing limits of technology.

COMMENT NO. 20: Forty CFR 131.10(h)(2) prohibits removal of a designated use if the use can be obtained by implementing effluent limits and reasonable and cost effective nonpoint source controls.

RESPONSE: EPA in guidance documents has stated that variances are available if one of the factors in 40 CFR 131.10(g) is met and existing uses will be protected. The department does not have direct authority to impose enforceable controls on nonpoint sources of pollutants. However, the department routinely identifies nonpoint sources during the development of total maximum daily loads. These nonpoint sources can then implement improvements voluntarily. Nonpoint sources can also establish agreement with point sources for the purpose of reducing nutrient loads if a nonpoint source enters into an agreement with a point source, and this nonpoint source reduction is accounted for in the point source's discharge permit.

COMMENT NO. 21: The extent of downstream protection a discharger is responsible for should be clarified prior to rule implementation. It should be clarified that a discharger is only accountable within the mixing zone or until the point where the next source of nutrients (point or nonpoint) occurs.

RESPONSE: Department Circular DEQ-12B, as proposed, does clearly provide, in the last paragraph of Section 3.2, that only when new, site-specific nutrient standards are established on a river or stream will downstream effects be

considered. If an individual variance is developed via modeling (per Section 3.2 of Department Circular DEQ-12B and also New Rule I(4)), no consideration of downstream use protection is given when the variance is applied in an MPDES permit. It is only when the model-based nutrient concentrations are proposed as site-specific standards that there will be a requirement for an analysis of the standards' downstream effects. The length of stream to which model-based site-specific criteria apply will be a case-by-case determination. But the norm by which the length of the reach will be determined is the same: downstream to the point where the site-specific conditions that allow for more relaxed nutrient standards continue to exist, but no further. For example, if the river reach in question is strongly P limited, but that condition ends four miles downstream where a tributary with naturally-high P joins it, rendering the river N and P co-limited, then the confluence with the tributary would be the logical endpoint of the site-specific criteria.

The downstream distance to which a point source discharge is held accountable is a TMDL question and does not affect standards-setting considerations in the previous paragraph. It should be noted, however, that the request that "downstream use protection," as viewed through the lens of the TMDL, extend no further than to the end of a point source's mixing zone is very likely too limited. Elevated nutrient concentrations can manifest their effects for miles below a point source and mixing zones are kept to the shortest length practicable, usually much less than miles. For an example of where a TMDL considered the longitudinal effect of a point source, please see Appendix G of the East Gallatin River TMDL at http://deq.mt.gov/wqinfo/TMDL/LowerGallatin/Appendix_G_EGAL_wQmodelfnl.pdf.

COMMENT NO. 22: Legislative intent was that variances would be available to all dischargers. However, the rules are silent on the availability of general variances to all. This creates too much uncertainty where industry is concerned. The department should, at a minimum, state for the record its position on the issuance of the general variance for new and increased dischargers for both the public and private sector.

RESPONSE: General variances are available to new and increased dischargers of both the public and private sector if the general variance concentrations will protect the existing beneficial uses of the receiving waterbody (and giving consideration to any downstream effects). In such cases, a general variance may be justified. Variances are not authorized for new or increased dischargers in cases where existing uses would be impacted and it is likely that the general variance concentrations will impact beneficial uses. Therefore, an individual variance, in which the permitted discharge concentrations are more stringent than the general variance values but still relaxed from the standards, is much more likely to be appropriate. In addition, an individual variance crafted in such a situation would probably be near to the limits of technology, which can also be the basis of a variance.

COMMENT NO. 23: Department Circular DEQ-12B adds a layer of qualification not found in 75-5-313, MCA, by requiring the "highest attainable condition within the receiving water." Also, the circular should address alternative variances.

RESPONSE: The language to which the commenter refers is in section 3.1 of the circular, which pertains to individual variances. Section 75-5-313(3), MCA, provides that, in reviewing an application for an individual variance, the department must determine whether there are reasonable alternatives that preclude the need for the individual variance. The optimization study required in 75-5-313(9)(a), MCA, requires the permittee receiving a variance to analyze "cost-effective methods of reducing nutrient loading." Thus, it was within the contemplation of the Legislature that the department would, in the individual variance process, reduce the amount of nutrient loading to the extent possible. The "highest attainable condition" requirement is within the department's authority under the statute.

Section 75-5-313(10), MCA, which authorizes alternative variances, is self-executing and can be implemented without any reference in the rule or the circular.

COMMENT NO. 24: The overall nutrient standards package, including variances, cannot result in a regulatory moratorium on new business in Montana.

RESPONSE: The purpose of the variance process is to assure that the economic effects of nutrient standards will not cause a regulatory moratorium on new business in Montana. In turn, the rules that have been developed to implement the statute reflect this intent. Variances can be granted to new businesses as long as the new dischargers show that the variance protects the existing use.

COMMENT NO. 25: In the department's REASON (page 276, MAR Notice No. 17-355), "most" or "virtually all" should replace "many" in the third sentence of the first paragraph.

RESPONSE: The purpose of the sentence is to state the reason for adoption of the rule. The term "many cases," indicating a large number of cases, provides an adequate basis for adoption of the rule. Whether using the terms "virtually all" or "most" would be a better description is not material.

COMMENT NO. 26: On pages 276-277 of MAR Notice No. 17-355, the language in the REASON should be changed. The 6th sentence of the 1st paragraph should be rewritten as follows: "The statute requires DEQ to grant variances from base numeric nutrient standards in those cases where meeting the standards today would be an unreasonable economic burden or technologically infeasible and the permittee meets the end-of-pipe treatment requirements in Dept. Circular DEQ-12B."

RESPONSE: The department does not believe the requested text change is necessary. As currently written, the sentence reads "That statute allows dischargers to be granted variances from base numeric nutrient standards in those cases where meeting the standards today would be an unreasonable economic burden or technologically infeasible." The intent of the sentence is to show that the department was, via statute, given authority to grant variances from the nutrient standards. The replacement sentence provided by the commenter could be construed to mean that no alternatives are to be considered prior to issuing a variance. However, statute is clear (see 75-5-313(3), MCA) that a permittee must consider (and the department must review) alternatives (e.g., trading, land application, etc.) prior to receiving an individual variance.

COMMENT NO. 27: If a stream is not listed as impaired, is it really necessary that the numeric nutrient criteria be met?

RESPONSE: Yes. Discharge permits must be written to require compliance with standards unless a variance is issued.

COMMENT NO. 28: Although variances generally may be granted for up to 20 years, they require review through a rulemaking process every three years. Where companies need long-term stability commensurate with long-term investment, this adds too much uncertainty.

RESPONSE: The three-year rulemaking process is required by 75-5-313(8), MCA. The department cannot modify a statutory requirement in a rule.

4. The amended circular may be viewed at and copied from the department's web site at http://deq.mt.gov/wqinfo/Standards/default.mcpx. Also, copies may be obtained by contacting Carrie Greeley at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-6749; or by e-mail at CGreeley@mt.gov.

5. No other comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

BY: */s/ Tracy Stone-Manning*
TRACY STONE-MANNING, Director

Certified to the Secretary of State, July 28, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 pertaining to permit application, degradation authorization, and annual permit fees, specific restrictions for surface water mixing zones, standard mixing zones for surface water, definitions, incorporations by reference, A-1 classification standards, B-1 classification standards, B-2 classification standards, B-3 classification standards, C-1 classification standards, C-2 classification standards, I classification standards, C-3 classification standards, general treatment standards, definitions, and criteria for determining nonsignificant changes in water quality	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On February 13, 2014, the Board of Environmental Review published MAR Notice No. 17-356 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 280, 2014 Montana Administrative Register, Issue Number 3.

2. The board has amended 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, and 17.30.702 exactly as proposed. It has amended ARM 17.30.619 as proposed, except that the reference to "Circular DEQ-12A, entitled 'Montana Base Numeric Nutrient Standards' (December 2013 Edition)" has been changed to "Circular DEQ-12A, entitled 'Montana Base Numeric Nutrient Standards' (July 2014 Edition)" to reflect the date of adoption of the circular and has amended ARM 17.30.715 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

<u>17.30.619 INCORPORATIONS BY REFERENCE</u> (1) The board adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) through (d) remain as proposed.

(e) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (~~December 2013~~ July 2014 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters.

(2) and (3) remain as proposed.

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) and (b) remain as proposed.

(c) discharges containing toxic parameters, ~~inorganic nitrogen, or inorganic phosphorus, except as specified in (1)(d) and (e),~~ which will not cause changes that equal or exceed the trigger values in Department Circular DEQ-7. Whenever the change exceeds the trigger value, the change is not significant if the resulting concentration outside of a mixing zone designated by the department does not exceed 15% of the lowest applicable standard;

(d) through (e) remain as proposed.

(f) changes in the quality of water for any harmful parameter, ~~including~~ and parameters listed in Department Circular DEQ-12A, except as specified in (1)(g), for which water quality standards have been adopted other than carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than 10% of the applicable standard and the existing water quality level is less than 40% of the standard;

(g) for nutrients in domestic sewage effluent discharged from a septic system that does not require an MPDES or MGWPCS permit, except as specified in (1)(d) and (e), which will not cause changes that equal or exceed the trigger values in Department Circular DEQ-7. Whenever the change exceeds the trigger value, the change is not significant if the changes outside of a mixing zone designated by the department are less than 10% of the applicable standard and the existing water quality level is less than 40% of the standard;

(g) remains as proposed, but is renumbered (h).

(2) and (3) remain as proposed.

(4) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, ~~or~~ if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then the significance criteria contained in (1)(g) are the significance criteria for total nitrogen and total phosphorus in surface water.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The rule proposes uniform, relaxed mixing zone standards. In contrast, EPA policy recommends that mixing zone characteristics be defined on a case-by-case basis after it has been determined that the assimilative capacity of the receiving system can safely accommodate the discharge. EPA also states that the assessment should take into consideration the physical, chemical, and biological characteristics of the discharge and the receiving system; the life history and behavior of organisms in the receiving system; and the desired uses of the waters.

RESPONSE: The proposed rules provide for the use of the entire 14Q5 flow in dilution calculations involving a standard mixing zone. The issue of appropriate mixing zones for base numeric nutrient standards was discussed during nutrient work group meetings and EPA was involved in the discussions. Although EPA's national policy is for case-by-case analysis, as noted by the commenter, much of the concern regarding such case-by-case analysis revolves around toxic compounds, which have both chronic and acute impact levels. Mixing zones are designed to make sure acute levels are not exceeded in the mixing zone, because this would harm any aquatic life present. In contrast, nutrients at the concentrations of the base numeric nutrient standards behave like chronic criteria and the changes to the mixing zone rules reflect this reduced potential for direct aquatic life impact.

COMMENT NO. 2: Endnote 4 in Department Circular DEQ-12A should be rephrased to clarify whether it applies to the development of permit limits or stream assessment for listing/delisting on Montana's 303(d) list. Further, it should be clarified that it is a monthly average, not a 30-day rolling average.

RESPONSE: The board agrees that this should be clarified. Section 2.2 of the circular states that permit limits for nutrient discharges are to be developed using the Average Monthly Limit (AML). Thus, the circular already provides, for permitting purposes, that the averaging timeframe (duration) for permitting nutrient discharges is 30 days. The board also agrees that the 30-day period should not be a rolling average. Section 2.2 has also been modified to provide that this is a calendar month.

In contrast to setting permit limits, when assessing a stream's ambient condition for 303(d) listing purposes, the department's monitoring and assessment unit collects nutrient samples throughout the growing season (a three-month period each year) and evaluates all data using statistical testing procedures. It does not restrict the evaluation to a calendar month. Footnote 4 has been updated to better reflect the monitoring and assessment process. It now reads: "The average concentration during a period when the standards apply may not exceed the standards more than once in any five-year period, on average." In relation to the duration and frequency requirements of the standards, it should be noted that, because permits are written to a shorter time frame (a calendar month), they are fully protective of the standard. In addition, the monitoring and assessment unit of the department evaluates biological data in concert with the nutrient concentrations to make a final assessment.

COMMENT NO. 3: Some commenters supported adoption of Flathead Lake TMDL Phase I targets as Flathead Lake water quality standards, but stated that a

document describing the technical and scientific support for the standards is needed first. Other commenters asked for postponement of the standards adoption for Flathead Lake pending a more thorough technical review and local stakeholder involvement.

RESPONSE: The board agrees that the standards for Flathead Lake should be postponed and that more details on the scientific and technical basis of the standards should be prepared. The standards for Flathead Lake have been removed from Department Circular DEQ-12A.

COMMENT NO. 4: Nutrient standards should be adopted for the Flathead River.

RESPONSE: Numeric standards for the Flathead River were not proposed in the notice of public hearing and, therefore, adoption of standards for that stream is not within the scope of this rulemaking. It would require commencement of a new rulemaking proceeding.

COMMENT NO. 5: Required reporting limits in Table 12A-3 of Department Circular DEQ-12A for total kjeldahl nitrogen (TKN) are not obtainable and should not be adopted in rule.

RESPONSE: The board agrees and has increased the required reporting value (RRV) for TKN from 150 µg/L to 225 µg/L. The board is aware that the typical practical quantitation limit for total kjeldahl nitrogen (TKN) is 0.5 mg/L, or 500 µg/L. However, this limit is not low enough to meet some nitrogen standards proposed in Department Circular DEQ-12A. If a reporting limit is greater than or equal to an applicable standard, state waters that have non-detectable levels of TKN may be unnecessarily listed as impaired and/or may have requirements for extensive sampling. This is why the board calculates an RRV for parameters which have numeric standards. The board has worked with the department and statewide analytical laboratories to derive the updated RRV. The board understands that this number is still very low and that conditions must be optimal in order to achieve this number. Reporting value concentrations higher than 225 µg/L may also be acceptable on a case-by-case basis, as indicated in Table 12A-3 of Department Circular DEQ-12A. Additionally, if a sample must be diluted, it is understood that the reporting limit will be raised.

COMMENT NO. 6: The board should consider expanding the period of application of the standards, where needed, because nutrient problems can manifest at times other than in summer/early fall due to low snowpack, early irrigation withdrawal, etc.

RESPONSE: The board is aware that eutrophied rivers and streams can manifest a period of excess algal growth in early spring prior to runoff. This has been observed in the Clark Fork River, for example. In western Montana, this algal growth is typically scoured away by the spring runoff and algal growth recommences in late June to early July. Application of nutrient standards is not necessary during the spring because spring is relatively short (typically a few weeks), generally before the main recreation season, and followed by a scouring period. Flow volume is not an appropriate factor for determining the end date for application of nutrient criteria.

After runoff ends, base flow begins and can be fairly uniform into November and December. However, regional climatic influences, such as lowered temperatures and light intensity, typically cause, by early October, major reductions in aquatic plant life growth, reductions in aquatic macroinvertebrate productivity, and higher dissolved oxygen concentrations. Essentially, the productive period for the year ends in the fall and the importance of nutrient concentrations to this productivity greatly declines. The proposed end dates for the period of application of the nutrient criteria reflect this.

COMMENT NO. 7: Site-specific criteria or modified periods of application should be used to tighten nutrient standards where it is apparent that nuisance algae are becoming worse or not improving.

RESPONSE: The board agrees. These changes would be made in another rulemaking proceeding that would be initiated once it is determined that the existing standards do not protect the use.

COMMENT NO. 8: In ARM 17.30.715(1)(c), the words "inorganic nitrogen, or inorganic phosphorus" should be deleted. If they are not, discharges of nutrients will be subject to the nonsignificance of both (1)(c) and (1)(f). Based on numerous meetings of the nutrient work group and early drafts, nonsignificance should be determined under (1)(f) using the base numeric nutrient standards rather than under the existing narrative standard.

RESPONSE: The board agrees. ARM 17.30.715(1)(c) has been modified so that nonsignificance will be determined under ARM 17.30.715(1)(f) for all discharges that require a surface or ground water permit. Additionally, for discharges that do not require one of those permits, but which undergo nondegradation review nonetheless, a new subsection, ARM 17.30.715(1)(g), has been added. This subsection retains the trigger value requirement as the initial criterion for significance. Retention of the trigger value will allow the department's subdivisions program, which has stringent deadlines for reviewing subdivisions, to continue to use an expeditious means of determining significance for small subdivisions. Failing this first test, the next test for nonsignificance will be the same as is found in ARM 17.30.715(1)(f); that is, a change is nonsignificant if the change is < 10% of the numeric nutrient standards and existing water quality is currently < 40% of those standards.

COMMENT NO. 9: Movement from the 7Q10 to the seasonal 14Q5 for nutrients is a poor policy choice. The board should stick with the 7Q10 for permitting base numeric nutrient standards.

RESPONSE: The low-flow design flow is chosen to ensure compliance with the water quality criteria. Given that the proposed criteria are to be permitted based on a 30-day average concentration and have an allowable excursion frequency of once in five years, it is overly restrictive to consider the 7Q10. When establishing permit limits, the 14Q5 ensures protection of the proposed criteria at a level that corresponds to the averaging period and allowable excursion frequency of the underlying criteria, while simultaneously providing a margin of safety because the low-flow averaging period is somewhat shorter (14 days instead of 30).

COMMENT NO. 10: A commenter pointed out that the nonseverability provision in ARM 17.30.619 is triggered by the expiration of the general variance rules, while the nonseverability provision in ARM 17.30.715 is not. The commenter stated that this should be a trigger in both rules. Several other commenters stated that the board should modify the nonseverability clauses to be triggered if EPA objects to or vetoes a permit based on the inclusion of a variance.

RESPONSE: The board agrees that the triggers for both provisions should be the same and has added the expiration of the variance rules to the nonseverability provision in ARM 17.30.715.

The board has not included the permit trigger. If EPA disapproves the general variance, the nonseverability provisions would apply. Once EPA approves the general variance, EPA would not have authority to object to or veto a permit for an existing discharger based on inclusion of general variance limits in the permit. In written comments on this rulemaking, EPA has indicated that variances may be available to new dischargers as long as existing uses are protected. EPA personnel have indicated to department personnel that inclusion of the permit trigger for nonseverability would likely result in EPA rule disapproval. Should this occur, the narrative standards would be reinstated. However, narrative standards are implemented in a permit by imposition of numeric limits and it is possible that a court would hold that the proper application of the narrative standards results in the same numeric permit limits as the numeric standards would require. However, because the variance provisions of 75-5-313, MCA, take effect only upon adoption of numeric standards, that statute would not be available to new or existing dischargers in those instances.

COMMENT NO. 11: The rules should clarify implementation of nondegradation for existing and future permits. The board should recognize the seasonal nature of the nutrient standards when implemented in permits and nondegradation provisions.

RESPONSE: Nondegradation requirements do not apply to existing permittees unless they become increased sources, as defined in ARM 17.30.702(18). For new or increased sources, as defined in ARM 17.30.702(18), nondegradation for base numeric nutrient standards will be applied following ARM 17.30.715.(1)(f), (1)(g), (2), and (3). If this process results in a finding that degradation will occur, the applicant can apply for an authorization to degrade.

Department Circular DEQ-12A clearly provides that the standards are seasonal in nature. The department would, therefore, be legally bound to recognize this seasonal nature in permitting, including application of nondegradation.

COMMENT NO. 12: Applying criteria "as an average, not to be exceeded more than once in any three-year period, on average" needs clarification.

RESPONSE: The allowable excursion frequency (once in five years in this case) is referred to "on average" in order to accommodate datasets longer or shorter than the specified five-year period. For example, if the dataset were ten years long, standards exceedences would be allowed twice in that period (2/10 years, equal to 1/5), but not three times.

COMMENT NO. 13: The rules should be clarified to show that these seasonal nutrient standards will not be applied to storm water discharges.

RESPONSE: All discharges, including storm water discharges, are subject to water quality standards, whether those standards are narrative, as the nutrient standards are currently structured, or numeric, as is proposed for nutrients.

COMMENT NO. 14: The overall nutrient standards package (including variances) cannot result in a regulatory moratorium on new business in Montana.

RESPONSE: The purpose of the variance process is to assure that the economic effects of nutrient standards will not cause a regulatory moratorium on new business in Montana. In turn, the rules that have been developed to implement the statute reflect this intent. Variances can be granted to new businesses so long as the new dischargers show that the variance protects the existing use.

COMMENT NO. 15: Is a nuisance threshold for algae, as determined by public opinion polling in Montana, an appropriate standard to determine impact to beneficial use?

RESPONSE: A scientific poll of Montanans' opinions regarding what constitutes a nuisance algae level is appropriate for establishing a water quality standard. All Montana surface waters have bathing, swimming, and recreation as part of their legally defined beneficial uses. To determine when this interrelated set of uses was harmed, it was necessary to identify at what point the Montana public felt that their recreation was impaired by excess attached algae. Increased growth of attached algae is one of the most common manifestations of excess nutrients in regional streams and was, therefore, appropriate to consider. Attached algae is very commonly measured via its chlorophyll a content and the department has standard operating procedures to do so. The public-opinion survey showed that there was a clear threshold at 150 mg chlorophyll a per square meter of stream bottom. Algae levels above this impacted peoples' desire to fish, wade, swim, and boat (page 135, Suplee et al., 2009), which are all common recreational activities in Montana.

Montana is not alone in using this approach. In 2010/2011, the state of Utah carried out its own recreational survey to determine the opinion of the Utah public regarding algae levels in streams. They arrived at identical conclusions and thresholds as were found in Montana. The state of Vermont is planning to carry out its own algae recreation-impact public survey starting this summer. The focus will be the recreational use of Vermont streams. Similar approaches have also been used to establish phosphorus standards to protect water clarity and recreational use in lakes (Lake Champlain, for example).

COMMENT NO. 16: Department Circular DEQ-12A should include language which indicates that future violations of the numeric nutrient standards should only be considered in context with the nuisance algae threshold for algae in streams at that time.

RESPONSE: The requested rule change is not necessary as it is already being done via standard operating procedures used by the department's monitoring and assessment section (the group that evaluates whether or not a stream is impaired by nutrients). Since 2010, assessment of Montana streams has required

collection of nutrient samples along with algae samples and other biological measurements. All the data are considered together, and a few high nutrient samples do not necessarily mean the stream will be found to be impaired by nutrients; it depends on the degree to which the biological measurements show impairment as well. The standard operating procedure (nutrient assessment method) for this process may be found on the department's web site at: http://deq.mt.gov/wqinfo/qaprogram/sops.mcpx.

COMMENT NO. 17: All stream classifications (e.g., the A-1 class at ARM 17.30.622) have been amended to include Department Circular DEQ-12A and also the option for a person to receive a nutrient standards variance from the standards in Department Circular DEQ-12A. In the three REASONS for these amendments (on pages 289 and 290) the language should be changed from "nutrient standards limits" to "the department's authority to grant variances from the numeric standards for permittees."

RESPONSE: The commenter's proposed language would have been appropriate. However, the term "limits," as used in the sentence, is also appropriate, because a variance will establish a discharge limit for a permittee at a higher concentration than the limit that would be required in order to meet the base numeric nutrient standards.

COMMENT NO. 18: Numeric nutrient standards are arbitrary and capricious and do not account for the concept of bioavailability.

RESPONSE: The board does not agree with the comment. In the development of the base numeric nutrient standards, extensive and detailed reviews of the scientific literature were carried out in order to understand the effect of nutrients in waterbodies. The department also carried out pertinent scientific research on its own. All the proposed standards have gone through independent academic peer-review and the peer-reviewer's comments were addressed prior to the criteria being proposed as standards. Further, regarding the nutrient criteria, a common theme across the spectrum of commenters (i.e., pro, con, neutral) was that the criteria have a solid technical and scientific basis behind them.

Regarding bioavailability, in flowing-water systems a large proportion of the nutrients, often more than 50 percent, are bound in organic forms, which can be utilized and re-mineralized by bacteria and made available to other aquatic organisms (like algae). It is for this reason that total nutrients were selected as standards, because total nutrients best reflect the total available pool of nutrients that are, or have the potential to become, available to participate in eutrophication. Some fraction of total nutrients may comprise compounds which are not readily bioavailable. However, what these compounds are, and how "unavailable" to biota they actually are, is a subject of unsettled scientific debate. The subject of non-bioavailable compounds was discussed several times during the meetings of the nutrient work group, but no change to the base numeric nutrient standards resulted.

COMMENT NO. 19: The board should not adopt standards that cannot be achieved.

RESPONSE: Under both state and federal law, water quality standards must protect the uses of the water. The Legislature anticipated that nutrient standards that protect the use of the waters would not be immediately achievable. By providing for nutrient standards variances, the Legislature provided a process that allows adoption of standards that meet legal requirements and a process that alleviates negative impacts on dischargers by providing variances for up to 20 years to achieve compliance with those standards.

4. The amended circular may be viewed at and copied from the department's web site at http://deq.mt.gov/wqinfo/Standards/default.mcpx. Also, copies may be obtained by contacting Carrie Greeley at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-6749; or by e-mail at CGreeley@mt.gov.

5. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, July 28, 2014.

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

In the matter of the adoption of New Rules I through XIV; the amendment of ARM 23.13.101, 23.13.201, 23.13.203, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.301, 23.13.304, 23.13.702, 23.13.703, 23.13.704, and 23.13.711; the transfer and amendment of ARM 23.13.401, 23.13.501, 23.13.701, 23.13.710, and 23.13.712; and the repeal of ARM 23.13.202 pertaining to the certification of public safety officers	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, TRANSFER AND AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 5, 2014, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Room 121 of the Karl Ohs Building, Montana Law Enforcement Academy, 2260 Sierra Road East, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

<u>NEW RULE I EMPLOYMENT AND TRAINING OF RESERVE OFFICERS</u>

(1) An agency that appoints a reserve officer pursuant to 7-32-213, MCA, must submit a completed employment status form to the director within ten days of appointing the reserve officer.

(2) The employing agency is responsible for training the reserve officer. The reserve officer must complete training as prescribed in this rule within two years of the reserve officer's initial appointment

(3) Training must, at a minimum, consist of the courses and hours listed in 7-32-214(1), MCA.

AUTH: 2-15-2029(2), MCA
IMP: 7-32-214, 44-4-401(2)(e), 44-4-403(1), MCA

REASON: The POST Council has responsibility for establishing employment and training requirements for "public safety officers," a term that includes reserve officers. This rule is reasonably necessary to let employing agencies know that they are responsible for training reserve officers they employ and what criteria fulfill the minimum training requirements. This proposed rule fulfills POST's responsibilities with respect to the employment and training of reserve officers, and implements POST Resolution 08-002, adopted August 21, 2008, which adopted these standards. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/.

NEW RULE II FIREARMS PROFICIENCY STANDARDS (1) Each agency that employs a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer;

(b) designate a POST-certified agency firearms instructor to document annual firearms proficiency, which must include:

(i) date of qualification;

(ii) identification of the officer;

(iii) firearm manufacture and model;

(iv) results of qualifying; and

(v) course of fire used.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records.

(2) The minimum standards for annual firearms proficiency are:

(a) Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;

(c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 100 yards;

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic.

(3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.

(4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.

AUTH: 2-15-2029(2), MCA

IMP: 7-32-303(2), 44-4-403(1), MCA

REASON: The council has statutory authority to establish training standards for public safety officers. This rule is reasonably necessary to set minimum proficiency standards for firearms and to require documentation for each officer's proficiency that must be available to POST. Firearms proficiency is an important element of officer training, promoting both efficiency in the enforcement of the law and safety for the public. This rule implements resolution 10-003, adopted April 15, 2010, which adopted similar standards. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. An administrative rule is required to make the policy enforceable.

NEW RULE III RECORD OF ALL POST COUNCIL MEETINGS (1) As required by Title 2, chapter 6, MCA, POST will maintain records of all meetings and make those records available for public inspection. The record consists of an audio recording and minutes of the proceedings. The audio recording is the official record of POST meetings.

AUTH: 2-15-2029(2), MCA
IMP: 2-3-212, 44-4-403(1), MCA

REASON: This rule is reasonably necessary to implement the requirements for keeping public records of POST's meetings. POST finds that audio recordings are the best method for maintaining records of meetings because recordings are relatively inexpensive, accurate, can be easily copied and shared for public inspection, and are well-suited for long-term storage.

NEW RULE IV FORMAL MAPA CONTESTED CASE PROCEEDINGS (1) A contested case involves a determination by POST that affects the rights or responsibilities of the respondent.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer has requested a hearing.

(3) Formal proceedings for suspension or revocation are subject to MAPA, in addition to, where applicable, the Montana Rules of Civil Procedure, the Montana Uniform District Court Rules, the Montana Rules of Evidence, the Montana Rules of Professional Conduct, the Montana Code of Judicial Conduct, and these rules.

(4) A respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) A party may be self-represented, or may, at the party's own expense, be represented by an attorney licensed to practice law in the state of Montana.

(6) Contested case counsel for POST will represent POST during the proceedings.

AUTH: 2-15-2029(2), 2-4-201, MCA
IMP: 2-4-201; Title 2, chapter 4, part 6; 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE V ADOPTION OF ATTORNEY GENERAL'S MODEL RULES

(1) The POST Council adopts and incorporates by reference the Attorney General Model Rules ARM 1.3.216, 1.3.226, 1.3.227, 1.3.228, 1.3.229, 1.3.230, and 1.3.232 in effect. The model rules incorporated by reference can be found on the Secretary of State's web site at http://sos.mt.gov/. In applying the model rules, references to "the agency" should be interpreted to refer to "the POST Council."

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, Title 2, chapter 4, part 6, 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VI CONTESTED CASES, DISCOVERY (1) In all contested cases, discovery is available to the parties in accordance with Rules 26 through 37 of the Montana Rules of Civil Procedure. All references to "court" will be considered references to the hearing examiner or POST Council; all references to subpoena power will be considered references to ARM 1.3.230; all references to "trial" will be considered references to "hearing"; all references to "plaintiff" will be considered references to "a party"; all references to "clerk of court" will be considered references to the hearing examiner.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the adversely affected party may seek enforcement in district court under 2-4-701, MCA.

(3) If either party seeking discovery believes it has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), M.R.Civ.P., or, if either party refuses to make discovery, the aggrieved party may petition the district court for review of the hearing examiner's action under 2-4-701, MCA.

(4) Severe failures of discovery may also be sanctioned pursuant to M.R.Civ.P. 37 and the case law interpreting it. Sanctions under this subsection may be enforced by or appealed to district court pursuant to 2-4-701, MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-104, 2-4-602, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VII CONTESTED CASES – HEARING EXAMINERS (1) The POST Council chair or the director may appoint a hearing examiner to conduct a hearing in a contested case, as allowed by 2-4-611, MCA.

(2) A hearing examiner appointed under 2-4-611, MCA and this rule may:

(a) administer oaths or affirmations;

(b) issue subpoenas;

(c) provide for the taking of testimony and depositions;

(d) set the time and place for hearing;

(e) set motion and briefing schedules that comport with the Montana Rules of Civil Procedure and the Montana Uniform District Court Rules for filing, service, deadlines, and time calculation;

(f) by mutual consent of the parties, hold conferences to consider narrowing or simplifying the issues;

(g) rule on summary judgment motions, motions in limine, and other motions and, if motions are dispositive, make recommendations to the POST Council as if a hearing on the merits had occurred;

(h) allow, disallow, or limit expert testimony;

(i) recommend to the council dismissal of the case based on M.R.Civ.P. 41, default, or other reason;

(j) provide for and conduct the MAPA contested case process as a matter of discretion, within the bounds of the applicable law.

(3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.

(4) Pursuant to 2-4-611(4), MCA, the POST Council may disqualify a hearing examiner if a party shows by affidavit the existence of personal bias, lack of independence, disqualification by law, or other ground for disqualification.

(5) If a hearing examiner recuses himself or herself for good cause, the director or POST Council may appoint a replacement.

(6) For guidance on the POST Council's past actions on cases and penalties imposed, a hearing examiner may inspect POST's integrity report, available on POST's web site or from POST staff, and may examine any POST file not containing privileged, ex parte, or other protected or constitutionally private material.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403(3), MCA

REASON: See Reason following Proposed New Rule XII.

NEW RULE VIII CONTESTED CASE HEARING (1) The contested case hearing will be conducted before the POST Council or a hearing examiner, at the council's discretion.

(2) The director will set the venue for the hearing.

(3) At the contested case hearing, the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action.

(4) The director may be represented by contested case counsel during the contested case process.

(5) The hearing examiner must ensure that the respondent and counsel for POST are afforded the opportunity to respond and present evidence and argument on all issues involved.

(6) Absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:

(a) opening statements by both parties;

(b) presentation of evidence by the respondent;

(c) cross examination by POST;

(d) presentation of evidence by POST;

(e) cross examination by the respondent; and

(f) rebuttal testimony.

(7) All testimony must be given under oath or affirmation.

(8) Exhibits must be marked and must identify the party offering the exhibits. The exhibits will be preserved by the hearing examiner and then by POST as part of the record of the proceedings.

(9) The hearing examiner may hear closing arguments, request written argument, order a schedule for parties to submit a prehearing memorandum, a final prehearing order, proposed findings of fact and conclusions of law, or any other writings that might assist the hearing examiner.

(10) The hearing examiner may grant recesses or continue the hearing.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE IX CONTESTED CASES, EVIDENCE (1) All evidence introduced in a contested case hearing will be received and evaluated in conformance with common law and statutory rules of evidence, including the Montana Rules of Evidence.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE X CONTESTED CASES, EX PARTE COMMUNICATIONS

(1) Pursuant to 2-4-613, MCA, ex parte communication by a party or a party's agent with the hearing examiner, the council, any individual member of the council, or any person authorized to participate in the decision of the contested case, is expressly prohibited unless otherwise authorized by law.

(2) An unauthorized ex parte communication may be treated as a default and may constitute a waiver of the party's rights to proceed.

(3) If an ex parte contact occurs, the person receiving the communication must state on the record the nature and content of the communication and a summary of its contents. The presiding officer or hearing examiner may, in the exercise of discretion, make any order that is appropriate.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, 2-4-613, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE XI CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE (1) Pursuant to 2-4-631(3), MCA, if the director or the council determines that public health, safety, or welfare requires emergency action, the director or council may immediately suspend a certification. The order must include findings justifying emergency action, and regular proceedings must be promptly initiated.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-631(3), 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE XII CONTESTED CASES, SETTLEMENT OR STIPULATION AND PROCESS FOR REVIEW BY THE POST COUNCIL (1) If, in the course of the MAPA contested case proceeding, the parties reach a stipulated agreement or settlement, the parties must:

(a) put the agreement into writing, signed by the respondent or the respondent's legal representative and the director;

(b) present the agreement to the POST Council for acceptance or rejection:

(i) if the council accepts the agreement by motion, then the agreement becomes the POST Council's final agency action;

(ii) if the council rejects the agreement, then the parties must provide the hearing examiner an excerpt of the official record of the POST meeting in which the council rejected the agreement. The contested case proceeds as though there had been no agreement.

(2) By signing a stipulation or settlement agreement, all parties:

(a) indicate their understanding that all agreements reached during the contested case process are subject to the POST Council's approval and are not binding until the council has approved the agreement by seconded motion;

(b) waive their rights or privileges to raise any argument, objection, complaint, or attempt to disqualify or remove any POST Council member or hearing examiner based on that individual's having heard, discussed, or ruled on the agreement. By submitting an agreement to the hearing examiner and the council, all parties agree not to attempt to disqualify that hearing examiner or any member of the POST Council who considers the agreement or prevent them from ultimately hearing the case on the merits if the agreement is rejected.

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

REASON: NEW RULES IV through XII are reasonably necessary to set forth the procedural rules that govern POST contested case proceedings and to clarify the roles of the parties, the hearing examiner, POST, and others. Based on past experience, the absence of administrative rules governing POST contested cases has resulted in confusion regarding how proceedings are initiated, what rules apply

(MAPA, rules of evidence, Attorney General model rules, etc.), what authority a hearing examiner possesses, what authority POST continues to exercise during a contested case, and other matters. These new rules attempt to address this confusion. These rules are necessary to establish that POST contested cases are formal matters that, procedurally, closely parallel state district court proceedings. Similarly, incorporation of evidentiary rules and discovery rules serve to further clarify the process for fact-finding within the case proceeding. These rules attempt to provide parties a fair process for resolving disputes and, at the same time, eliminate the uncertainty and unnecessary disputes over process that occurred in the past.

NEW RULE XIII NOTICE TO THE PUBLIC OF POST COUNCIL ACTIONS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, POST will afford reasonable opportunity for public participation. Reasonable opportunity for public participation may be afforded by:

(a) any of the agency actions allowed pursuant to 2-3-104, MCA; or

(b) a notice of the proposed agency action published in the register in accordance with template 102a (www.armtemplates.com). POST may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter within the jurisdiction of POST must be allowed at any public meeting under 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, defining "public matter" and "meeting" and stating the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-3-103, 2-3-104, 2-3-203, 44-4-403, MCA

REASON: Section 2-3-103, MCA, requires each agency to adopt by rule procedures "for permitting and encouraging the public to participate." This proposed rule adopts Attorney General Model Rule ARM 1.3.102, with minor grammatical changes.

NEW RULE XIV PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS (1) Except as provided in (2), the standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field.

(2) The standards set forth in (1) do not apply to reserve officers.

(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers.

AUTH: 2-15-2029(2), MCA
IMP: 7-32-303, 44-4-403(1), MCA

REASON: The council proposes to adopt this new rule to add needed clarity for readers as to the source of requirements for education and training for public safety officers and the obligation by employing agencies to notify the POST Council in case of a change in status of a public safety officer. Section 7-32-303(5), MCA, states the circumstances under which an experienced peace officer can achieve certification through equivalency. POST believes this opportunity should be extended to public safety officers, with the exception of reserve officers, and this rule accomplishes this goal. This rule also extends the requirement in 7-32-303(4), MCA that an employing agency notify POST within ten days after hiring a peace officer to all public safety officers. Section 7-32-303(4), MCA currently requires ten-day notice for hiring and termination of peace officers. This requirement allows POST to keep track of officers who are terminated for poor conduct or misconduct, and helps prevent these officers from obtaining employment with another Montana agency. The proposed rule extends this protection to all public safety officers. It also allows POST to track continuous employment by officers for purposes of implementing 7-32-303(5), MCA. Because POST and employing agencies currently use the ten-day notification process for peace officers, adopting this requirement is a convenient method that allows POST to be informed of the employing agencies with public safety officers.

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

23.13.101 ORGANIZATION AND GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS ~~(1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.~~

~~(2) The council membership is defined in 44-4-402, MCA.~~

~~(3) As used in ARM 23.13.101 through 23.13.712, the definitions set forth in 44-4-401, MCA, apply.~~

(1) The organization and function of the Public Safety Officers Standards and Training Council ("POST" or "POST Council") are described in ARM 23.1.101(1)(d), (2)(k), and (4).

(2) POST will maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders must be available for public inspection on request. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(1), 2-4-623(6), 2-15-2029, MCA

REASON: A description of the agency's organization and purpose is required by 2-4-201, MCA. Section (1) shortens the existing rule and eliminates unnecessary duplication. An index of agency decisions is required by 2-4-623(6), MCA. Section

(2) is necessary to address this requirement, and follows the provisions of Model Rule ARM 1.3.233. Prior to this amendment, POST did not have a rule addressing the requirements of 2-4-623(6), MCA, which requires each agency to index decisions in contested cases and make the decisions available to the public. This proposed amendment fills that gap in POST's rules and brings the rules into compliance with statute.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) ~~Public~~ All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, ~~as defined in 44-4-401, MCA,~~ all public safety officers ~~shall~~ must:

(a) be a citizen of the United States or may be a registered alien if unsworn;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;

(e) be a high school graduate or have ~~passed the general education development test and have~~ been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; ~~and~~

(g) be in good standing with any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;

~~(g)~~ (h) possess a valid driver's license if driving a vehicle will be part of the officer's duties~~.~~;

(i) take an oath containing the code of ethics and abide by the code of ethics contained in ARM 23.13.203; and

(j) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:

(i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Sanction, Suspension, and Revocation ARM 23.13.702;

(ii) review of the annual POST integrity report;

(iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;

(iv) review of agency policy and procedure regarding ethical and moral codes of conduct;

(v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

(3) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(i) and (2)(j). The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(i) and (2)(j). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: The POST Council has adopted a policy, POST Resolution 11-001, requiring in-service training for certified public safety officers. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. This amendment implements that policy as rule, making it enforceable through a disciplinary action. However, based on past experience, the council believed that the number of in-service hours should be reduced from 40 hours to 20 hours, and this amendment reflects that judgment. The change to (2)(e) is necessary because the Office of the Superintendent of Public Instruction no longer recognizes the GED test. New (2)(g) requires an officer to remain in good standing with all agencies of other states that have certified or licensed the officer. This amendment prevents an officer from losing certification in another state and then being certified in Montana. New (2)(i) clarifies the existing rule that the code of ethics applies to officers who were certified before the code was originally adopted as rule in 2008. This change is needed to prevent a double standard and to clarify that ethics do not vary based on an officer's hire date; an officer who deviates from the code of ethics has violated the ethics code regardless of when the offending officer was hired. New (2)(j) clarifies that the in-service training must include specified ethics topics.

New (3) is necessary to remove any confusion over which agency must maintain records, and it clarifies that the employing agency is responsible for maintaining records of the administration of the oath containing the code of ethics and the completion of in-service training required by (2)(i) and (2)(j). The amendments also make minor changes in grammar for clarity.

23.13.203 CODE OF ETHICS ~~(1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.~~

(1) All public safety officers who have been hired or employed by any agency or entity in Montana, or who have been certified by POST, or who have attended an MLEA basic class must be administered an oath regarding the code of ethics contained herein.

(2) The procedure for administration of the code of ethics is as follows:

(a) each ~~applicant for certification~~ officer will attest to this code of ethics and the oath shall be administered by the ~~head of the public safety agency for which they~~

~~serve~~ officer's employing authority, or by the ~~Montana Law Enforcement Academy (academy)~~ MLEA administrator or designee, or by the POST director or POST staff;

(b) the ~~applicant~~ officer and the ~~administrator~~ individual administering the oath will sign ~~two copies of~~ the public safety code of ethics; and

(c) at least one copy will be retained by the ~~applicant~~ officer or the officer's employing authority and ~~the other copy~~ will be ~~retained in the applicant's academy student file, which will be~~ made available for inspection by ~~the council~~ POST staff at any reasonable time.

(3) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule, even if it was not previously administered to them as an oath. Continued employment as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for suspension, sanction, or revocation of any POST certificate.

~~(3)~~ (4) The oath of the public safety officers' code of ethics is:

(a) "My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged~~.~~;

(b) "I ~~shall~~ will perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct~~.~~;

(c) "I will enforce or apply all laws and regulations appropriately, courteously, and responsibly~~.~~;

(d) "I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person~~.~~;

(e) "Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise~~.~~;

(f) "I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and ~~shall~~ will disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties~~.~~;

(g) "I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice~~.~~;

(h) "I will be responsible for my professional development and will take reasonable ~~opportunities~~ steps to improve my level of knowledge and competence~~.~~;

(i) "I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303(2), 44-4-403(1)(a), MCA

REASON: The proposed amendment is necessary to clarify that the code of ethics applies to all officers, regardless of when they were hired or certified. This

amendment also makes minor changes in procedure to promote efficiency and in language and format to promote clarity.

23.13.204 PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting ethical behavior, professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council ~~shall have~~ has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence as determined by the council.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303(7), 44-4-403(1)(a), MCA

REASON: The proposed amendments are necessary to clarify the broad purposes served by POST Council certificates and the standard of proof for sanctions. POST finds that adding a standard of proof is necessary to promote fairness to the officers the POST Council has certified.

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal agency, state, tribal entity, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers ~~shall~~ must complete the required basic training as set by the council.

(3) All public safety officers must ~~shall attest that they~~ subscribe to the code of ethics as prescribed in ARM 23.13.203. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

(4) Prior to issuance of any certificate, the public safety officer ~~shall~~ must have completed the designated combinations of education, training, and experience as computed by the credit hour system established ~~annually~~ by the council.

(5) To maintain certification the officer must:

(a) abide by all laws and rules of Montana, including those set forth herein;

(b) maintain ethical conduct by upholding and abiding by the code of ethics set forth in ARM 23.13.203 and refrain from engaging in any behavior that constitutes a ground for sanction, suspension, or revocation under ARM 23.13.702;

(c) maintain the continuing education and training requirements set forth by the council and ARM 23.13.201(2)(j).

~~(5)~~ (6) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies ~~shall~~ will be determined by the council, and requires notice of application for credit.

(7) In calculating the training hours for an intermediate, advanced, or supervisory certificate, no more than 25% of the required training hours will be allowed from any college or military training credits and no more than 15% will be allowed from in-service training.

(a) The POST Council is not responsible for maintaining records of in-service training hours acquired to satisfy the requirements of this rule. The employing agency must maintain records of in-service training hours acquired to satisfy this rule and provide those records with the application for intermediate or advanced certificates.

(8) In calculating the training hours for an intermediate, advanced, or supervisory certificate, military training will be accepted hour for hour only with a written explanation of how the training relates to civilian law enforcement and other supporting documents requested by the director.

(9) In calculating the training hours for an intermediate, advanced, or supervisory certificate, college education will be credited for individual class work only. Credit will be given using the formula of ten hours for one semester credit hour and six hours for one quarter credit hour, and must be accompanied by a written explanation of how the higher education course relates to public safety officer work and supporting documents including a transcript.

~~(6)~~ (10) Applicable discipline-specific experience in any public safety agency will be considered by the council when determining the minimum standards for certification of each discipline.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: Amendments to (1) through (5) are necessary to clarify that the code of ethics applies to all officers, regardless of hire date. The amendments in (6) make minor changes in wording for clarity. The proposed amendments in (7) through (10) set out the manner in which the council accounts for training hours for purposes of certification. These amendments implement Resolution 08-001, adopted August 21, 2008, and Resolution 10-001, adopted February 14, 2011. The resolutions can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. The resolutions are reasonably necessary to provide criteria for local agencies and notice to officers of how POST calculates training hours. The new rule language is needed to make those policies enforceable.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation ~~shall~~ must have completed:

(i) the probationary period prescribed by law or by the current employing agency, but in any case have a minimum of one year discipline-specific employment experience with the current employing agency; and

(ii) the basic course or the equivalency as defined by the council~~; and~~.

~~(iii) application for the basic certificate.~~

(b) Public safety officers hired before the effective date of this regulation ~~shall~~ must have:

(i) completed the probationary period prescribed by the employing agency, and ~~shall have~~ served a minimum of one year with the present employing agency;

(ii) completed the basic course at the ~~academy~~ MLEA, or an equivalency as defined by the council; or

(iii) remains the same.

(c) Public safety officers with out-of-state ~~experience and~~ training or who have been formerly employed by a designated federal agency, state, tribal entity, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) ~~shall~~ must have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training ~~and~~ or service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the ~~academy~~ MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training ~~and~~ or service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course~~; and~~.

~~(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.~~

(d) remains the same.

(e) The council may grant a one-time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) through (g) remain the same.

(2) An officer meeting the qualifications outlined above will be issued a basic POST certificate. POST will consider the completion of the above requirements to constitute the officer's application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment clarifies that POST considers an officer's completion of the training and experience requirements an implied request for a certificate, and POST will issue a certificate once the requirements are satisfied. This amendment is reasonably necessary to address past abuses from officers who exploited a loophole in the rules to attempt to avoid disciplinary action. For example, prior to this amendment, an officer could avoid a POST certificate simply by not applying for a certificate. Then, if the officer engaged in conduct that could result in disciplinary action, the officer could argue that POST had no authority because the officer had no certificate to suspend or revoke. This amendment forecloses this tactic. Additionally, this amendment is necessary to clarify the probationary period for a basic certificate, makes the rule consistent with 7-32-303(5)(c), MCA, and makes minor grammatical changes for clarity.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) ~~shall~~ must possess the discipline-specific basic certificate; and

(c) ~~shall~~ must have four years discipline-specific experience and 200 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an intermediate certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines as a matter of discretion that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an intermediate certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and basic certificate of the officer seeking intermediate certificate must be "discipline-specific," i.e., must be in the same discipline for which the intermediate certificate is sought.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the advanced certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate; and

(b) ~~shall~~ must have eight years' discipline-specific experience and 400 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an advanced certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an advanced certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking advanced certificate must be "discipline-specific," i.e., must be in the same discipline for which the advanced certificate is sought.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the supervisory certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate;

(b) ~~shall~~ must have successfully completed a ~~40~~ 32-hour POST-approved management course; and

(c) ~~shall~~ must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first-level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities~~, and most commonly is the rank of sergeant~~.

(3) Officers who believe they are eligible for a supervisory certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a supervisory certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking supervisory certificate must be "discipline-specific," i.e., must be in the same discipline for which the supervisory certificate is sought. Additionally, to avoid confusion, this amendment removes the reference to "commonly affected rank" because this language could be read as a limitation, which was not the intention.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the command certificate:

(a) ~~shall~~ must possess the discipline-specific supervisory certificate;

(b) ~~shall~~ must have completed a professional development course or courses cumulating a minimum of 200 hours or more of POST-approved, supervisory, management or leadership topic matter; and

(c) ~~shall~~ must have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

(2) Officers who believe they are eligible for a command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and supervisory certificate of the officer seeking command certificate must be "discipline-specific," i.e., must be in the same discipline for which the command certificate is sought.

23.13.211 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADMINISTRATIVE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the administrative certificate:

(a) ~~shall~~ must possess the discipline-specific advanced and command certificate; and

(b) ~~shall~~ must have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) remains the same.

(3) Officers who believe they are eligible for an administrative certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an administrative certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and advanced and command certificates of the officer seeking the administrative certificate must be "discipline-specific," i.e., must be in the same discipline for which the administrative certificate is sought.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES ~~(1) For the purposes of ARM 23.13.302, 23.13.304, and 23.13.401, the following definitions apply:~~

~~(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;~~

~~(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;~~

~~(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and~~

~~(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.~~

~~(2) The council is responsible for the approval of all public safety officer training programs:~~

~~(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and~~

~~(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.~~

(1) The director may approve any request for POST training credit or course content accreditation. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.

~~(3)~~ (2) ~~The course requirements for POST approved training include~~ To obtain the status of POST-approved training, training courses must:

(a) ~~meeting~~ meet the requirements ~~contained in (2), the requirements~~ for trainee attendance and performance, and the instructor requirements contained in these rules;

(b) ~~being~~ be based upon generally recognized best practices;

(c) ~~comporting~~ comport with Montana laws and court decisions; ~~and~~

(d) ~~being~~ be at least two hours or more in length~~.~~ ;

(e) be advertised and open to all public safety agencies; and

(f) contain course content that has been reviewed and approved by the director, either before or after the training occurs, through the procedures set forth in (3).

(3) To receive POST training credit, employing agencies or any person or entity seeking course credit for POST-certified officers must submit to the director:

(a) application for accreditation;

(b) instructor certification or training record and an instructor biography;

(c) material showing course content, including a syllabus and/or lesson plan and student handouts.

~~(4) Approval requirements for training courses presented or sponsored by public safety agencies are:~~

~~(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and~~

~~(b) each course must be advertised and open to all public safety agencies.~~

(4) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to follow the required reporting procedures set forth in these rules and as set by the director and monitor the standards for training, trainee attendance, and performance as set by the council.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: More public safety officer training is being offered by private vendors, and the manner in which individual public safety agencies authorize and approve training differs from agency to agency. The POST Council finds that rules that describe how it approves training programs and applications for accreditation will promote consistency for training vendors and agencies, while at the same time help

ensure that officers receive the appropriate training. Accordingly, this proposed rule amendment is necessary to promote fairness for officers and agencies while clarifying the POST Council's responsibilities and providing clear guidelines for POST staff. The definitions in ARM 23.13.301(1) have been transferred to the general definition rule, ARM 23.13.102, so that they will be applicable to all of the POST Council's rules.

23.13.304 THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course ~~shall~~ will be prescribed by the council.

(2) Students in any basic public safety officers' course ~~shall be~~ are required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council ~~shall annually~~ will review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(a) All lesson plans submitted to the POST Council for accreditation must contain, at a minimum:

(i) the title of the lesson plan;

(ii) the training goal of the lesson plan;

(iii) application level performance objectives;

(iv) the method of evaluation;

(v) the student materials and handouts;

(vi) course content references.

(4) The council may approve changes from the course content established at the last ~~annual~~ review upon written application from the MLEA administrator ~~of the academy~~ providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: This amendment is necessary to set forth the criteria for basic training courses. The goal of including these criteria is to help vendors and agencies know what their lesson plans must include, thus facilitating POST-approval of their courses. The amendment implements Resolution 09-002, adopted on April 16, 2009, in order to make the policy enforceable. The resolution can be found on the POST Council's web site at the following link: https://doj.mt.gov/post/post-resolutions/. It also deletes the requirement for annual review by the POST Council of the basic curriculum, and makes minor changes in grammar.

23.13.702 GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The executive director or the council ~~shall~~ will consider ~~and rule on~~ any ~~complaint~~ legitimate allegation made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of ~~material~~ any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the ~~person's~~ officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) ~~addiction to or~~ the unlawful use of or addiction to any controlled substances or other drug(s) that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable treatment;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) ~~the commission~~ conviction of a felony, or an offense which would be a felony if committed in this state~~, or an offense involving dishonesty, unlawful sexual conduct, or physical violence~~;

(f) conviction of any offense involving unlawful sexual conduct or unlawful physical violence;

~~(f)~~ (g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

~~(g)~~ (h) willful violation of the code of ethics set forth in ~~these rules~~ ARM 23.13.203;

~~(h)~~ (i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

~~(i)~~ (j) failure to meet the minimum standards for employment as a public safety or peace officer set forth in these rules or Montana law;

~~(j)~~ (k) failure to meet the minimum training requirements ~~provided in~~ or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules; ~~or~~

~~(k)~~ (l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the ~~agency's~~ employing authority's or officer's reputations, or to the public's confidence in the profession~~.~~;

(m) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of public safety officers;

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

(o) the sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.

~~(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a~~

~~federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.~~

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(c), MCA

REASON: This amendment is reasonably necessary to clarify that sanctions are related to behaviors that negatively affect an officer's abilities or that negatively affect the public's confidence in public safety officers. This amendment, along with others, including the amendments to the code of ethics, reflects POST's finding that officers must hold themselves and their profession to high standards. POST also finds that officers deserve to know what is expected of them. POST's goals in expressly clarifying the existing grounds for sanctions and including additional grounds for sanctions, are to provide guidance to officers, to promote fairness for officers who have been accused of wrongdoing, and to provide guidance to the council so that its decisions will bear meaningful appellate review. Additionally, there are grammatical changes to promote clarity.

23.13.703 ~~PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION~~ PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR

~~(1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.~~

~~(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.~~

~~(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:~~

~~(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);~~

~~(b) name and place of employment of the person complained against; and~~

~~(c) a full and complete description of the incident.~~

~~(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.~~

~~(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:~~

~~(a) file a formal complaint with the council on their own behalf;~~

~~(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;~~

~~(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;~~

~~(d) accept the voluntary surrender of a certificate issued by the council; or~~

~~(e) for good cause, recommend closure of the investigation of a complaint.~~

~~(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.~~

(1) The POST Council will create, maintain, and adopt in public meetings a "flow chart" policy and procedure for processing and responding to allegations. The flow chart policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.

(2) Any allegation made against a public safety officer that states potential grounds for sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the employing authority of the allegation. This requirement does not apply if the allegation has been made against the highest ranking officer in the agency, who would otherwise constitute the employing authority, and there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

(4) After being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, preferably in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director.

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation.

(a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.

(b) The allegation must provide at least the following information:

(i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;

(ii) the name and place of employment of the officer;

(iii) a complete description of the incident;

(iv) the remedy sought, including a recommendation for a sanction, suspension, or revocation of the officer's POST certification;

(c) A person or entity making an allegation is encouraged to use the allegation form available from POST staff.

(6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the employing authority.

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

(a) All such correspondence must be copied to the employing authority, unless the exception noted in (3) applies.

(b) The flow chart and accompanying policy provided in (1), will outline the number and nature of these letters.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the director and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(8) After an allegation is made by or filed with the director, the director, contested case counsel for POST, the POST compliance officer and investigator, or other POST staff or designees will investigate the complaint.

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

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council;

(b) accept the voluntary surrender of a certificate;

(c) make one of the following findings:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations made or the investigation conclusively proved that the act or acts complained of did not occur.

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) made.

(d) issue the appropriate sanction, suspension, or revocation of a certificate;

(e) if a sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for revocation and suspension pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the

hearing examiner must grant a stay based on an application by the director or counsel for POST.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's employing authority must also be maintained in the officer's POST file.

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

REASON: This amendment is reasonably necessary to implement the POST Council's new process for handling complaints against certified officers. An explanation of the need for the new process follows Proposed New Rule XII above. This rule replaces the existing rule and describes the new process. The procedures set forth in this rule provide fundamental due process to officers against whom allegations have been made while providing POST a workable means of processing its workload. The procedures in this rule precede the process described in proposed amended ARM 23.13.704.

23.13.704 ~~COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION~~ REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA FOLLOWING SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION BY THE DIRECTOR ~~(1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.~~

~~(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.~~

~~(3) In formal proceedings, the respondent must file an answer, or be in default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.~~

~~(4) Service shall be made in a manner consistent with Montana law.~~

~~(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.~~

~~(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.~~

~~(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.~~

~~(8) A representative from the office of the Attorney General may present the case of the complainant.~~

~~(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.~~

~~(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.~~

(1) If the director sanctions, suspends, or revokes an officer's POST certification pursuant to ARM 23.13.703(9) and the officer receives a notice of agency action, then the officer has the right to request a formal contested case proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

(2) The proceedings and hearing can only be initiated by a request from the officer whose certificate was sanctioned, suspended, or revoked, and not by any other person or entity.

(3) To request a hearing, the officer must follow the instructions contained in the "notice of agency action" and notify the appropriate individual or the director that the officer requests a hearing within 30 days of the officer receiving the notice of agency action.

(4) Failure to notify and request a hearing within 30 days of receiving the notice of agency action will constitute a waiver of the right to a hearing.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to implement the POST Council's new policy for handling requests for contested case hearings. A full explanation of the need for the new process follows Proposed New Rule XIV above. The goals of the new policy are to provide more due process to officers seeking contested case hearings and also to clarify the applicable process. If an officer requests a hearing under this part, the hearing process is established in MAPA and in the Attorney General Model Rules to be adopted in Proposed New Rule V above.

23.13.711 CONTESTED CASES, RECORD ~~OF PROCEEDINGS~~ ~~(1) The record shall consist of the items enumerated in 2-4-614, MCA, and an audio recording of oral proceedings shall be the official record of the proceedings.~~

(1) The hearing examiner in the contested case proceeding is responsible for maintaining the official record of the contested case until its conclusion. The record must include:

(a) all pleadings, motions, and rulings;

(b) all evidence, either written or oral, received, or considered by the presiding officer;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings on objections;

(e) proposed findings and exceptions; and

(f) any decision, opinion, or report, and any proposed findings of fact, conclusions of law, and proposed order, entered by the hearing examiner, which must be in writing.

(2) The hearing examiner must number the docket and maintain it like the docket of a court of record.

(3) At the request of any party, all or part of the hearing proceedings must be transcribed. The cost of transcription is the responsibility of the requesting party.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: MAPA requires maintenance of the record of contested case proceedings. This proposed rule amendment would govern the record of proceedings before POST. The new process supplants the existing rule, which is too brief to be very helpful. The amended rule adopts Attorney General's Model Rule ARM 1.3.220. Section (2) is new and obligates the hearing examiner or presiding officer to maintain the record as though in the office of a clerk of the district court. Following this practice will ensure that the record is complete for appellate review.

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

23.13.401 (23.13.212) INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) remains the same.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have successfully completed a 40-hour minimum instructor development course or equivalent approved by the ~~council~~ director;

(d) remains the same.

(e) must submit the specific lesson plan that is at least two hours in length, and which includes performance objectives, instructional strategies, and complete course content.

(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have an endorsement from ~~a professional instructor and~~ the POST director, or designee, attesting to the applicant's competencies; and

(d) remains the same.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the

person shall apply to the council on a form approved by the council, and shall meet the following requirements:

(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; ~~and~~

(b) must have endorsement from the POST director or designee and agency administrator; and

(c) meet all of the requirements necessary to qualify as a master instructor as required by (3).

(5) The council will certify approved primary and master instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor ~~shall~~ will be listed in an official register of the council, and for each primary and master instructor, each subject that instructor is certified to teach ~~shall~~ will be noted in ~~said~~ the register.

(6) remains the same.

(7) After four years of continuous certification, ~~master~~ all instructors may be recertified for a four-year period.

(8) remains the same.

~~(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.~~

(9) Officers who believe they are eligible for any instructor certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

~~(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to ARM 23.13.712.~~

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an instructor certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to

move this rule from subchapter 4 to subchapter 2. The amendment to this rule will also provide clarity and consistency by establishing the time limit for lesson plans, clarifying the roles of the "director" and the council as they pertain to instructor training courses, and removing language that conflicted with certification and disciplinary procedures.

23.13.501 (23.13.213) REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION (1) remains the same.

(2) The council ~~shall~~ will issue incident command certificates designated by:

(a) emergency response specialty; and

(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to ARM 23.13.203 and 23.13.205, applicants for an award of a designated incident command certificate:

(a) ~~shall~~ must possess an intermediate certificate;

(b) ~~shall~~ must have completed an approved ICS course;

(c) ~~shall~~ must have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;

(d) ~~shall~~ must be trained within a specialized area of emergency response;

(e) ~~shall~~ must have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and

(f) ~~shall~~ must be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

(4) Officers who believe they are eligible for an incident command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA
IMP: 2-15-209, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an incident command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to move this rule from subchapter 5 to subchapter 2. These amendments

will also promote consistency in the rules by making the procedures for incident command certification the same as for other certifications.

23.13.701 (23.13.102) DEFINITIONS As used in this ~~sub~~chapter, the following definitions apply:

(1) "Allegation" means:

(a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;

(b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;

(c) the document or statement, prior to the notice of agency action, that initiates the informal revocation, suspension, or sanction proceeding against an officer.

~~(2) "Complainant" means:~~

~~(a) any person or entity making a complaint against a public safety officer to the council; or~~

~~b) the POST executive director acting upon any credible knowledge, information, or belief.~~

~~(1)~~ (2) "Certification" or "certificate" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.

(3) "Contested case" means:

(a) a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules; or

(b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.

~~(3)~~ (4) "Council" or "POST Council" or "POST" means the full 13-member public safety officer standards and training council as created by 2-15-2029, MCA.

~~(4)~~ (5) "Director" or "executive director" means the executive director of the public safety officer standards and training council~~, as established by these rules~~.

~~(5) "Formal Proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.~~

(6) "Employing authority," "employing agency," or "~~Governmental~~ governmental unit" means any ~~governmental~~ entity ~~which~~ that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

(7) "Field training" means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment.

(8) "Hearing examiner" means the chair or the council's designated representative, who regulates the course of a contested case proceeding or other hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.

(9) "In-service training" means training provided within a law enforcement and/or public safety agency to review and develop skills and knowledge for the specific agency's needs.

~~(7)~~ (10) "Informal proceeding~~s~~" means ~~proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding~~ a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.

(11) "MAPA" means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(12) "Misconduct" means any action or conduct that could potentially result in sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

(13) "MLEA" or "Academy" means the Montana Law Enforcement Academy.

(14) "Notice of agency action" means the document that:

(a) gives an officer the notice required under 2-4-601, MCA;

(b) informs the officer of the suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.

(15) "Party" means one side, or its representative, in an informal or contested case proceeding, usually the respondent and/or POST.

(16) "POST-approved training" means training reviewed and approved by the director or council for which POST gives training credit, including but not limited to basic, regional, and professional courses.

~~(8)~~ (17) "Presiding officer" means the chair of the council ~~or their designated representative, who shall regulate the course of hearings held by the council~~ who holds all same powers as a hearing examiner for the purpose of contested cases.

~~(9)~~ (18) "Public safety officer" means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303(5), (8) or 44-4-403, MCA to an elected official.

~~(10)~~ (19) "Respondent" means the public safety officer against whom ~~a complaint~~ an allegation of misconduct has been made, or ~~their~~ the officer's legal representative.

~~(11)~~ (20) "Revocation" means the permanent cancellation by the council of a public safety officer's POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(21) "Roll call training" means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

~~(12)~~ (22) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, ~~or the accepted norms of being a public safety officer~~ 23.13.203, or the laws or rules of Montana.

~~(13)~~ (23) "Suspension" means the annulment, for a ~~period of time~~ time period set by the director or council, of a public safety officer's POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.

~~(14) "Uncertifiable officer" means a public safety officer who:~~

~~(a) is employed as a public safety officer, but does not possess the required basic certificate, as required in ARM 23.13.206;~~

~~(b) has been the object of a complaint filed pursuant to ARM 23.13.703;~~

~~(c) has been afforded the process due by law;~~

~~(d) has been found to be subject to suspension or revocation pursuant to ARM 23.13.702.~~

AUTH: 2-15-2029, 44-4-402(2), MCA
IMP: 44-4-403, 2-15-2029, MCA

REASON: These amendments are reasonably necessary to clarify existing terminology, delete unnecessary definitions, and to establish that the defined terms apply to the entire chapter, rather than only a subchapter. POST proposes to renumber the rule to place it at the beginning of POST's rules, and thereby emphasize that the definitions apply to all the rules.

23.13.710 (23.13.706) DECISION AND ORDER, STAYS ~~(1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.~~

~~(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.~~

~~(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.~~

(1) After completing a contested case proceeding, the hearing examiner shall, within 30 days of the hearing, issue findings of fact and conclusions of law that would, if adopted by the council, meet the requirements of 2-4-623, MCA.

(2) Within 15 days after the hearing examiner has issued findings, conclusions, and a proposed decision, an adversely affected party may submit exceptions to the hearing examiner's decision. The council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA. The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ten days. No reply brief will be received.

(3) For the period between the submission of the hearing examiner's decision and the hearing before the council, general counsel for the council or another person designated by the council chair will act as a special master for purposes of resolving any issue arising before the council hearing.

(4) After deliberating, the council will decide to adopt, reject, or modify the hearing examiner's findings and recommendation. The council will issue a decision and order pursuant to 2-4-623, MCA, and mail a copy of this decision to respondent or the respondent's legal representative.

(5) If a party has filed exceptions to the decision of the hearing examiner, the contested case is not considered to be submitted for decision under 2-4-623(1), MCA, until oral arguments are concluded before the council.

(6) If a certificate was revoked or suspended by the director before the hearing, the certificate will remain revoked or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the suspension or revocation for good cause shown.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to clarify how the new disciplinary policy culminates in a proposed order that can either become final or that can be appealed to the full council and then to the Board of Crime Control. The amendments also clarify the effect of the orders pending review and the process for seeking a stay of the proposed order from the council. With these amendments, the rule will promote fairness for officers and also will result in decisions from the council that allow for meaningful appellate review. POST proposes renumbering this rule for purposes of continuity.

23.13.712 (23.13.718) APPEALS ~~(1) If requested by the respondent an appeal may be made to the Montana Board of Crime Control pursuant to ARM 23.14.1004. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.~~

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

AUTH: 2-15-2029, MCA
IMP: 2-4-201(2), 2-15-2029, 44-4-403(1), MCA

REASON: Unlike most agency decisions, POST decisions are subject to an additional layer of administrative review before a petition may be filed in district

court. This amendment is necessary to clarify the availability of appeal. POST proposes renumbering this rule for purposes of continuity.

6. The POST Council proposes to repeal the following rule:

23.13.202 REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED BEFORE THE EFFECTIVE DATE OF THIS REGULATION

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

REASON: The repeal of this rule is necessary to remove any inconsistency or confusion as to which officers are subject to the code of ethics. This rule clarifies the existing rule that the requirements of the code of ethics apply to officers employed before the effective date of the code's adoption in 2008. ARM 23.13.202 is inconsistent with ARM 23.13.201, 23.13.203, 23.13.204, 23.13.205, and 23.13.206 as proposed for amendment above.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., September 18, 2014.

8. Chris D. Tweeten, Attorney at Law, has been designated to preside over and conduct this hearing.

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

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State July 28, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.320, 17.36.321, 17.36.322, 17.36.323, 17.36.325, 17.36.912, 17.36.918, 17.38.101, and 17.38.106 pertaining to sewage systems, definitions, horizontal setbacks, floodplains, plans for public sewage system, and fees	)	NOTICE OF AMENDMENT (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On April 24, 2014, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-359 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 747, 2014 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 17.36.320 and 17.36.325 exactly as proposed and has amended ARM 17.36.321, 17.36.322, and 17.36.323 as proposed, but with the following changes, stricken matter interlined, new matter underlined. The board has amended ARM 17.38.101 and 17.38.106 exactly as proposed and has amended ARM 17.36.912 and 17.36.918 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) and (2) remain as proposed.

(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) through (c) remain as proposed.

(d) ~~cesspools~~ absorption beds;

(e) through (g)(ii) remain as proposed.

(4) Cesspools are prohibited as new or replacement systems. ~~The following systems may be used only as replacement systems, subject to the limitations provided in department Circular DEQ-4:~~

~~(a) cut systems;~~

~~(b) fill systems; and~~

~~(c) artificially drained systems.~~

(5) remains as proposed.

17.36.322 SEWAGE SYSTEMS: SITING (1) through (3) remain as proposed.

(4) No component of any sewage treatment system may be located under structures or driveways, parking areas or other areas subjected to vehicular

traffic, or other areas subject to compaction, except for those components of the system designed to accommodate such conditions. Drainfields must not be located in swales or depressions where runoff may flow or accumulate.

(5) through (7) remain as proposed.

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)
Public or multiple-user drinking water wells/springs	-	100 ~~(3)~~ (4)	100
Individual and shared drinking water wells	-	50 ~~(3)~~ (4)	100
Other wells ~~(4)~~ (5)	-	50 ~~(3)~~ (4)	100 ~~(3)~~ (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 ~~(5)~~ (6)	25
Slopes > 35 percent ~~(6)~~ (7)	-	10 ~~(5)~~ (6)	25
Property boundaries	10 ~~(7)~~ (8)	10 ~~(7)~~ (8)	10 ~~(7)~~ (8)
Subsurface drains	-	10	10
Water mains	-	10 ~~(8)~~ (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10

Surface water ~~(9)~~ (10), springs	100 ~~(3)~~ (4) ~~(10)~~ (11) ~~(11)~~ (12)	50 ~~(3)~~ (4) ~~(10)~~ (11)	100 ~~(3)~~ (4) ~~(10)~~ (11) ~~(12)~~ (13)
Floodplains	10 ~~(10)~~ (11)	- Sealed components - no setbacks (1) Other components - 100 (2) ~~(3)~~ (4) ~~(10)~~ (11)	100 ~~(10)~~ (11) ~~(13)~~ (14)
Mixing zones	100 ~~(3)~~ (4)	-	-
Storm water ponds and ditches (15)	25 ~~(14)~~ (16)	10	25

Footnotes (1) and (2) remain as proposed.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8, subject to the limitations in ARM 17.36.321.

Footnotes (3) through (12) remain as proposed, but are renumbered (4) through (13).

~~(13)~~ (14) After consultation with the local health department ~~A~~a waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(15) Storm water ponds and ditches are those structures that temporarily hold or convey water as part of storm water management.

Footnote (14) remains as proposed, but is renumbered (16).

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

(1) and (2) remain as proposed.

(3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(4) through (34) remain as proposed.

(35) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term ~~including~~ includes, but is not limited to, the following:

(a) through (36) remain as proposed.

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

Table 1 remains as proposed.

Footnotes (1) and (2) remain as proposed.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8 subject to the limitations in ARM 17.36.916.

Footnotes (4) through (8) remain as proposed.

(2) through (5) remain as proposed.

3. The following comments were received and appear with the board's and department's responses:

COMMENT NO. 1: Several comments were received in response to ARM 17.36.320, 17.36.322, and 17.36.918 stating that drip irrigation systems should not have the same slope limitations, natural soil depth, and setback requirements as other systems. The comments stated that drip systems are installed at a very shallow depth and mirco-dosed. The comments also stated that the best use of a drip system includes steep slopes, confined drainfield areas, and preserving plantings such as mature trees.

RESPONSE: Steep slopes are sensitive areas that are naturally affected by erosion and landslide potential. Application of effluent by subsurface drip systems increases the possibility of failure. Six feet of natural soil below the bottom of the trench ensures that hydraulic loading will occur only in areas where there will not be a limiting layer. The suggested change has not been made.

COMMENT NO. 2: ARM 17.36.320(4) requires that the replacement area for a system approved for a size reduction must have sufficient area without considering the size reduction for the primary system. This rule does not appear to be based in good engineering logic. With a malfunctioning or failed Level II pre-treatment system, the failure does not typically occur in the drainfield. The risk of soil-based failure in a drainfield is mitigated when Level II treatment, or another advanced treatment, is installed upstream. This rule change will result in the unnecessary loss of developable land.

RESPONSE: Although effluent from advanced treatment typically has very low BOD5 and TSS effluent characteristics, if the drainfield fails it will most likely be from factors other than the use of advanced treatment. Since the department cannot predict what those factors may be, the department requires a full-sized replacement area. If site constraints do not allow this configuration, the designer may request a waiver from the requirement. Moreover, a full-sized replacement area must be required for all systems, including elevated sand mounds and those with advanced treatment in order to maintain consistency with the standards of Department Circular DEQ-4. The suggested change has not been made.

COMMENT NO. 3: ARM 17.36.321(2) and 17.36.912(1) should be amended to clarify that an evapotranspiration absorption (ETA) system is not considered an absorption bed.

RESPONSE: ETA systems are not considered absorption beds. The distinctions between the two types of systems are clear in Department Circular DEQ-4 Section 6.8, Evapotranspiration Absorption and Evapotranspiration Systems, and Section 6.11, Absorption Beds.

COMMENT NO. 4: ARM 17.36.321(3)(g) should allow the use of holding tanks by waiver for systems with special uses, such as automotive repair shop floor drains and beer/wine mash waste.

RESPONSE: Holding tanks may be approved through waiver for facilities owned and operated by a local, state, or federal unit of government or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health department. The department restricts the use of holding tanks more than other wastewater treatment systems because holding tanks require a higher level of maintenance and scheduled inspections. The suggested change has not been made.

COMMENT NO. 5: A county health department supports the addition of a waiver in ARM 17.36.321(3)(g) to allow holding tanks to replace a failed system when no other alternative is available. The rule will allow the county more flexibility in dealing with problem situations.

RESPONSE: The department acknowledges this comment.

COMMENT NO. 6: ARM 17.36.321(3) and (4), which describe systems allowed for new or replacement systems, seem to say the same thing from a different perspective. The department should simplify this rule. Also, this section should include absorption beds in order to remain consistent with subchapter 9.

RESPONSE: The department agrees that ARM 17.36.321(3) and (4) could be drafted more concisely. In response to this comment, the department has consolidated the lists in (3) and (4) and clarified that cesspools are prohibited.

COMMENT NO. 7: ARM 17.36.322(4) should be reworded to ensure that drainfields will not be located in any area that is subject to compaction.

RESPONSE: The department agrees and ARM 17.36.322(4) has been modified to include language that prohibits drainfields in all areas that would be subject to compaction, not just those listed in the proposed rule.

COMMENT NO. 8: ARM 17.36.322(2) should not allow drainfields on slopes greater than 25 percent. There is no language that limits the amount of design flow as with installations on slopes that are 15 to 25 percent. Also, does an objection from the local health department mean that the waiver will not be granted?

RESPONSE: ARM 17.36.322(2) amendments allow, through a department waiver, use of pressure-dosed systems on slopes greater than 25 percent and up to 35 percent, if a qualified person performs a soil evaluation. The department has found that in some situations pressure-dosed systems can be installed on these slopes without adverse consequences. The use of the waiver process will allow for consideration of the special circumstances in each case and will ensure the appropriate design flow.

While ARM 17.36.322(2) does require consultation with the local health department, this does not give the local health department the authority to determine if a waiver will be granted. The department retains the authority to grant or deny a waiver so long as it has consulted with the local health department.

COMMENT NO. 9: A county health department agrees with the changes to Table 2 in ARM 17.36.323, especially the addition of language that allows easements to be used to satisfy setbacks to property lines. The county also agrees with the addition of mixing zones and storm water ponds to the table.

RESPONSE: The department acknowledges this comment.

COMMENT NO. 10: Several comments were received in response to setback distances in Table 2 of ARM 17.36.323 and Table 1 of ARM 17.36.918. The comments asked for clarification as to why a setback was not required between water lines and sewer lines.

RESPONSE: The department does not require setbacks between water lines and sewer lines because the department does not believe that a setback between water and sewer lines is necessary to protect public health or the environment. Water and sewer lines run close together when entering and exiting a structure and, in many cases, water and sewer lines overlap once inside. This type of design is permissible because water lines are pressurized making the likelihood of contamination from a sewer line highly unlikely, even in an instance where both lines are broken. Additionally, requiring a setback between water and sewer lines creates inconsistency with the department's public water supply rules.

COMMENT NO. 11: Table 2 in ARM 17.36.323 and Table 1 in ARM 17.36.918 should not allow a waiver on "other" wells to drainfields. Any type of well is a conduit to an aquifer. The purpose for its use is not relevant. For example, irrigation wells have a greater potential to be pumped excessively over a long period of time than drinking water wells. Accordingly, the potential for the irrigation well to pull contaminants into the aquifer is greater and there should be equal protection.

RESPONSE: The amendments to ARM 17.36.323 provide for a waiver to the setback between "other wells" and components of wastewater treatment systems. The amendments to ARM 17.36.918 do not provide for a waiver of the setback, but local boards of health have authority to grant a variance from the setback. The department and the board acknowledge that some wells may have more potential to pull contaminants into an aquifer than others. The waiver and variance processes will allow the department and the counties to consider the use of the well and determine the appropriate restrictions. The suggested change has not been made.

COMMENT NO. 12: A county health department appreciates the clarification in proposed footnote (12) to Table 2 in ARM 17.36.323 that the setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

RESPONSE: The department acknowledges this comment.

COMMENT NO. 13: Proposed footnote (13) to Table 2 in ARM 17.36.323 provides for a waiver to the setback between drainfields and the floodplain. Proposed footnote (13) authorizes a waiver if the applicant demonstrates that the seasonally high water level of the surface water or spring is at least 100 feet horizontally from the drainfield and the bottom of the drainfield is at least two feet

above the maximum 100-year flood elevation. The waiver is less stringent than the minimum standards in subchapter 9. Before this waiver could be granted by the department, the local board of health would have to approve a variance from local wastewater regulations. We recommend that the waiver include a requirement for local concurrence.

RESPONSE: Proposed footnote (13) (renumbered (14)) is not new, but is an existing provision that was moved from the rule to a footnote. Footnote (14) is not less stringent than the minimum standards in ARM Title 17, chapter 36, subchapter 9. Local boards of health have broad authority to allow variances under subchapter 9 and the variance process does not set forth specific criteria that must be met for this setback. The department's authority pursuant to ARM 17.36.323 is more limited because footnote (14) sets out specific conditions that must be met in order for a waiver to be granted. The department agrees that local input is important and has amended footnote (14) to require consultation with the local health department.

COMMENT NO. 14: In Table 2 of ARM 17.36.323, we recommend that "storm water ponds and ditches" be further clarified so that the phrase includes only those structures that usually do not have water in them. The department could do this with a footnote that reads, "storm water ponds and ditches are those structures that temporarily hold or convey water as part of storm water management."

RESPONSE: The department agrees and has made the suggested change.

COMMENT NO. 15: Why does footnote (14) to Table 2 in ARM 17.36.323 require that a drainfield be 100 feet from the floodplain?

RESPONSE: Footnote (14) requires a 100-foot setback to the floodplain because during a flood the floodplain is covered by surface water. The table requires the same setback for the floodplain as it does for surface water.

COMMENT NO. 16: Footnote (14) to Table 2 in ARM 17.36.323 allows for drainfields to be 100 feet from surface water if the drainfield is at least 100 feet horizontally from seasonally high water and at least two feet above the maximum 100-year flood elevation. The same language should be added to ARM 17.36.918.

RESPONSE: Before making the suggested change, comments should be obtained from other government entities and individuals who would be affected by the change. The board may consider including the suggested provision in a future rulemaking. The existing provisions of subchapter 9 would allow a local board of health to grant a variance that imposed the same conditions that are set out in footnote (14) of Table 2 in ARM 17.36.323.

COMMENT NO. 17: The definition of "bedrock" in ARM 17.36.912(3) is not consistent with some of the provisions in Department Circular DEQ-4. The definition states that bedrock includes material that "has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater." Gravel could meet this condition if it had few fines. However, gravel is not treated as bedrock in Department Circular DEQ-4, Section 2.1.7.

RESPONSE: The commenter correctly points out that Department Circular DEQ-4 does not treat gravel as bedrock. Four feet of vertical separation with natural

soil is required between absorption trenches and bedrock. However, footnote (c) to Table 2.1-1 in Department Circular DEQ-4 Section 2.1.7 allows absorption trenches to be installed within four feet of gravel if the system is pressure-dosed and the trenches are sand-lined. To be consistent with Department Circular DEQ-4, the definition of "bedrock" has been modified to clarify that the term does not include gravel and other rock fragments that are defined in Department Circular DEQ-4, Appendix B.

COMMENT NO. 18: A county health department supports the increase to 240 minutes per inch in the definition of "impervious layer" in ARM 17.36.912(14).

RESPONSE: The board acknowledges this comment.

COMMENT NO. 19: The definition of "floodplain" in ARM 17.36.912(10) should be amended to remove reference to a 100-year flood. Instead, the rule should refer to this flood as one that has a one percent chance of occurring during any year.

RESPONSE: In pertinent part, the language in ARM 17.36.912(10), as it appears in the rule notice, defines a floodplain as "the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year." The reference to the 100-year flood remains in the rule because this description is commonly used to refer to a flood of this intensity. The board believes that this definition is consistent with the commenter's suggestion.

COMMENT NO. 20: In the definition of "impervious layer" in ARM 17.36.912(14), the limitation of 240 minutes per inch is unnecessary. This county has successfully installed ETA systems in soils that are tighter than 240 minutes per inch. Our concern is that the 240 minutes per inch limit will unnecessarily result in declaring properties undevelopable.

RESPONSE: This definition is the same as the definition in the recently revised Department Circular DEQ-4. Soils with percolation rates slower than 240 minutes per inch have very little capacity for wastewater infiltration, requiring that other treatment options be assessed.

COMMENT NO. 21: The board should consider expanding the definition of "replacement system" in ARM 17.36.912(24) to eliminate the restriction to systems that replace a "failed, failing, or contaminating" system. This is necessary to accommodate the need for new systems on parcels that serve expanded homes or systems that need relocation. It should be clarified whether such systems are or are not replacement systems, since replacement systems are allowed certain benefits and flexibilities under the rules.

RESPONSE: New systems that serve an expanded home, or installed to relocate an existing system, are not replacement systems unless the system is replacing a "failed, failing, or contaminating system." The commenter is correct that replacement systems do not always have to meet the same requirements as new systems. Systems should be considered new systems unless they are replacing a "failed, failing, or contaminating system."

COMMENT NO. 22: The proposed amendment to the definition of "wastewater" in ARM 17.36.912(35) deletes the provision that refers to discharge from a building, in order to include waste segregation systems like incinerating toilets. However, the amendment broadens the definition so that it now could include storm water running off roofs or down the street carrying waste and detritus with it. The definition should also be amended to clarify that it applies to human excreta, whether water-carried or not.

RESPONSE: Storm water is not treated as wastewater in these rules and applicable department circulars. The definition of "wastewater" has been modified to clarify that it does not include wastes carried in storm water. A corresponding change to the definition of "wastewater" in Department Circular DEQ-4 will be proposed at a later date. The wastes listed in (a) through (d) are water-carried wastes by definition, regardless of whether they are, in fact, carried in water.

COMMENT NO. 23: In proposed ARM 17.36.912(36), the board should consider redefining "wastewater treatment system" as "a system that receives wastewater for purposes of treatment, storage, and/or disposal." This will allow the reviewing authority to have legal authority over any system installed for this purpose, not just those prescribed in Department Circular DEQ-4.

RESPONSE: In pertinent part, the definition of "wastewater treatment system," as it appears in the rule notice, already defines "wastewater treatment system" as "a system that receives wastewater for purposes of treatment, storage, or disposal." The term includes, but is not limited to, all disposal methods described in Department Circular DEQ-4. The amended definition addresses the commenter's concern.

COMMENT NO. 24: ARM 17.36.914(3) states that "under no circumstances" may the vertical separation distance between a drainfield and a limiting layer be less than four feet of natural soil. The language "under no circumstances" should be removed, since it implies there is no ability to request a variance from this separation distance.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.914.

COMMENT NO. 25: The ground water monitoring procedures set out in ARM 17.36.914(5)(c) could simply refer to the ground water monitoring procedure described in Department Circular DEQ-4.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.914.

COMMENT NO. 26: ARM 17.36.914(6) should be amended so that a replacement system that is not failed is also subject to the 200-foot connection requirement. Or, the definition of a "replacement system" needs to be reconsidered per previous comments on that definition.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.914. In response to the

comment on ARM 17.36.912(24), the board stated that a system is considered a new system unless it is replacing a "failed, failing, or contaminating system."

COMMENT NO. 27: The board should consider amending ARM 17.36.916(1) and (5) to allow the use of holding tanks for special purposes such as auto repair shop floor drains and brewery/winery mash.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.916.

COMMENT NO. 28: In ARM 17.36.916, the board should consider changing the seasonal use requirement for holding tanks. If a holding tank is the right system, it is the right system regardless of the seasonality of use. There should be some flexibility, beyond a local variance, to allow for holding tank use.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.916.

COMMENT NO. 29: The board should consider amending ARM 17.36.916(5) to require deed restrictions for pumping and maintenance of holding tanks. Holding tanks should not be permitted for more than five years. Holding tanks should be required to have a tightness test and inspection to certify soundness before another permit is issued.

RESPONSE: This comment is outside the scope of the current rulemaking, since no amendments were proposed to ARM 17.36.916.

COMMENT NO. 30: A county health department states that the changes made to ARM 17.36.918 Table 1 help clarify the regulations and are still protective of public health and the environment

RESPONSE: The board acknowledges this comment.

COMMENT NO. 31: In the amendments to the setbacks in ARM 17.36.918, water mains have a setback distance, but water lines do not. Water lines should have an established minimum distance to sealed components and absorption systems.

RESPONSE: A horizontal setback between water service lines and drainfield components is not necessary to protect public health or the environment, because water lines are pressurized making the likelihood of contamination from a sewer line highly unlikely, even in an instance where the lines are simultaneously broken.

COMMENT NO. 32: Footnote (3) to Table 1 in ARM 17.36.918 defines "absorption systems" as only those systems in Department Circular DEQ-4 Subchapter 6. That leaves out seepage pits, pit privies, cesspools, and experimental systems, all of which need to be located at least 100 feet from a well or surface water.

RESPONSE: The commenter is correct. In order to include a reference to seepage pits, pit privies, cesspools, and experimental systems, ARM 17.36.918 has been modified to include a reference to Department Circular DEQ-4 Subchapters 6 and 8. In response to this comment, the department will make a similar modification

to the setback table in the Sanitation Act rules. See modifications to Table 2 in ARM 17.36.323, above.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, July 28, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.105 and 17.53.401 pertaining to incorporation by reference and no state waste delisting - federal petition required	))))	NOTICE OF AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On June 26, 2014, the Department of Environmental Quality published MAR Notice No. 17-362 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1331, 2014 Montana Administrative Register, Issue Number 12.

2. The department has amended the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

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

By: */s/ Tracy Stone-Manning*
TRACY STONE-MANNING, DIRECTOR

Certified to the Secretary of State, July 28, 2014.

BEFORE THE HUMAN RIGHTS COMMISSION
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 24.9.203A, 24.9.313, 24.9.315, 24.9.329, 24.9.330, 24.9.331, 24.9.408, 24.9.413, and 24.9.1507 regarding obsolete rules	))))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On June 12, 2014, the Human Rights Commission published MAR Notice No. 24-9-285 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 1164 of the 2014 Montana Administrative Register, Issue Number 11.

2. The commission repeals the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Dennis Taylor
Dennis Taylor
Chair
Human Rights Commission

Certified to the Secretary of State July 28, 2014.

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

In the matter of the amendment of ARM 24.138.402 fee schedule, 24.138.403 mandatory certification, 24.138.406 dental auxiliary functions, 24.138.425 limited access permits, 24.138.502 dentist licensure by exam, 24.138.503 dental hygienist licensure by exam, 24.138.506 dental hygienist licensure by credentials, 24.138.2101 continuing education definition, 24.138.2104 continuing education requirements, and the adoption of NEW RULE I military training or experience, II dental hygienist committee, and III denturist committee	))))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 13, 2014, the Board of Dentistry (board) published MAR Notice No. 24-138-69 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 458 of the 2014 Montana Administrative Register, Issue No. 5.

2. On April 4, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the April 11, 2014, deadline.

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

COMMENT 1: Numerous commenters supported the amendments to ARM 24.138.425 to include nurse practitioners and physician assistants as primary care providers with whom LAP dental hygienists may consult.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Multiple commenters said it is common practice in public health facilities for health care providers other than physicians or dentists to oversee the patient's care in residence. The commenters supported the amendments to ARM 24.138.425 to allow LAP dental hygienists to consult with nurse practitioners or physician assistants when patients have severe systemic diseases and then

determine the treatment and appropriateness of dental hygiene preventative services under these circumstances.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

COMMENT 3: Numerous commenters supported the establishment of the dental hygienist committee in NEW RULE II.

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

COMMENT 4: Numerous commenters supported the establishment of the denturist committee in NEW RULE III.

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

4. The board received numerous comments on the proposed amendments to ARM 24.138.406, both in support and in opposition. Following consideration of all the comments, and lengthy board discussion, the board is not proceeding with the amendments to ARM 24.138.406 at this time. The board anticipates considering the wording of this rule in future board meetings.

5. The board has amended ARM 24.138.402, 24.138.403, 24.138.425, 24.138.502, 24.138.503, 24.138.506, 24.138.2101, and 24.138.2104 exactly as proposed.

6. The board has adopted NEW RULE I (24.138.540), II (24.138.206), and III (24.138.208) exactly as proposed.

BOARD OF DENTISTRY
TERRY KLISE, D.D.S., PRESIDENT

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

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

Certified to the Secretary of State July 28, 2014

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2014. This table includes those rules adopted during the period April 1, 2014, through June 30, 2014, 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, 2014, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2014 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

2.5.201 and other rules - State Procurement of Supplies and Services, p. 2332, 141, 1077
2.59.104 Semiannual Assessment for Banks, p. 1309
2.59.108 and other rules - Lending Limits, p. 142, 675
2.59.111 Retention of Bank Records, p. 1305
2.59.301 and other rules - Service of Process - Advertising - Fee Disclosures and Computation of Interest - Credit Insurance - Fees to Public Officials - Receipt Form - Licensee Records Affecting Consumer Loan Licensees, p. 2345, 498
2.59.1401 and other rule - Title Lending, p. 2204, 205
2.59.1701 and other rules - Definition of Origination of a Mortgage Loan - Certificate of Bona Fide Not-For-Profit Entity - State-Specific Prelicensing Education - When an Application Is Deemed Abandoned - Definitions - Proof of Experience - Standardized Forms - Reinstatement of Licenses - Reporting Forms for Mortgage Servicers - Licensing Exemptions - Mortgage Loan Originator Testing - Written Exemption Form, p. 1866, 2417

(Public Employees' Retirement Board)
2.43.3501 and other rule - Adoption by Reference - State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 1302

COMMERCE, Department of, Title 8

8.2.501 Administration of the 2015 Biennium Quality Schools Grant Program–Planning Grants, p. 345, 676
8.2.503 and other rule - Administration of the Quality Schools Grant Program, p. 537, 961
8.94.3727 Administration of the 2013-2014 Federal Community Development Block Grant (CDBG) Program, p. 1312
8.94.3814 and other rule - Governing the Submission and Review of Applications for Funding Under the Treasure State Endowment Program (TSEP), p. 174, 583
8.99.511 Microbusiness Finance Program, p. 2209, 964
8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 348, 677
8.112.101 and other rules - Montana Heritage Preservation and Development Commission, p. 1147
8.119.101 Tourism Advisory Council, p. 540, 965

(Montana Coal Board)
8.101.302 and other rule - Policies of the Montana Coal Board - Applications for Montana Coal Board Grant Assistance, p. 1, 386

EDUCATION, Department of, Title 10

(Office of Public Instruction)
10.7.111 Bus Drivers, p. 1005

(Board of Public Education)
10.64.201 School Bus Drivers, p. 1009

(Montana State Library)
2.12.301 and other rules - Montana Land Information Act, p. 1880, 2420

FISH, WILDLIFE AND PARKS, Department of, Title 12

I Hunters Against Hunger Program, p. 1315
I Wolf Management Stamps, p. 1318, 1546
12.7.502 and other rules - Fish Importation, p. 1158
12.10.103 and other rule - Shooting Range Grants, p. 1462

(Fish and Wildlife Commission)
I State Land Access Tax Credit, p. 2212, 391
I-V Unauthorized Placement of Fish Into Public Waters, p. 177, 1592
12.6.2208 and other rule - Exotic Species Classification, p. 703
12.9.1301 and other rules - Gray Wolf Management, p. 1886, 843
12.11.501 and other rules - Recreational Use on Lake Alva, Harpers Lake, and Lake Marshall, p. 755, 1563, 209
12.11.645 Whitefish River, p. 434, 1460

12.14.101 and other rules - Commercial Use Rules, p. 897

(State Parks and Recreation Board)
12.14.101 and other rules - Commercial Use Rules, p. 897

ENVIRONMENTAL QUALITY, Department of, Title 17

I Nutrient Standards Variances, p. 275
17.36.101 and other rules - Subdivision Applications and Review - Subdivision Requirements - Subdivision Waivers and Exclusions - Subdivision Review Fees - On-Site Subsurface Wastewater Treatment Systems, p. 706
17.36.326 and other rule - Sewage Systems: Operation and Maintenance, Ownership, Easements, and Agreements - Sewage Systems: Existing Systems, p. 1334, 1504
17.53.105 and other rule - Incorporation by Reference - No State Waste Delisting--Federal Petition Required, p. 1331
17.55.109 Incorporation by Reference, p. 436

(Board of Environmental Review)
I Reclamation - Administrative Requirements for Limited Opencut Operations, p. 2367, 679
17.8.102 Incorporation by Reference–Publication Dates, p. 353, 1256
17.8.501 and other rule - Definitions - Air Quality Permit Application Fees, p. 1321
17.8.818 and other rule - Review of Major Stationary Sources and Major Modifications--Source Applicability and Exemptions - Source Impact Analysis, p. 1327
17.24.905 Reclamation - Rules Not Applicable to In Situ Coal Operations, p. 2364, 678
17.30.201 and other rules - Permit Application, Degradation Authorization, and Annual Permit Fees - Specific Restrictions for Surface Water Mixing Zones - Standard Mixing Zones for Surface Water - Definitions - Incorporations by Reference - A-1 Classification Standards - B-1 Classification Standards - B-2 Classification Standards - B-3 Classification Standards - C-1 Classification Standards - C-2 Classification Standards - I Classification Standards - C-3 Classification Standards - General Treatment Standards - Criteria for Determining Nonsignificant Changes in Water Quality, p. 280
17.30.630 Temporary Water Quality Standards, p. 183, 681
17.36.320 and other rules - Sewage Systems - Definitions - Horizontal Setbacks - Floodplains - Plans for Public Sewage System - Fees, p. 747
17.36.345 and other rule - Adoption by Reference - Plans for Public Water Supply or Public Sewage System, p. 267

TRANSPORTATION, Department of, Title 18

18.6.101 and other rules - Junkyard Regulations, p. 1465
18.6.202 and other rules - Community Welcome To Signs, p. 2018, 213
18.8.202 and other rules - Motor Carrier Services Housekeeping, p. 1468
18.8.1501 and other rules - Motor Carrier Services Safety Assistance Program, p. 4, 502
18.9.701 and other rule - Motor Fuels Tax, p. 440, 968

JUSTICE, Department of, Title 23

I-III License Plate Age-Based Reissuance Process, p. 356, 682
I-III School Crossing Guards, p. 773, 1392
1.3.215 Informal Disposition of Contested Cases, p. 683
23.3.505 and other rule - Type 2 Endorsements for Commercial Motor Vehicle Operators, p. 2024, 117
23.12.601 Fire Safety and Fireworks and Uniform Fire Code, p. 2027, 2422
23.12.1203 and other rules - Montana Law Enforcement Academy Preservice Applicants, p. 2371, 323
23.16.101 and other rules - Electronic Submission of Documents and Electronic Signatures - Definitions - Records - Devices - Changes in Managers, Officers, and Directors - Charitable Card Game Tournaments - Types of Card Games Authorized - House Players - Authorized Sports Pools - Repairing Machines–Approval - Department Approval of Promotional Games of Chance, Devices, or Enterprises - Review of Carnival Games, p. 1012, 1505

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I-III Licensure of Professional Employer Organizations, p. 2380, 684
24.11.204 and other rules - Unemployment Insurance, p. 296, 593
24.17.127 Prevailing Wage Rates for Public Works Projects, p. 912, 1506, 1598
24.22.301 and other rules - Incumbent Worker Training Fund Availability, p. 360, 852
24.29.1401A and other rules - Definitions - Facility Service Rules and Rates - Professional Fee Schedule for Services Provided - Conversion Factors for Services Provided - Utilization and Treatment Guidelines, p. 776, 1055, 1513
24.301.109 and other rules - Definitions - Incorporation by Reference - Fees - Modifications to the International Building Code - Plumbing Permits - Plumbing Inspections, p. 1549

(Workers' Compensation Court)
24.5.301 and other rules - Amended Petition - Computation of Time - Joinder and Service of Alleged Uninsured Employers - Recusal, p. 1021

(Human Rights Commission)
24.9.203A and other rules - Obsolete Rules, p. 1164

(Board of Personnel Appeals)
24.26.697 and other rule - Stay of an Informal Investigation, p. 2030, 969

(Alternative Health Care Board)
24.111.511 and other rule - Naturopathic Physician Formulary - Military Training or Experience, p. 645

(Board of Architects and Landscape Architects)
I Military Training or Experience, p. 187, 853
24.114.301 and other rules - Definitions - Licensure of Applicants From Other States - Renewals - Unprofessional Conduct - Architect Continuing Education, p. 443

(Board of Athletic Trainers)
I Military Training or Experience, p. 915, 1393

(Board of Barbers and Cosmetologists)
24.121.605 and other rules - Application for Postsecondary School Licensure - School Curricula - Postsecondary Education Status - Military Training or Experience, p. 450, 1085

(Board of Chiropractors)
I Military Training or Experience, p. 10, 854

(Board of Clinical Laboratory Science Practitioners)
I Military Training or Experience, p. 455, 1258

(Board of Dentistry)
24.138.402 and other rules - Fee Schedule - Mandatory Certification - Dental Auxiliary Functions - Limited Access Permits - Dentist Licensure by Exam - Dental Hygienist Licensure by Exam - Dental Hygienist Licensure by Credentials - Continuing Education Definition - Continuing Education Requirements - Military Training or Experience - Dental Hygienist Committee - Denturist Committee, p. 458

(State Electrical Board)
24.101.413 and other rule - Renewal Notification - Military Training or Experience, p. 367, 971

(Board of Funeral Service)
24.147.1101 and other rules - Crematory Operation Standards - Casket/Containers - Integrity of Identification Process - Cremation Procedures - Crematory Prohibitions - Transportation and Custody of Human Remains - Crematory Records - Cremation Authorizations - Military Training or Experience - Shipping Cremated Human Remains, p. 543
24.147.2101 Continuing Education Requirements, p. 1894, 215

(Board of Hearing Aid Dispensers)
24.150.401 and other rule - Fees - Military Training or Experience, p. 13, 1394

(Licensed Addiction Counselors Program)
I Military Training or Experience, p. 17, 595
24.154.301 and other rules - Definitions - Supervised Work Experience - Unprofessional Conduct, p. 2215, 118

(Board of Massage Therapy)
24.155.301 and other rules - Definitions - Fee Schedule - Licensure by Examination - Licensure by Endorsement - Military Training or Experience - Anonymous Complaints - Nonroutine Applications - Inactive License, p. 466, 1397

(Board of Medical Examiners)
I Military Training or Experience, p. 559, 1259
24.156.508 and other rules - Approved Residency - Examination - Graduate Training Requirements - Occasional Case Exemption - Unprofessional Conduct - Definitions - Initial License - Professional Conduct and Standards - Physician Assistant License Renewal - Podiatry Postgraduate Training, p. 1474
24.156.615 and other rules - Renewals - License Categories - Reactivation of License, p. 1897, 596

(Board of Nursing)
I Military Training or Experience, p. 649

(Board of Nursing Home Administrators)
I Military Training or Experience, p. 20, 855

(Board of Occupational Therapy Practice)
I Military Training or Experience, p. 313, 972

(Board of Optometry)
I Military Training or Experience, p. 473, 973

(Board of Outfitters)
I Military Training or Experience, p. 562, 918

(Board of Pharmacy)
I Military Training or Experience, p. 565, 1261

(Board of Physical Therapy Examiners)
I Military Training or Experience, p. 476, 1086
24.177.2105 Continuing Education, p. 1057

(Board of Plumbers)
24.180.2301 and other rule - Unprofessional Conduct - Military Training or Experience, p. 371, 974

(Board of Private Security)
I Military Training or Experience, p. 479, 1087

(Board of Professional Engineers and Professional Land Surveyors)
I Military Training or Experience, p. 568, 1088
24.101.413 and other rules - Renewal Dates and Requirements - Definition of Responsible Charge - Board Meetings - Fee Schedule - Approval of Schools - Application References - Examination Procedures - Grant and Issue Licenses - Comity - Classification of Experience - Form of Corner Records - Uniform Standards for Monumentation - Uniform Standards for Final Subdivision Plats - Remonumentation and Rehabilitation - Architectural Services Incidental to Engineering - Exhibits of Land Surveying Projects - Unprofessional Conduct - Introduction - Performance of Services - Conflicts of Interest - Avoidance of Improper Solicitation - Issuance of Public Statements, p. 1339

(Board of Psychologists)
24.189.401 and other rules - Fee Schedule - Application Procedures - Minimum Standards - Required Supervised Experience - Licensees From Other States or Canadian Jurisdictions - Licensure as a Psychologist by Experience - Temporary Permit - Continuing Education - Continuing Education Program Options - Continuing Education Implementation - Exemptions - Military Training or Experience, p. 652

(Board of Public Accountants)
24.201.502 and other rule - Accounting and Auditing Experience Requirements - Military Training or Experience, p. 482, 1090

(Board of Radiologic Technologists)
24.204.408 and other rule - Radiologic Technologists Applications - Military Training or Experience, p. 375, 1262

(Board of Real Estate Appraisers)
I Military Training or Experience, p. 23, 685

(Board of Realty Regulation)
24.210.401 and other rules - Fee Schedule - Course Provider - Continuing Real Estate Education - Continuing Property Management Education, p. 921
24.210.825 and other rule - Renewals - Military Training or Experience, p. 664

(Board of Respiratory Care Practitioners)
I Military Training or Experience, p. 571, 1264

(Board of Sanitarians)
24.216.502 and other rules - Minimum Standards for Sanitarians and Sanitarians-In-Training - Examination - Military Training or Experience, p. 316, 975

(Board of Social Work Examiners and Professional Counselors)
24.219.501 and other rules - Application Procedures - Licensure of Out-of-State Applicants - Complaint Procedure - Military Training or Experience, p. 783

(Board of Speech-Language Pathologists and Audiologists)
I-VIII Telepractice of Speech-Language Pathology and Audiology - Military Training or Experience, p. 379, 1266

(Board of Veterinary Medicine)
I Military Training or Experience, p. 574, 1273
24.225.410 and other rules - Record-keeping Standards - Inspection and Sanitation - Continuing Education - Unprofessional Conduct, p. 2220, 1092

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - License Fees - Permit Fees - Miscellaneous Fees - Definitions - Permit Required - Permits - Additional Requirements for Cattle - Horses, Mules, and Asses - Semen Shipped Into Montana - Definitions - Trichomoniasis - Licensing - Veterinary Fees, p. 190, 1096
32.3.138 and other rules - Deputy Veterinarians - Domestic Bison, p. 2384, 326
32.3.141 Revocation or Suspension of Appointment of Deputy State Veterinarian, p. 1175
32.3.433 Designated Surveillance Area, p. 1171
32.3.1201 and other rules - Reporting Rabies - Rabies Quarantine - Isolation of Rabid or Suspected Rabid Animals - Isolation of Biting Animals - Stray or Ownerless Animals, p. 1167
32.6.712 Food Safety and Inspection Service - Meat and Poultry, p. 668, 1275
32.15.601 Brand Mortgages - Renewal Requirements - Placement of Digits - Brand Ownership and Transfer - Sale of Branded Livestock - Change in Brand Recording - Equine Breed Registry Mark - Freeze Branding - Recording and Transferring of Brands - Rerecording of Brands - Brand

Inspection - County Line Grazing Permits - Import Transportation Permit - Livestock Market Releases - Sheep Permit - Domestic Bison Permit - Duration of Permits, p. 2268, 324

32.18.102 and other rules - Age Tally Marks - Numeral Marks - Placement of Digits - Import Transportation Permits - Hides to be Marked, p. 671, 1276

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Water Right Combined Appropriation, p. 2389, 216
36.12.203 and other rule - Appointment of Hearing Examiner - Temporary Leases, p. 202, 598
36.25.128 and other rules - Cabinsite Lease Site Sales, p. 1783, 2423

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37.5.304 and other rules - Adoption of Federal Statutes for Guardianship, p. 2278, 320, 976
37.12.401 Laboratory Testing Fees, p. 2227, 228
37.30.405 Vocational Rehabilitation Program Payment for Services, p. 577, 978
37.34.201 and other rules - Eligibility, p. 1574, 2034, 219
37.34.301 and other rules - Placement Determinations, p. 1570, 217
37.34.901 and other rules - Medicaid Home and Community-Based Services Program, p. 1906, 220, 1599
37.34.3005 and other rule - Update of Developmental Disabilities Program Home and Community-Based Waiver - Case Management Reimbursement, p. 933, 1408
37.36.604 Updating to 2014 Levels the Federal Poverty Index for the Montana Telecommunications Access Program, p. 790, 1400
37.40.307 and other rules - Nursing Facility Reimbursement, p. 811, 1517
37.40.830 Hospice Reimbursement, p. 2394, 328
37.57.102 Update of Current Federal Poverty Guidelines for the Children's Special Health Services Program, p. 486, 977
37.57.301 and other rules - Newborn Screening and Follow-up of Failed Screenings, p. 939, 1411
37.70.107 and other rules - Low Income Energy Assistance Program (LIEAP) for the 2013-2014 Heating Season, p. 2050, 126
37.79.102 and other rules - Medicaid Allied Health Services Program Reimbursement and Rates, p. 816, 1405
37.80.101 and other rules - Child Care Assistance, p. 64, 599
37.81.304 and other rule - Maximum Big Sky Rx Premium Change, p. 2036, 2438
37.82.701 Update of Federal Poverty Level and Health Coverage Status When Determining Plan First Eligibility, p. 1575
37.85.104 and other rule - Revision of Fee Schedules for Medicaid Provider Rates, p. 797, 1402