

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.50.213 and 17.50.216 pertaining to)	ON PROPOSED AMENDMENT
junk vehicles)	
)	(JUNK VEHICLES)

TO: All Concerned Persons

1. On September 26, 2019, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.50.213 PAYMENT REQUESTS (1) and (2) remain the same.

(3) The department shall pay each claim at the flat rate of ~~\$100.00~~ \$115 per vehicle removed.

(4) through (8) remain the same.

AUTH: 75-10-503, MCA

IMP: 75-10-532, MCA

REASON: Section 75-10-503(3), MCA, authorizes the department to adopt rules for reimbursement of charges by tow truck operators for removing abandoned vehicles at the request of law enforcement in accordance with 61-12-401, MCA. ARM 17.50.213 establishes the amount of the reimbursement payment for each abandoned vehicle removed with a valid claim for payment. The reimbursement rate was set at \$70 in 1999, raised to \$85 in 2006, and raised again to \$100 in 2011. The money for reimbursement is contained in the junk vehicle fund authorized under 15-1-122(2), MCA.

Due to inflation and increased fuel and maintenance expenses incurred by tow truck operators who are hired to remove these abandoned vehicles, the Capital City Tow Association has requested an increase in the reimbursement payment. Based on that request and the rising costs incurred by tow truck operators, the

department concluded it is reasonably necessary to increase the reimbursement payment from \$100 to \$115 per vehicle removed.

Since fiscal year 2011 up to fiscal year 2018, the average number of vehicles towed per year is 428. Approximately 300 tow truck operators seek reimbursement during a fiscal year. Therefore, the department estimates that the proposed increase in the reimbursement payment would provide each tow truck operator an average \$21 per year in additional reimbursement payments. The total proposed increase in reimbursement payments by the department is estimated to be about \$6,420 per year. Sufficient funds are available in the junk vehicle fund authorized under 15-1-122(2), MCA, to pay for the proposed increase in reimbursement payments.

17.50.216 ITEMIZED ACCOUNTING BUDGET PROCEDURES--COUNTY JUNK VEHICLE PROGRAMS (1) ~~An itemized accounting shall be submitted to the department for each~~ Each county junk vehicle program shall submit to the department an itemized accounting for the past fiscal year by December 31 before an approval will be granted for the department will approve the next fiscal year's budget.

(2) ~~Itemized accountings shall~~ The itemized accounting must be submitted on forms provided by the department.

(3) ~~County A county's~~ A county's junk vehicle budgets for each fiscal year must be spent, or encumbered (purchase order or signed contract), or, subject to the limitations set forth in 75-10-521, MCA, designated to a motor vehicle recycling and disposal capital improvement fund by June 30. ~~Any funds not encumbered by June 30 must be returned to the state.~~

(4) Prior to paying a county's approved budget as provided for in 75-10-534, MCA, the department shall deduct any funds from the county's approved budget for the past fiscal year that were not spent, encumbered, or designated to a motor vehicle recycling and disposal capital improvement fund by June 30.

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

AUTH: 75-10-503, MCA

IMP: 75-10-503, 75-10-521, 75-10-534, MCA

REASON: The department is proposing several amendments to the county junk vehicle program budgeting and accounting procedures to set deadlines, implement recent legislation, align the rules with current department practice, and update grammar and language choices. The department also is adding citation to additional statutes that are implemented by this rule.

The department is proposing to add a December 31 deadline in (1) to give the department adequate time to determine the county's junk vehicle budget for the subsequent fiscal year. Under current rule, a county may submit its itemized accounting at any point during the following fiscal year, which at times has caused delays and prevented some counties from receiving their budget funds by fiscal year end. The proposed December 31 deadline would also give counties sufficient time to create an accurate expenditure report for the preceding fiscal year.

The department is proposing changes to (3) to implement amendments to 75-

10-521, MCA, enacted by the 2017 Montana Legislature at Chapter 88, Laws of 2017 (House Bill 152). The 2017 amendments to 75-10-521, MCA, allow counties to establish motor vehicle recycling and disposal capital improvement funds. The proposed changes to (3) establish in rule the alternative method by which a county may use its junk vehicle budget funds.

The department is proposing (4) to accurately reflect current department procedures relating to county budget funds remaining at the end of the fiscal year. The department has found that it is more efficient to deduct unused funds from the following fiscal year's budget rather than requiring the county to return the unused funds to the department.

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 Sandy Scherer, Legal Secretary, 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 sscherer@mt.gov, no later than 5:00 p.m., October 4, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. 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 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; wind energy, 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 Sandy Scherer, Legal Secretary, 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 Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Nicholas Whitaker, attorney for the department, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The bill sponsor was notified by letter on February 18, 2019.

8. 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.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN McGRATH

Director

Certified to the Secretary of State August 27, 2019.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.660 pertaining to nutrient standard)
variances)
)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On October 22, 2019, at 1:00 p.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., October 15, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.30.660 NUTRIENT STANDARDS VARIANCES (1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards. In addition to this rule, variances are subject to the procedures and requirements contained in Department Circular DEQ-12B (~~May 2018~~ November 2019 edition).

(2) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of Department Circular DEQ-12B (~~May 2018~~ November 2019 edition). The decision to grant the general variance must be reflected in the permit that is made available for public comment.

(3) remains the same.

(4) The department may approve the adoption of an individual variance that specifies interim effluent limits different from those contained in general variance limits contained in Department Circular DEQ-12B (~~May 2018~~ November 2019 edition), if water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. The variance must provide effluent limits that reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in an application for an individual nutrient variance under (3). A person who has an

individual variance with effluent limits that are based on this section shall, in each subsequent triennial review of those limits conducted pursuant to 75-5-313(7), MCA, collect and submit water quality data to demonstrate whether the biological status of the receiving water continues to justify those effluent limits.

(5) through (7) remain the same.

(8) The department adopts and incorporates by reference Department Circular DEQ-12B, entitled "Nutrient Standards Variances" (~~May 2018~~ November 2019 edition), which provides procedures and requirements for nutrient standards variances. Copies of Department Circular DEQ-12B are available at the Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-313, MCA

REASON: The department is proposing to revise Department Circular DEQ-12B to respond to the U.S. District Court for the District of Montana's Order in *Upper Missouri Waterkeeper v. U.S. EPA*, Case No. CV-16-52-GF-BMM (July 16, 2019). While the Court found significant portions of the general nutrients standards variance to be lawful and supported by the record, the Court partially vacated and remanded a portion of EPA's approval of the general variance found in Department Circular DEQ-12B. The Court then stayed this vacatur and provided the department 120 days from the date of the Order to adopt a revised general variance timeline, and provided U.S. EPA 90 days to complete its review of these changes. The Court did not vacate EPA's approval of the department's findings concerning widespread economic and social impacts, nor did it vacate approval of the treatment requirements found in Table 12B-1 of Department Circular DEQ-12B (what the Court refers to as the "Current Variance Standard" or "highest attainable condition"). This rulemaking is only intended to address the specific concerns of the Court related to (a) the timeline necessary to meet the Table 12B-1 treatment requirements and (b) the timeline and process necessary to meet the base numeric nutrient standards contained in Department Circular DEQ-12A. The rulemaking will allow continued use and application of the general variance for eligible dischargers and will prevent the related economic and social harm from requiring immediate compliance with the base numeric nutrient standards.

The economic and social justification for the Table 12B-1 treatment requirements, as well as the treatment requirements themselves, are not subject to the proposed amendments to Department Circular DEQ-12B. The Court found the justifications and treatment requirements to be reasonable and did not vacate these portions of EPA's approval. Because EPA's approval was limited to only 36 municipal facilities, this proposed rulemaking is also, thereby, limited to those 36 facilities.

Timeline Necessary to Meet Table 12B-1 Requirements: In its July 16, 2019 Order, the Court reiterated the conclusion that the adoption of a 17-year timeline to merely reach the Table 12B-1 values violated the direction of the Federal Clean Water Act

and that the general variance must instead begin with the Table 12B-1 treatment requirements. In doing so, the Court also recognized "the reality that discharges throughout the State of Montana currently stand at different levels of attainment." In response to this direction, the department is proposing that mechanical dischargers (≥ 1.0 million gallons per day and < 1.0 million gallons per day) and lagoon dischargers must attain the Table 12B-1 treatment requirements as soon as possible. Because the general variance is implemented through MPDES permitting process, the department will be able to ensure that facilities are achieving the Table 12B-1 treatment requirements as soon as possible.

Several mechanical facilities are currently achieving the Table 12B-1 treatment requirements and most of the remaining mechanical facilities should be able to attain the treatment requirements well before July 1, 2027. However, the department has identified one mechanical facility, the Town of Manhattan, that may require up to July 1, 2027 to achieve the Table 12B-1 treatment requirements. For the mechanical facilities that are not yet able to attain the Table 12B-1 treatment requirements, i.e., the Cities of Butte, Helena, Kalispell, and Manhattan, the department anticipates it will be able to publicly-notice draft MPDES permits to incorporate the Table 12B-1 treatment requirements, or a compliance schedule to achieve the same, no later than July 31, 2020. This rulemaking clarifies that a compliance schedule may be used to ensure the Table 12B-1 treatment requirements will be met as soon as possible.

Because Table 12B-1 already requires that lagoon facilities maintain long-term average effluent concentrations for TP and TN, lagoon facilities, in the short-term, must focus on implementing pollutant minimization programs as soon as possible. In section 2.2.1.2. of the amended Circular DEQ-12B, the department is now required to complete its statewide lagoon performance evaluations no later than 2020 (instead of 2022). Because of this change, lagoon facilities will be required to complete reviews of operational methods two years sooner, leading to earlier attainment of PMP requirements.

Timeline and Process Necessary to Meet the Base Numeric Nutrient Standards: To address the Court's concerns about demonstrating progress toward meeting the base numeric nutrient standards, the department amended Circular DEQ-12B to include section 2.3. This section describes the process for reviewing and amending the Table 12B-1 treatment requirements and how the department and eligible facilities will proceed as the treatment requirements are modified through the triennial review procedure. In the event the Table 12B-1 treatment requirements are not modified during a triennial review, the proposed changes to Circular DEQ-12B also require the submission and implementation of a revised optimization/pollutant minimization program for those facilities that are currently achieving the Table 12B-1 treatment requirements. This change will ensure all facilities will continue to make progress toward attaining the base numeric nutrient standards.

Section 2.3 also addresses the specific timeline to achieve the base numeric nutrient standards and is consistent with the Court's adoption of Plaintiff's proposed timeline

of 2035. Under the terms of 75-5-313(8), MCA, the general variance may be established for a period not to exceed 20 years. Because the original version of the general nutrient standards variance became effective for state law purposes on August 8, 2014, the term of the general variance may not extend beyond August 7, 2034.

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 Sandy Scherer, Legal Secretary, 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 sscherer@mt.gov, no later than 5:00 p.m., October 22, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date. A copy of proposed Department Circular DEQ-12B (November 2019) may be viewed at the department's website: <http://deq.mt.gov/water/drinkingwater/standards/#menu4>. Copies may also be obtained by contacting Mike Suplee at (406) 444-0831 or msuplee@mt.gov.

5. 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 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; wind energy bonding, 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 Sandy Scherer, Legal Secretary, 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 Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Kurt Moser, attorney for the department, has been designated to preside over and conduct the hearing.

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/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State, August 27, 2019.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING ON
New Rule I pertaining to antique	)	PROPOSED ADOPTION AND
gambling devices and the	)	AMENDMENT
amendment of ARM 23.16.102.)	
23.16.104, 23.16.107, 23.16.118,)	
23.16.209, 23.16.301, 23.16.502,)	
23.16.503, 23.16.1701,)	
23.16.1702, 23.16.1703,)	
23.16.1704, 23.16.1706,)	
23.16.1712, 23.16.1714,)	
23.16.1823, 23.16.1901, and)	
23.16.1920 pertaining to gambling)	
operator license applications and)	
processing, escrowed funds,)	
illegal devices, VGM permit)	
eligibility, sports pool games and)	
sports tabs, shake-a-day games,)	
and VGM specifications and)	
restrictions)	

TO: All Concerned Persons

1. On September 27, 2019, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, no later than 5:00 p.m. on September 20, 2019, to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail jsaye@mt.gov.

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

NEW RULE I ANTIQUE GAMBLING DEVICES (1) The terms antique gambling device and public gambling have the definitions found in 23-5-112, MCA.

(2) An antique gambling device may be operated only:

(a) for public gambling by a licensed gambling operator if the device is a VGM permitted as required by law; or

- (b) in a private residential dwelling for purposes other than public gambling.
- (3) A licensee or nonlicensee may possess an antique gambling device that is not permitted as a VGM or that does not qualify for a permit. The device may be displayed in a public setting, but the device must not be offered for play and must be:
 - (a) inaccessible to the public by restricted placement, glass enclosure, or other effective physical barriers to reach; or
 - (b) rendered inoperable for purposes of conducting a gambling activity.
- (4) A licensed gambling operator shall notify the department in writing before displaying an antique gambling device on the licensed premises.
- (5) An antique gambling device may be offered for sale, subject to the restrictions of 23-5-153, MCA, and all other applicable federal, state, and tribal laws.
- (6) To qualify as an antique gambling device, a device must conform to the age standards set forth in 23-5-112, MCA, and the proof standards set forth in 23-5-153, MCA. An antique gambling device may be restored but:
 - (a) must possess mostly original cabinet parts, castings, and components; and
 - (b) the mechanical mechanism or electronic components must be substantially original in parts and design.

AUTH: 23-5-115, MCA

IMP: 23-5-112, 23-5-152, 23-5-153, MCA

REASON: Prior to 2019, the Gambling Code generally forbade possession of illegal gambling devices, but created a special class of devices defined as "antique illegal gambling devices." The former code allowed a licensee or a nonlicensee to possess an "antique illegal gambling device."

The Gambling Code permitted collectors to keep slot machines over 25 years old the collector may have owned prior to passage of the Video Gaming Machine Control Law in 1989. Since 1989, legal video gambling devices, which could only be possessed by a licensee, aged to become 25 or more years old. This led to the irrational result of a nonlicensee being able to possess an antique illegal gambling device, but being forbidden to possess an antique legal video gambling machine. SB 25, 2019 Mont. Laws, ch. 57, cured that peculiar legal outcome by eliminating the class of devices called "antique illegal" gambling devices. Following the 2019 statutory changes, any gambling device 30 or more years old is considered an antique (subject to a grandfather provision for those between 25 and 30 years old) and may be possessed by licensees or nonlicensees.

This new rule and the amendments to ARM 23.16.209 are necessary to implement these statutory changes.

The new rule and the ARM 23.16.209 amendments separately address illegal gambling devices and antique gambling devices. Though many regulatory provisions are unchanged, this distinction is necessary because there are tighter restrictions on possession and display of illegal gambling devices. Antique

gambling devices are more freely sold, possessed, and displayed. Under both the former and current versions of the Gambling Code, it is lawful to display both types of devices, but the statutory amendments ease some of the restrictions on public displays of antique gambling devices. Formerly, an antique device could be displayed in public only after being rendered unplayable, virtually destroying its historic value or monetary value as a collectible. The new rule incorporates these statutory changes.

The new rule and amended rule prohibit public play of all illegal devices or unpermitted legal devices while allowing a collector to play an antique device such as a slot machine or roulette wheel only in a nonpublic, residential setting.

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

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) remains the same.

(2) An application for a gambling license must be submitted to the Department of Justice, Gambling Control Division, on forms prescribed by the department and described herein. The application is not complete unless it is signed and dated by all or any applicant(s) and contains all information, statements, documentation, and fees required by the department. An applicant applying for a gambling operator license prior to approval of a premises under 23-5-177, MCA, must submit an electronic application.

(3) through (5) remain the same.

AUTH: 23-5-112, 23-5-115, 23-5-621, MCA

IMP: 23-5-115, 23-5-118, 23-5-128, 23-5-129, 23-5-177, 23-5-178, 23-5-308, 23-5-324, 23-5-513, 23-5-625, MCA

REASON: The 2019 Legislature amended 23-5-117 and 23-5-177, MCA. See HB 727, 2019 Mont. Laws, ch. 479. This amendment is necessary to recognize the statutory amendment now permitting certain gambling operator applicants to gain license approval prior to a premises approval. Electronic applications will streamline the Gambling Control Division's investigation and final processing when the applicant later identifies a premises and applies for premises approval.

23.16.104 PROCESSING OF GAMBLING LICENSE APPLICATION

(1) remains the same.

(2) If the department issues a gambling operator license prior to approval of a premises under 23-5-117, MCA:

(a) the licensee must, within six months of the license approval, electronically submit an application for premises approval, which the department will investigate under standards outlined in 23-5-117, MCA; and

(b) the licensee may not offer any gambling activity until the premises has been approved.

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

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-117, 23-5-177, MCA

REASON: Same as ARM 23.16.102.

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT, OR AUTHORIZATION (1) through (1)(j) remain the same.

(k) failed to meet other qualifications for licensure as set forth in 23-5-176, MCA; ~~or~~

(l) had a gambling license denied for other than technical defects in the application; ~~or~~

(m) failed to apply for or receive approval of a premises within the timeframe required in ARM 23.16.502.

(2) remains the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-117, 23-5-176, 23-5-177, MCA

REASON: Same as ARM 23.16.102.

23.16.118 ESCROW REQUIRED (1) ~~Money~~ Except as provided in (3), money or any other thing of value constituting consideration for transferring an interest in a licensed gambling operation may not be paid, received, or used until the provisions of ARM 23.16.116 or 23.16.117 have been met. However, the funds may be placed in escrow pending compliance with these provisions.

(2) remains the same.

(3) Funds related to the transfer of an interest in a licensed gambling operation may be exchanged or released from escrow when temporary gambling authority is granted under ARM 23.16.509.

AUTH: 23-5-115, MCA

IMP: 23-5-118, 23-5-176, MCA

REASON: This rule was promulgated in 1991 and required the parties to the sale of a licensed business to escrow funds until the Gambling Control Division (GCD) completed its license application investigation. Many years later, GCD promulgated ARM 23.16.509, allowing GCD to issue temporary gambling authority to an applicant before it completed its investigation. This rule as originally written did not contemplate temporary gambling authority. Now this rule is unnecessarily restrictive and inhibits business transactions where the investigation has found no applicant suitability issues and the GCD has issued the applicant temporary gambling authority. To streamline transfers of ownership interests in gambling operations, gambling industry representatives have advocated relaxing the escrow requirement when the GCD grants an applicant temporary authority. The GCD has not enforced the escrow requirement in cases involving temporary gambling authority. This

amendment harmonizes the escrow and temporary authority rules, recognizes reasonable industry recommendations, and codifies GCD's recent practice.

23.16.209 DISPLAY OF ILLEGAL GAMBLING DEVICES AND ANTIQUE ILLEGAL GAMBLING DEVICES (1) The following definitions apply for this rule:

(a) the terms "illegal gambling device" and "public gambling" have the definitions found in 23-5-112, MCA; and

(b) the term "museum" means a facility or registered historic site, whether publicly or privately owned, where objects of historic, scientific, artistic, or cultural interest are exhibited or demonstrated to the public.

(2) An illegal gambling device may not be:

(a) possessed, sold, or exchanged for value except as allowed by 23-5-152, MCA; or

(b) operated by any person to offer public gambling.

(1)(3) If an An illegal gambling device as defined in 23-5-112, MCA, is displayed in a public place other than a museum, it must be:

(a) and (b) remain the same.

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

(3) ~~Except as provided in (4), public display of an antique illegal gambling device must comply with the requirements of (1).~~

(4) An antique illegal gambling device, as defined in 23-5-153, MCA, may be:

(a) displayed only and not operated in a public or private museum;

(b) possessed and operated for private use only in a private residential dwelling; or

(c) displayed only and not operated in a retail business establishment if the device is being offered for resale.

(5) ~~To qualify as an antique gambling device, a slot machine must have been manufactured more than 25 years prior to the date of possession, may be restored but must possess mostly original cabinet parts and castings, the mechanical mechanism must be substantially original in parts and design, and the machine must display its original serial number or show evidence where the original serial number once existed but was removed.~~

AUTH: 23-5-115, MCA

IMP: 23-5-112, 23-5-152, 23-5-153, MCA

REASON: As described in the reason statement for New Rule I, the 2019 Legislature eliminated the class of gambling devices known as "antique illegal gambling devices." Following the 2019 statutory changes, any gambling device 30 or more years old is considered an antique (subject to a grandfather provision for those between 25 and 30 years old) and may be possessed by licensees or nonlicensees. This rule, ARM 23.16.209, formerly addressed the display of both illegal gambling devices and antique illegal gambling devices.

The tighter restrictions on possession and display of illegal gambling devices justify separate rules for the two classes of devices: New Rule I, pertaining to antique gambling devices; and ARM 23.16.209, pertaining to illegal gambling

devices. Under both the former and current versions of the Gambling Code, it is lawful to display both types of devices, but the statutory amendments ease some of the restrictions on public displays of antique gambling devices. The Gambling Code has fewer restrictions on an illegal device possessed or displayed "in a public or private museum" as compared to possession or display in any other public space. Neither the Gambling Code nor the rule defined the term "museum." This rule amendment offers a definition of a museum to clarify the difference between a private collection and a private museum.

While it is lawful in some circumstances to play an antique gambling device, an illegal device may never be permitted or played in public. These amendments clarify the statutory distinctions between newly defined antique gambling devices and illegal gambling devices.

23.16.301 MERCHANDISE PRIZES AND SHAKE-A-DAY GAMES

~~(1) In the case of merchandise prizes authorized in shake-a-day games (excluding shaking for a drink or music), those prizes may not exceed the value of the pot. All shake-a-day games are subject to these general rules:~~

- ~~(a) the price per play may not exceed 50 cents;~~
- ~~(b) a player may play more than one pot per day, but may not play any individual pot more than once per day;~~
- ~~(c) the player must be allowed to choose the pot or pots the player plays;~~
- ~~(d) no more than five dice may be used;~~
- ~~(e) a gambling operator may offer noncash prizes for a winning combination, but the gambling operator may not award an additional roll of the dice; and~~

~~(f) the licensee must record and retain for 90 days the winner's name and contact information, the date, and the amount won.~~

~~(2) Cash in a shake-a-day pot is subject to the following rules:~~

- ~~(a) a gambling operator may contribute cash to initially fund the pot, but that contribution may not be removed to reimburse the licensee;~~
- ~~(b) a gambling operator may not remove money from a pot for any reason, including reimbursing the licensee for noncash prizes such as drinks or merchandise awarded to players;~~

~~(c) a gambling operator may not cap the total cash in a pot, which must be allowed to grow until a winner is declared;~~

~~(d) the pot collected in each shake-a-day game must be kept separate from other shake-a-day pots and the gambling operator's other cash;~~

~~(e) a gambling operator may secure a pot on the premises, but the cash must be available to all employees and immediately paid to the winning player; and~~

~~(f) except for a predetermined percentage held back to fund a following game, the winner must receive all of the cash in a pot.~~

~~(3) Each gambling operator offering a shake-a-day game must clearly post the rules of the house games, which must include:~~

- ~~(a) price per play for each pot, which may not exceed 50 cents;~~
- ~~(b) the total cash in the pot, updated daily;~~

(c) the dice combinations required to win the pot or noncash prizes supplied by the gambling operator; and

(d) the percentage of the pot retained from a win to be used to fund the next game.

AUTH: 23-5-115, MCA

IMP: 23-5-160, MCA

REASON: Experience has shown that the current shake-a-day rule is inadequate. The absence of rules has led to the possibility players might not win the amount due to them. Additionally, the absence of basic rules for the conduct of shake-a-day games has led to uncertainty for licensees and investigators alike.

For example, the Gambling Control Division investigated an instance where a licensee "borrowed" funds from a shake-a-day pot but the absence of any accounting opened the possibility the money was not returned in full. The division has investigated numerous instances where the pot is capped and money over that cap is used to start another pot. Licensees are permitted to withhold from a winner a percentage of the pot for the following game. With no requirement to post the total in the pot, licensees or employees can remove cash from a pot undetected. Unless the portion withheld is disclosed, a player cannot know what portion will be withheld. Each of these scenarios could result in something other than a fair game.

These amendments are needed to ensure a fair game consistent with the public policy of the State.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All Except as provided in (2) and (3), all applicants shall submit the following information on Forms 5, 10, 40, or 43, and FD-258, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424, or on the division's web site www.doj.mt.gov/gaming www.dojmt.gov/gaming:

(a) through (e)(vi) remain the same.

(vii) if the owner(s) acquires the services of a gambling manager or management firm, the information must be submitted for the owner and the manager or management firm; and

(f) the full name and address of every location manager; and

(g) a floor plan of the proposed premises that clearly identifies the areas where gambling activities will occur.

(2) If a premises has not been identified at the time of the application, applicants have six months from issuance of the license to apply for premises approval. The premises must meet suitability standards outlined in 23-5-117, MCA, and be approved within one year of issuance of the gambling operator license. Failure to apply for or receive approval of a premises within the required timeframe will result in administrative action to revoke the initial license approval.

(3) The department may consider an amended application process for applicants that possess an alcoholic beverage license.

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

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-117, 23-5-118, 23-5-176, 23-5-177, MCA

REASON: Same as ARM 23.16.102.

23.16.503 APPLICATION PROCESSING FEE (1) ~~At the time~~ When a gambling operator license is submitted, the applicant shall pay a deposit on the license application processing fee in ~~the following~~ an amount: set forth in the application form.

~~(a) \$300 if the applicant is a nonprofit organization;~~

~~(b) \$800 if the applicant is a sole proprietorship; or~~

~~(c) \$1,000 if the applicant is a partnership or corporation.~~

(2) through (4) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-177, MCA

REASON: The Gambling Code provides that the department must assess gambling operator license applicants a fee "to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176." Mont. Code Ann. § 23-5-177(8), *see also* § 23-5-128 (distributor licenses), 23-5-129 (route operator licenses), 23-5-414 (manufacturers of bingo/keno equipment) and 23-5-625 (VGM manufacturers). Experience has demonstrated that the established fees frequently are inadequate to meet the department's actual expenses. To fulfill the statutory mandate to charge actual costs, the department will revise its fee schedule and include those fees in application forms.

23.16.1701 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (7) remain the same.

(8) "Sponsor" means a ~~person~~ licensed gambling operator conducting a sports tab game by selling individual sports tabs or conducting a sports pool by selling chances, the sales of which occur on premises appropriately licensed for on-premises alcoholic beverages consumption as provided in 23-5-119, MCA.

(9) through (15) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-501, 23-5-502, 23-5-503, 23-5-512, MCA

REASON: The 2019 Legislature enacted SB 25, 2019 Mont. Laws, ch. 57, which eliminated an apparent conflict in the Gambling Code regarding who may offer sports pools. Under the former version, the code expressly restricted sports tabs to licensed establishments. With no similar statutory restriction on sports pools, the division interpreted the Gambling Code to permit nonlicensees to offer sports pools. Following enactment of SB 25, the Gambling Code limits both sports pools and

sports tabs to gambling operators with an appropriate alcoholic beverages license. This rule amendment is necessary to update the rule to reflect the recent legislative clarification. The amendment defines a sports pool or sports tab "sponsor," which is now restricted to gambling operators with alcoholic beverage licenses. The new statutory amendments permit a sponsor to conduct a sports pool or sports tab game and donate up to 50% of the net proceeds of the game to a nonprofit organization. These rule amendments reflect the new statutes.

23.16.1702 SPORTS POOL CARD (1) through (1)(b) remain the same.

(c) Any unsold spaces ~~at the time when~~ the numbers are assigned are considered purchased by the ~~person conducting the sports pool~~ sponsor and must be marked in a manner indicating that they may not be sold to another person.

(d) remains the same.

(e) Each competitor in the sports event must be assigned to either the horizontal or vertical axis of the master square before the beginning of each sports event, except when the ~~operator of the sports pool~~ sponsor publicly declares by rules in advance of any sales to award equal prizes based upon both winning number combinations (e.g., when the score is 37–29, the winners are those holding spaces corresponding to vertical 7 and horizontal 9, and vertical 9 and horizontal 7).

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

(g) predetermined intervals, as provided in ARM 23.16.1705(3), for which a prize will be awarded, if any; ~~and~~

(h) ~~the sponsor's name of the person conducting the sports pool;~~ and

(i) in the case of a sports pool conducted by a sponsor to support a nonprofit organization, the name of the nonprofit organization, the percentage of the pool proceeds to be donated, and the percentage of the pool proceeds to be awarded to the winner.

(5) through (7) remain the same.

(8) If the sports event is rescheduled, the ~~person conducting the sport pool~~ sponsor may:

(a) and (b) remain the same.

(9) A sports pool card must be retained by the ~~person conducting the sports pool~~ sponsor for at least 90 days from the date of the sports event, or last event in a series of sports events, upon which the sports pool was based, whichever occurs first.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

REASON: Same as ARM 23.16.1701.

23.16.1703 SALE OF SPORTS POOL CHANCES (1) and (2) remain the same.

(3) After sale of the chances begins, the ~~person conducting the sports pool~~ sponsor:

(a) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA
IMP: 23-5-502, 23-5-503, 23-5-512, MCA

REASON: Same as ARM 23.16.1701.

23.16.1704 DETERMINATION OF SPORTS POOL WINNERS - PRIZES

(1) through (3) remain the same.

(4) A nonprofit organization may ~~retain~~ receive up to 50 percent of the proceeds from the sale of chances in a sports pool if the nonprofit organization meets the requirements of 23-5-503, MCA.

AUTH: 23-5-115, MCA
IMP: 23-5-502, 23-5-503, 23-5-512, MCA

REASON: Same as ARM 23.16.1701.

23.16.1706 PROCEDURES FOR APPROVING VARIATIONS OF AUTHORIZED POOLS

(1) remains the same.

(2) A person ~~requesting~~ qualified to be a sponsor may apply to the department for approval from the department for conducting a variation of an authorized sports pool ~~shall submit~~ by submitting the following information ~~to the department:~~

(a) through (3) remain the same.

(4) After reviewing the proposed sports pool variation, the department shall notify in writing the ~~person submitting the variation~~ applicant of its intended action. ~~If the person desires a hearing he shall submit a written request to the department within 20 days. Upon receipt of the request, all proceedings must be conducted according to the Montana Administrative Procedure Act and the Attorney General's Model Rules of Procedure. An applicant desiring to challenge the department's action must proceed under ARM 23.16.108 and 23.16.203.~~

AUTH: 23-5-115, MCA
IMP: 23-5-512, MCA

REASON: Same as ARM 23.16.1701.

23.16.1712 DESIGN AND CONDUCT OF SPORTS TAB GAME

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

(i) predetermined intervals, as provided in ARM 23.16.1714, during the sports event for which prizes are to be awarded, if any; ~~and~~

(j) name of the competitors and the date of the sports event that will be substituted for the original sports event if it is cancelled; ~~and~~

(k) in the case of a sports tab game conducted by a sponsor to support a nonprofit organization, the name of the nonprofit organization, the percentage of the net sports tab game proceeds to be donated, and the percentage of the net sports tab game proceeds to be awarded to the winner.

(3) through (5) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-501, 23-5-503, MCA

REASON: Same as ARM 23.16.1701.

23.16.1714 SPORTS TAB GAME PRIZES (1) through (4) remain the same.

(5) A sponsor who ~~is~~ conducts a sports tab game to support a nonprofit organization may ~~retain~~ donate up to 50% of the ~~cost~~ net proceeds of the sports tabs if the nonprofit organization meets the requirements of 23-5-503, MCA.

(6) remains the same.

AUTH: 23-5-115, MCA
IMP: 23-5-501, 23-5-502, 23-5-503, MCA

REASON: Same as ARM 23.16.1701.

23.16.1823 VIDEO GAMBLING MACHINE PERMITS – ELIGIBILITY, APPLICATION, RENEWAL, PRORATION (1) A gambling operator is eligible to apply for video gambling machine permits only if the operator holds an appropriate alcoholic beverage license and:

(a) the restrictions of 23-5-629 and [2019 Mont. Laws, ch. 336, § 3], MCA, do not apply; ~~or~~

(b) the restrictions of 23-5-629, MCA, apply, and

(i) the department receives a written application from both common owners that provides revocable consent for a single common owner to apply for video gambling machine permits exclusive of the other; or

(ii) the operators are common owners, as defined in 23-5-629, MCA, but do not, in fact, operate in an interrelated manner as defined in (2) ~~of this rule; or~~

(c) the resort area gambling machine permit restrictions of [2019 Mont. Laws, ch. 336, § 3], apply, but fewer than 20 gambling machines are currently permitted in the resort area.

(2) through (8) remain the same.

AUTH: 23-5-115, 23-5-621 MCA
IMP: 2019 Mont. Laws, ch. 336, § 3, 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-629, MCA

REASON: The 2019 Legislature enacted SB 358, 2019 Mont. Laws, ch. 336, which, among other things, repealed 16-4-202, MCA, and replaced it with a new statute capping the number of VGM permits allowed in a resort area. This amendment is necessary to correct the existing rule to include this statutory change.

23.16.1901 GENERAL SPECIFICATIONS OF VGMS (1) through (1)(d)(vii) remain the same.

(1)(d)(ix) is incorrectly numbered and is renumbered (1)(d)(viii).

(1)(d)(ix) through (1)(d)(xi) remain the same.

(xii) the VGM must clearly display "~~No Person Under the Age of 18 Years is Allowed to Play~~" a statement that no person under the age of 18 years is allowed to play;

(xiii) through (3) remain the same.

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA

IMP: 23-5-136, 23-5-602, 23-5-603, 23-5-608, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: This amendment is necessary to correct a clerical error in numbering (two subsections numbered (ix)).

Additionally, this amendment is necessary to remove the requirement that an underage gambling advisory must quote exact language. The language from the rule was meant to be an example of a compliant advisory – not language that must be duplicated. Under this rule, licensees who have deviated from the exact language appear to be in violation, though GCD has not enforced a strict word-for-word quotation. This amendment makes clear that roughly equivalent language complies with the rule.

23.16.1920 AARS, CTVS, AND VGM HARDWARE AND SOFTWARE SPECIFICATIONS (1) and (2) remain the same.

(3) Any device communicating with a VGM through a physical interface shall be tested and approved by the department before being offered for sale, sold, or installed/connected to any permitted VGM.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-603, 23-5-621, 23-5-631, 23-5-637, MCA

REASON: In a recent division case, an unauthorized system interfaced with VGMS through an AARS in a manner prohibited by statute. That case alerted the division to the absence of plain authority prohibiting licensees or others from connecting external devices to VGMS whose effect on the VGM is untested. This rule is necessary to protect connecting devices whose behavior and effect on VGM play is unknown.

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: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail j.saye@mt.gov and must be received no later than 5:00 p.m., October 7, 2019.

6. Michael L. Fanning, Department of Justice, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail and United States mail on May 31, July 30, and will be contacted again on September 9, 2019.

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

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State August 27, 2019.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.138.301 definitions,	)	PROPOSED AMENDMENT,
24.138.402 fees, 24.138.403	)	ADOPTION, AND REPEAL
mandatory certification, 24.138.406)	
dental auxiliary functions, 24.138.419)	
dental hygienist limited prescriptive)	
authority, 24.138.502 dentist license)	
by examination, 24.138.503 dental)	
hygienists license by examination,)	
24.138.505 dentist license by)	
credentials, 24.138.506 dental)	
hygienist license by credentials,)	
24.138.507 dentist specialist license)	
by credentials, 24.138.508 dental)	
hygiene local anesthetic certification,)	
24.138.509 dental hygiene limited)	
access permit, 24.138.511 denturist)	
license requirements, 24.138.512)	
denturist internship, 24.138.514)	
converting inactive to active status,)	
24.138.525 reactivation of expired)	
license, 24.138.2105 reporting)	
procedures, 24.138.2301 dentist and)	
dental hygienist unprofessional)	
conduct, 24.138.2302 denturist)	
unprofessional conduct, 24.138.3223,)	
24.138.3225, and 24.138.3229)	
anesthesia standards and continuing)	
education; the adoption of New Rule I)	
approved clinical exam criteria for)	
dentists and dental hygienists, New)	
Rule II denturist scope of practice –)	
dentures over implants; and the repeal)	
of 24.138.510 denturist examination)	

TO: All Concerned Persons

1. On October 2, 2019, at 9:30 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, 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 Dentistry no later than 5:00 p.m., on September 25, 2019, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "General supervision," for the purpose of ARM 24.138.406, means the provision of allowable functions by dental auxiliaries provided to a current patient of record, with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

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

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA

IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: See REASON for ARM 24.138.406. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.402 FEE SCHEDULE (1) through (5) remain the same.

~~(6) Jurisprudence reexamination fee~~ 40

(7) through (17) remain the same but are renumbered (6) through (16).

AUTH: ~~37-1-131~~, 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, 37-29-201, MCA

IMP: 37-1-134, 37-1-141, 37-4-301, ~~37-4-307~~, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-29-303, MCA

REASON: During a rule review, staff observed that the licensure rules had not been reviewed or updated in over ten years. Staff recommended several amendments to update to current examination standards and application procedures. The board is amending this rule to eliminate the reexamination fee for the Montana jurisprudence examination to align with standardized department policy and application procedures. Because this fee has not been charged to any applicant nor generated any revenue in the last five years, its elimination will result in no fiscal impact.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.403 MANDATORY CERTIFICATION (1) and (2) remain the same.

(3) Licensees shall affirm the expiration date of the CPR, ACLS, or PALS card on the renewal. The board may audit a licensee for compliance of a current CPR, ACLS, or PALS card in addition to the random CE audit every three-year reporting period. An active licensee who practices without a current CPR, ACLS, or PALS card may be subject to ~~disciplinary action by the board~~ administrative suspension.

(4) remains the same.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-321, 37-29-201, 37-29-401, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address confusion from licensees and audit staff regarding certification audits run in conjunction with the random CE audit every three-year reporting period. This will standardize the audit requirement, create efficiencies within the audit unit, and conform with the administrative suspension statutes and procedures.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) ~~Allowable functions for a dental auxiliary practicing~~ Dental auxiliaries may work under the direct supervision of a licensed dentist ~~per ARM 24.138.301 shall include dental procedures as allowed by board rule and subject to (2), in which if the auxiliary:~~

(a) ~~the auxiliary~~ was instructed and qualified to perform in a dental assisting program accredited by the Commission on Dental Accreditation or its successor; or
(b) ~~the auxiliary~~ was instructed and trained by a licensed dentist; or
(c) ~~the auxiliary~~ was instructed and trained in a board-approved continuing education course.

(2) Dental auxiliaries may work under the general supervision of a licensed dentist per ARM 24.138.301 if the auxiliary holds a certified dental assistant certification from the dental assisting national board.

~~(2) (3)~~ A dental auxiliary will be allowed to working under the direct supervision of a licensed dentist per ARM 24.138.301 may perform the following dental procedures including, but not limited to:

(a) making radiographic exposures as prescribed by the supervising dentist;
and

(b) through (o) remain the same.

(4) Dental auxiliaries holding a certified dental assistant certification from the dental assisting national board and working under the general supervision of a licensed dentist per ARM 24.138.301 are prohibited from performing the following functions:

(a) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;

(b) applying silver diamine fluoride agents;

(c) placing and removing rubber dams;

(d) placing and removing matrices;

(e) polishing amalgam restorations;

(f) placing pit and fissure sealants; and

(g) applying topical anesthetic agents.

~~(3)~~ (5) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist, or an auxiliary holding a certified dental assistant certification from the dental assisting national board may work under the general supervision of a licensed dentist. No dentist shall allow any dental auxiliary to perform the following:

(a) through (k) remain the same.

(l) air polishing; or

(m) prophylaxis as ~~per~~ defined in ARM 24.138.301.

~~(4)~~ (6) Dentists shall ~~refrain from delegating~~ not delegate to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental auxiliaries under 37-4-408, MCA, and board rules.

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

~~(7)~~ (9) ~~It shall be the responsibility of the~~ The employing dentist ~~to~~ shall verify that a dental auxiliary's qualifications ~~are in compliance~~ comply with the statutes and rules of the ~~Board of Dentistry~~ board.

~~(8)~~ (10) A dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it, as per ARM 37.14.1003. Only a licensed dentist ~~is allowed to~~ may prescribe radiation dosage and exposure.

~~(a)~~ The dental auxiliary ~~A dental auxiliary~~, under the direct supervision of a licensed dentist, ~~will qualify to~~ may expose radiographs only if the auxiliary:

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

~~(b)~~ (ii) has been certified in dental radiology ~~by the U.S.~~ as a result of military experience; or

~~(c)~~ (iii) has successfully completed a board-approved radiology written examination. ~~The written examination must be passed prior to the dentist allowing the auxiliary to expose radiographs.~~

(b) Dental auxiliaries holding a certified dental assistant certification from the dental assisting national board may expose radiographs under the general supervision of a licensed dentist.

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

~~(9)~~ ~~A list of board-approved examinations will be kept on file in the board office.~~

~~(10)~~ ~~The board will accept documentation of (8)(a) through (d) as certification for radiographic exposure.~~

AUTH: 37-4-205, 37-4-408, MCA

IMP: 37-4-408, MCA

REASON: The 2019 Montana Legislature enacted Chapter 157, Laws of 2019 (Senate Bill 157), an act providing for dentists' general supervision of dental auxiliaries who have attained the dental assisting national board (DANB) certification. The bill was signed by the Governor and became effective on April 18, 2019, and is codified at 37-4-408, MCA. The board is adding (2) to implement the legislation and specifically address when auxiliaries may work under a dentist's

general supervision. At this same time, the board determined it is reasonably necessary to amend this rule throughout for accuracy, consistency, simplicity, better organization, and ease of use for the reader.

Following the statutory change, the board referred the discussion of the specific functions the DANB-certified dental auxiliaries may perform under general supervision to the board's rules committee. The committee met on May 16, 2019, and recommended several rule changes which the full board considered on June 7, 2019. After discussion, the board concluded that to adequately protect public health and safety, it is reasonably necessary to require that auxiliaries perform certain functions under a dentist's direct supervision, even if the auxiliary holds a DANB certification. Therefore, the board is amending (3) and adding (4) to specify the procedures that DANB-certified auxiliaries may not perform under general supervision and may only perform under direct supervision by a dentist.

The amendments to (10) are reasonably necessary to remove redundant provisions and address the exposure of radiographs by DANB-certified auxiliaries pursuant to SB 157. The board is striking old (9) and (10) because the provisions are outdated and no longer comport with current procedures.

24.138.419 LIMITED PRESCRIPTIVE AUTHORITY – QUALIFICATIONS – ALLOWABLE PERCENTAGES OF TOPICAL AGENTS (1) and (2) remain the same.

(3) Allowable percentages of prescribed agents are:

(a) through (a)(iv) remain the same.

(v) prophylactic paste – 1.25 percent; ~~and~~

(vi) fluoride paste – 5 percent; ~~and~~

(vii) silver diamine fluoride – 38 percent.

(b) and (c) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-401, ~~37-4-408~~, MCA

IMP: 37-1-131, 37-4-401, 37-4-405, ~~37-4-408~~, MCA

REASON: The 2017 Montana Legislature passed Senate Bill 120, an act allowing licensed dental hygienists limited prescriptive authority for fluoride agents, oral anesthetics, and nonsystemic oral antimicrobials. During the 2017 rulemaking process to implement the bill, a public comment suggested the board add 38 percent silver diamine fluoride to the proposed new rule. The board was unable to make the substantive change in the final rule notice and set the suggestion for discussion at a future board meeting.

The board discussed the matter in several public meetings and considered materials submitted by both proponents and opponents of the proposed change. After extensive dialogue, the board concluded that silver diamine fluoride is a topical fluoride agent that can be safely and effectively used by appropriately trained dental hygienists when applied with the percentage specified for preventing the deterioration of dental caries. The board determined that the possible benefits to the public health from allowing licensed hygienists to apply silver diamine fluoride significantly outweigh the potential risks and is amending the rule accordingly.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

(1) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed within six months, the application will be considered incomplete and a new application and fees must be submitted.~~

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-301, MCA

REASON: The board is amending this rule, ARM 24.138.503, 24.138.506, and 24.138.508 to align with current standardized department procedures for license application processing that includes a one-year life span from the initial date of application. After one year, an application will automatically time out and the applicant will be required to reapply. Standardized application procedures will enhance efficiency and create cost savings in the licensing process.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) through (1)(c) remain the same.

(d) verification of graduation from a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. Verification must consist of an original dental hygiene school transcript ~~and a diploma~~. The board may accept a letter from the dean of the school of dental hygiene, program director, or dean's equivalent attesting to the program of study, and that graduation status was attained to process the application; however, a license will not be issued until the transcript is received in the board office;

(e) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed before the end of six months, the application will be considered incomplete and a new application and fees must be submitted.~~

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-401, 37-4-402, MCA

REASON: The board is amending (1)(d) to create efficiencies in the licensing process as, generally, diplomas are not issued for months after a student graduates and licensing staff must track the application to ensure the diploma was eventually received. Additionally, unlike official transcripts received directly from an educational institution, diplomas may be readily copied and altered.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) through (1)(d) remain the same.

(e) provides evidence that the applicant ~~is currently~~ has been engaged in the practice of clinical, direct patient care dentistry at least six months prior to the date of application and ~~has been~~ can demonstrate actively practicing within the last five years immediately preceding application, for a total accumulation of 3000 hours of experience as demonstrated by any or all of the following:

(i) through (f) remain the same

(g) submits certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 24.138.2102 and pursuant to ARM 24.138.2105(2);

(h) through (3) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, 37-4-301, MCA

REASON: The board is amending this rule to correct inefficiencies in processing dentistry applications by recognizing that applicants may have breaks in practice immediately preceding application that do not bear on the applicant's competency to practice. The board determined that six months would be a reasonable time frame during which an applicant could cease practice, but still maintain the sharpness of skill needed to safely practice upon licensure.

The board is striking the subsection from (1)(g) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

(1) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed within six months the application will be considered incomplete and a new application and fees must be submitted.~~

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

(1) through (1)(e) remain the same.

(f) submits certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a Montana license. Courses submitted must meet continuing education requirements as defined in board rule and pursuant to ARM 24.138.2105(2);

(g) through (2) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: The board is striking the subsection from (1)(f) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT

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

(5) The application remains valid for ~~six months~~ one year from the time it is received in the office. ~~If not completed within six months, the application will be considered incomplete and a new application and fee must be submitted.~~

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA

IMP: 37-1-131, 37-4-401, 37-4-402, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through

(1)(d) remain the same.

(e) provides certificates of attendance of completion of 12 additional continuing education credits for the three-year cycle reporting period immediately preceding LAP application pursuant to ARM 24.138.2105(2); and

(f) through (5) remain the same.

AUTH: 37-4-205, 37-4-401, 37-4-405, MCA

IMP: 37-4-401, 37-4-405, MCA

REASON: The board is amending this rule to align with terminology changes and the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.511 DENTURIST APPLICATION LICENSE REQUIREMENTS

~~(1) Each applicant shall submit a completed application.~~

~~(2) The application fee and required documentation must include:~~

(1) Denturist license applicants must submit a completed application, required fees, and documentation that demonstrates:

~~(a) official transcripts from all colleges or educational institutions sent directly to the board office by the college or institution;~~

(a) successful passage of:

~~(b) (i) certification of successful passage of a board-approved written dentistry denturist examination approved by the board;~~

~~(c) (ii) certification of successful passage of a board-approved clinical/practical dentistry denturist examination approved by the board; and~~

(iii) the board jurisprudence examination with a grade of at least 75 percent;

~~(d) verification of written test scores sent directly to the board office from the testing agency;~~

~~(e) verification of clinical/practical test scores sent directly to the board office from the testing agency;~~

~~(f) (b) documentation that the applicant has completed completion of formal training of not less than two years;~~

(i) at an educational institution as set forth in 37-29-303, MCA;

~~(g) documentation that the school is an educational institution accredited by a national or regional accrediting agency recognized by the Montana state Board of~~

Regents; and

~~(h) (ii) documentation that the under a curriculum that includes those the courses set forth in 37-29-303, MCA;~~

~~(c) completion of a clinical internship of at least one year, but no more than two years, under the direct supervision of a licensed dentist;~~

~~(i) a copy of a diploma from a recognized school as stated in 37-29-303, MCA;~~

~~(j) remains the same but is renumbered (d).~~

~~(k) (e) a copy of a current CPR, ACLS, or PALS card; and~~

~~(l) affidavits from three persons not related to the candidate regarding the candidate's good moral character;~~

~~(m) (f) a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank;~~

~~(n) jurisprudence examination fee; and~~

~~(o) application fee.~~

~~(3) Applicant shall submit a copy of the board approved intern application including intern reports, showing internship clinical training, which are signed by the monitoring licensed dentist.~~

~~(4) The board may require application materials to be updated prior to the applicant taking the jurisprudence examination.~~

~~(5) Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to the issuance of a license.~~

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, 37-29-306, MCA

REASON: During a review of the rules, staff observed that the dentist licensure rules had not been reviewed or updated in over ten years. Staff recommended several amendments to update the rules to current examination standards and application procedures. The board determined it is reasonably necessary to amend this rule and repeal ARM 24.138.510 to accurately represent current application processes and further facilitate initial licensure of dentists in Montana.

The board is striking (2)(l) to no longer require affidavits regarding good moral character. The board concluded that adequate information to demonstrate character is obtained through the application's disciplinary/criminal history questions and the results of each applicant's National Practitioner Data Bank (NPDB) self-query.

The board is further amending this rule to remove provisions for the internship application process, following staff review of all applications and licensure requirements. Noting that applicants must complete a one-year internship under the direct supervision of a licensed dentist, pursuant to the training and content standards of ARM 24.138.512, the board concluded it is unnecessary to approve individual internships or continually monitor intern progress throughout the internship period. Applicants and supervisors will be required to attest to successful completion of the internship requirement as part of the application process.

Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend this rule for accuracy, consistency, simplicity, better organization, and ease of use.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.512 DENTURIST INTERN INTERNSHIP ~~(1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303(1), MCA.~~

(1) Denturist applicants must complete a clinical internship of at least one year, but no more than two years, under the direct supervision of a licensed denturist.

~~(2) A denturist intern is a person engaged in a clinical training program under the direct supervision of a Montana licensed denturist.~~

~~(a) (2) Such training program shall~~ At a minimum, the internship must consist of 2000 clock hours of training and performance in at least the following fields of practice as follows:

(a) 36 hours minimum in:

- | | |
|--|------------------|
| (i) patient charting; | 36 hours minimum |
| (ii) operatory sanitation; | 36 hours minimum |
| (iii) oral examination; | 36 hours minimum |
| (iv) impressions, preliminary and final (pour models, custom trays); | 36 hours minimum |

(v) processing (wax up, flask boil out, packing, grind-polish); and

(vi) delivery-post adjustment;

(b) 12 hours minimum in:

- | | |
|--|------------------|
| (v) (i) bite registrations; | 12 hours minimum |
| (vi) (ii) articulations; | 12 hours minimum |
| (vii) (iii) set ups; and | 12 hours minimum |
| (viii) (iv) try ins; | 12 hours minimum |

~~(ix) processing (wax up, flask boil out, packing, grind-polish)~~

~~(x) delivery-post adjustment~~

~~(b) processed relines (one plate - one unit)~~

(c) 48 hours minimum in:

~~(c) (i) tooth repairs; and~~

~~(d) (ii) broken or fractured plates or partials; and~~

(d) 24 units of processed relines (one plate - one unit).

~~(3) An intern shall file a monthly report with the board, on a form and attested to by the intern's supervising denturist. The report shall state the number of hours or units completed in each field of practice identified in (2).~~

~~(4) (3) No~~ Per 37-29-302, MCA, a licensed denturist may not supervise more than one intern at any one time ~~interns than is reasonable and appropriate to provide the necessary internship skill needed for licensure.~~

~~(5) Each intern shall be provided a separate work station in the laboratory area, containing standard denturist equipment, i.e., lathe, torch, and storage space. Operatory facilities and other equipment will be shared with the intern. The necessary hand tools shall be provided by the intern.~~

~~(6) (4) No intern may practice once the internship has been completed until after successful passage of the clinical examination and the applicant has met all~~

other requirements for licensure. Upon completion of an internship, an applicant may not practice until obtaining a denturist license from the board.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, MCA

REASON: Following a review of the rules, staff recommended several amendments to align with statutory parameters regarding the one-year internship requirement per 37-29-302 and 37-29-303, MCA. The board is amending this rule to reorganize, simplify, and update to current processes, and clearly delineate the hourly standards of the one-year internship. The hourly requirements are not changing.

The board determined it is reasonably necessary to amend this rule to permit denturist applicants to complete the one-year internship requirement under supervising denturists who are duly licensed in other states or jurisdictions. Due to the large size and rural nature of Montana, the relatively small number of Montana licensed denturists, and the fact that the currently approved denturist school(s) are located in other state(s), the board concluded that limiting supervisors to only Montana licensees is not necessary to ensure qualified denturist applicants.

The board is removing the requirement that denturist interns submit monthly progress reports during the pendency of an internship. Noting that applicants must complete a one-year internship under the direct supervision of a licensed denturist, pursuant to the content standards of this rule, the board concluded it is unnecessary to continually monitor intern progress throughout the year. Applicants and supervisors will be required to attest to successful completion of the internship requirement as part of the application process.

The board is amending (3) to align with 37-29-302, MCA, which limits licensed denturists to supervising only a single denturist intern at any one time.

The board is striking (5) because while the board prescribes the training content of a qualifying internship, the board concluded that it is up to the supervising denturist and intern to determine adequate and appropriate facilities and equipment.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.514 CONVERTING FROM INACTIVE TO ACTIVE STATUS

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

(d) certificates of attendance of continuing education pursuant to ARM

24.138.2105~~(2)~~ as follows:

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

(c) certificates of attendance of continuing education pursuant to ARM

24.138.2105~~(2)~~ as follows:

(i) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-29-201, MCA

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

REASON: The board is striking the subsection from (3)(d) and (4)(c) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.525 REACTIVATION OF AN EXPIRED LICENSE (1) through (1)(b) remain the same.

(c) proof of CE pursuant to ARM 24.138.2105(2) as follows:

(i) through (iii) remain the same.

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA

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

REASON: The board is striking the subsection from (1)(c) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.2105 CONTINUING EDUCATION - AUDIT REPORTING PROCEDURES (1) ~~(2)~~ Continuing education CE credits may not be carried over from one three-year cycle reporting period to another.

~~(2) (3)~~ Licensees are required to keep ~~a certificate~~ certificates or other documentation of ~~attendance of continuing education completed CE~~ and ~~make this available~~ provide the documentation to the board if ~~so requested~~ upon request. The ~~certificate or document of attendance shall include at a minimum:~~

~~(a) licensee name;~~

~~(b) course title;~~

~~(c) course date;~~

~~(d) presenter or sponsor; and~~

~~(e) number of credit hours earned.~~

~~(3) (1)~~ Licensees shall affirm their understanding of the recurring duty to comply with continuing education (CE) requirements as a part of annual and compliance with continuing education requirements with the license renewal.

~~(4) (5)~~ Failure of licensee to produce certificates of attendance of required continuing education may result in disciplinary action. ~~Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.~~

~~(5) (4)~~ The department will conduct a random audit of the licensees every three-year cycle. The audit shall include ten percent of active dentists, ten percent of active dental hygienists, and ten percent of active denturists. The board may randomly audit up to 50 percent of renewed licensees' CE hours.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

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

REASON: The board is amending this rule to align with and facilitate the department's standardized renewal, administrative suspension, and audit procedures, and to streamline and reorganize the rule for better organization and

ease of use for the reader. The board is amending the title to better represent the content.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (4) to allow flexibility in conducting random CE audits. Currently, the board randomly audits ten percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is amending (5) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes. Further, it is reasonably necessary to remove the one-year CE audit grace period to align with standardized audit procedures that allow licensees a minimum of 85 days to cure any audit deficiencies. Additional extensions are no longer necessary.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.2301 UNPROFESSIONAL CONDUCT FOR DENTISTS AND DENTAL HYGIENISTS (1) through (1)(k) remain the same.

(l) Commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of dentistry.

AUTH: 37-1-319, 37-4-205, 37-4-408, MCA

IMP: 37-1-316, 37-1-319, 37-4-405, 37-4-408, MCA

REASON: The board determined it is reasonably necessary to amend this rule to implement the board's determination that acts of substantiated sexual misconduct should be explicitly recognized as unprofessional conduct. While sexual misconduct was already implicitly recognized as being sanctionable, clarifying this in rule is in keeping with the norms of the profession for dentists, hygienists, and denturists and will further facilitate the board's ability to discipline licensees for such acts.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

(1) through (1)(i) remain the same.

~~(j) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant; and~~

(j) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of dentistry; and

(k) remains the same.

AUTH: 37-1-136, 37-1-319, 37-29-201, MCA

IMP: 37-1-316, 37-1-319, 37-29-402, 37-29-403, MCA

REASON: In 2018, as a result of litigation, the board agreed to revise ARM 24.138.2302(1)(j) which provides that "fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant" by a denturist is unprofessional conduct. After reconsideration, the board determined it is reasonably necessary to amend this rule and adopt NEW RULE II in this notice. The new rule recognizes that denturists can safely fit dentures over implants under the supervision of a dentist.

The board determined it is reasonably necessary to add (1)(j) to implement the board's determination that acts of substantiated sexual misconduct should be explicitly recognized as unprofessional conduct. While sexual misconduct was already implicitly recognized as being sanctionable, clarifying this in rule is in keeping with the norms of the profession for dentists, hygienists, and denturists and will further facilitate the board's ability to discipline licensees for such acts.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.3223 MINIMUM MONITORING STANDARDS (1) through (1)(b)(i) remain the same.

(ii) precordial or pretracheal stethoscope ~~or~~ and capnography used to monitor respiratory rate;

(iii) through (2)(b)(ii) remain the same.

(iii) a precordial or pretracheal stethoscope ~~or~~ and capnography used to continually monitor respiration; and

(iv) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA

IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-408, 37-4-511, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.138.3225 pertaining to monitoring and facility standards to align with the 2016 American Dental Association guidelines for the use of sedation and general anesthesia by dentists. The current rule language was based on the 2007 and 2012 guidelines. Generally accepted standards of safety in the practice now require a dentist anesthesiologist have a capnograph available during procedures.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.3225 FACILITY STANDARDS (1) through (1)(f) remain the same.

(g) a precordial or pretracheal stethoscope ~~or~~ and capnograph;

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

(b) precordial or pretracheal stethoscope ~~or~~ and capnograph;

(c) through (3) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

24.138.3229 REQUIREMENTS FOR ANESTHESIA CONTINUING EDUCATION IN ANESTHESIA ~~(1) All dentists holding permits to provide deep sedation/general anesthesia must submit certificates of attendance of having attended a minimum of 20 hours of continuing education every three-year cycle pursuant to ARM 24.138.2105(2).~~

~~(2) All dentists holding permits to provide moderate sedation must submit certificates of attendance of having attended a minimum of 12 hours of continuing education every three-year cycle pursuant to ARM 24.138.2105(2).~~

~~(3) (2) The education Acceptable CE~~ must be in one or more of the following fields:

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

~~(g) advanced cardiac life support, up to a maximum of eight hours of continuing education.~~

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

~~(5) (1) All anesthesia Anesthesia~~ permit holders shall affirm their understanding of ~~and compliance with continuing education~~ the recurring duty to comply with anesthesia-specific CE requirements on the annual license renewal. Anesthesia-specific CE is in addition to CE required for the underlying dentist license.

(a) Deep sedation/general anesthesia - 20 hours every three-year reporting period.

(b) Moderate sedation - 12 hours every three-year reporting period.

~~(6) (5) Failure of licensee to produce records of required continuing education may result in disciplinary action.~~ Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.

~~(7) (4) A random audit of licensees will be conducted in~~ The board may randomly audit up to 50 percent of renewed licensees' CE hours every three-year cycle reporting period. Licensees must provide CE documentation upon request to the board.

AUTH: 37-1-131, 37-1-319, ~~37-4-205~~, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and to streamline and reorganize the rule for better organization and ease of use. The board is amending the title to better represent the content.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (4) to allow flexibility in conducting random CE audits. Currently, the board randomly audits ten percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is amending (5) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

4. The proposed new rules are as follows:

NEW RULE I APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS (1) Starting January 1, 2020, for the purposes of licensure, a dentist applicant shall verify successful passage of a board-approved clinical practical exam to include the following components:

(a) patient-based operative exam, to include one direct posterior class II composite and any one of the following:

(i) direct posterior class II composite; or

(ii) direct posterior class II amalgam; or

(iii) direct anterior class III composite;

(b) patient-based periodontal exam;

(c) non-patient-based endodontics exam, to include:

(i) anterior access;

(ii) posterior access; and

(iii) obturation of one canal;

(d) comprehensive treatment planning computer-based exam that is scored by calibrated examiners; and

(e) non-patient-based prosthodontics exam.

(2) Starting January 1, 2020, for the purposes of licensure, a dental hygienist applicant shall verify successful passage of a board-approved patient-based clinical practical exam to include the following:

(a) clinical competency and patient competency with the following components:

(i) pocket depth;

(ii) recession;

(iii) calculus detection and removal; and

(iv) intraoral and extraoral assessment.

(3) For the purpose of a local anesthetic permit a dental hygienist applicant shall verify successful passage of a board-approved written and patient-based clinical practical exam to include:

(a) the Western Regional Examining Board (WREB) or board-approved local anesthetic exam.

(4) The board may review applications from applicants who have taken a clinical practical examination that does not meet the above criteria as nonroutine for licensure.

(5) This rule shall not apply to dentist or dental hygienist applicants applying by credentialing.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA

IMP: 37-1-131, 37-4-301, 37-4-402, MCA

REASON: In 2014, the board became aware that some board-approved regional clinical exam agencies were implementing clinical exams with optional exam sections such as periodontics and/or prosthodontics. The board also wanted to address non-patient-based clinical exams such as the objective structured clinical exam that is common in Canada and has been adopted by other U.S. states. Some states also allow licensure based on a one-year post graduate residency in lieu of a clinical exam. In 2017, the board established the clinical exam review committee to research these issues and research how other states have dealt with them. In 2018, the committee forwarded draft rule language to the board. Following discussion and revisions, the board is now proposing NEW RULE I to address the identified dentist and dental hygienist clinical examination issues.

The board is adopting this new rule following a determination that the safe practice of dentistry in Montana requires that relatively inexperienced dental school graduates prove holistic competence in core elements of routine dental procedures prior to licensure. Dentist and dental hygienist applicants can be licensed to practice in Montana either through credentialing or examination. The board concluded that exam applicants should reasonably be expected to demonstrate competence by testing routine procedures, including a variety of fillings and core periodontal, endodontics, and prosthodontic procedures. Because credentialing applicants require a minimum of 3000 hours of practice for dentists and 1000 for dental hygienists for licensure, it can be reasonably expected they have performed these procedures during their years of experience. The board determined that any additional burden these requirements may impose on exam applicants will be relatively minimal, while the requirements will help protect public health and safety by requiring that applicants demonstrate hands-on competence in procedures they are likely to perform prior to licensure.

NEW RULE II DENTURIST SCOPE OF PRACTICE – DENTURES OVER IMPLANTS (1) It is within the scope of practice of a denturist to fit dentures over implants under the following conditions:

(a) the fitting must be performed under the direct supervision of a Montana-licensed dentist;

(b) the denture must be at least partially soft-tissue-borne; and

(c) the denture must be manually removable by the wearer.

(2) "Direct supervision" means treatment by a licensed denturist provided with the intent and knowledge of a licensed dentist and while the dentist is on the premises.

(3) A denturist fitting a denture over dental implants who is not in compliance with this rule may be subject to discipline for unprofessional conduct.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-102, 37-29-103, MCA

REASON: In September 2018, as a result of litigation settlement, the board agreed to replace ARM 24.138.2302(1)(j) that prohibits denturists from fitting dentures on or over dental implants with a new rule allowing the practice and created with input from all stakeholders. The parties intended the new rule to be in place within 18 months of the agreement.

The board's rules committee reviewed similar regulations in the five other U.S. states that license and regulate the practice of dentistry and forwarded their draft rule language to the full board. On June 7, 2019, the board reviewed, discussed, and accepted the committee's suggested new rule. Therefore, the board is adopting this new rule to recognize that denturists can safely fit dentures over implants under the supervision of a dentist. Because of the unacceptably high risk of damage to teeth and jaws from the pressure of fitting dentures, the board concluded that safe practice requires a denturist's fitting of dentures over implants be overseen by a dentist on the premises and available as needed.

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

24.138.510 DENTURIST EXAMINATION

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-201, MCA

REASON: During a review of the rules, staff observed that the denturist licensure rules had not been reviewed or updated in over ten years and recommended several amendments to update to current examination standards and application procedures. The board is repealing this rule to represent current application processes and further facilitate initial licensure of denturists in Montana. All relevant provisions are relocated to ARM 24.138.511.

6. 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., October 4, 2019.

7. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 14, 2019, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.301, 24.138.402, 24.138.403, 24.138.406, 24.138.419, 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, 24.138.508, 24.138.509, 24.138.511, 24.138.512, 24.138.514, 24.138.525, 24.138.2105, 24.138.2301, 24.138.2302, 24.138.3223, 24.138.3225, and 24.138.3229 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.138.510 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to dlibsdden@mt.gov.

11. Bradley Jones, board attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
AIMEE AMELINE, DDS
PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 27, 2019.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VIII and the repeal of	)	PROPOSED ADOPTION AND
ARM 37.107.305 and 37.107.306	)	REPEAL
pertaining to medical marijuana)	
testing laboratories)	

TO: All Concerned Persons

1. On September 26, 2019, at 1:00 p.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 adoption and repeal 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 the Department of Public Health and Human Services no later than 5:00 p.m. on September 20, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, 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 adopted provide as follows:

NEW RULE I MARIJUANA TESTING LABORATORY LICENSURE AND ACCREDITATION (1) A marijuana testing laboratory must meet all applicable requirements under the Montana Medical Marijuana Act (Title 50, chapter 46, part 3, MCA) and this subchapter in order to qualify for licensure or licensure renewal.

(2) An applicant for a testing laboratory license must provide, to the department's state laboratory, documentation to support fulfillment of these requirements, which includes but is not limited to the following:

- (a) certificates of insurance and bonding;
- (b) business license;
- (c) laboratory licensure fee payment;
- (d) landlord permission form for laboratories, if applicable;
- (e) laboratory employee fingerprint/background check clearance;
- (f) laboratory security/storage plan;
- (g) quality assurance plan;
- (h) standard operating procedures;
- (i) validation studies/data and results;
- (j) proficiency data/results;

(k) director professional resume, college transcripts/degrees from an accredited college or university;

(l) director references; and

(m) Certificate of ISO/IEC 17025:2017 accreditation and associated audit reports by an approved accreditation or credentialing body.

(3) An application for a laboratory license will not be considered complete, and an on-site audit will not be scheduled, until all of the required documentation is provided.

(4) A laboratory audit will be scheduled with the applicant following receipt of all required documentation.

(5) A laboratory licensee applicant must implement processes that are ISO/IEC 17025:2017 compliant.

(6) An applicant, that meets all of the requirements of this subchapter and 50-46-311, MCA, but is not ISO/IEC 17025:2017 accredited, may be qualified for a provisional license pending ISO/IEC 17025:2017 accreditation approval, if written evidence of pending ISO accreditation and the results of an audit by the state laboratory indicate that accreditation will be achieved within 12 months from the date of licensure.

(7) A provisional laboratory license may not be extended or reissued beyond the date of the initial 12-month term.

(8) A licensed laboratory must maintain ISO accreditation for all methods/analytes in [NEW RULE VIII], at all times.

(9) If a laboratory's method/analyte ISO accreditation lapses or is revoked, the laboratory must not perform those methods until it is reinstated.

(10) For the purpose of this subchapter, the department adopts and incorporates by reference ISO/IEC 17025:2017, which sets forth general requirements for the competence of testing and calibration laboratories. A copy of the publication may be obtained from the American National Standards Institute (ANSI), 1899 L St. NW, 11th Floor, Washington, DC 20036; <https://webstore.ansi.org/SDO/ISO>.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-326, 50-46-329, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE II MARIJUANA TESTING LABORATORY GENERAL REQUIREMENTS (1) A licensed marijuana testing laboratory must employ a full-time scientific director that meets the minimum requirements described in 50-46-311, MCA.

(2) The scientific director must ensure that:

(a) the laboratory achieves and maintains ISO/IEC 17025:2017 accreditation for all testing methods/analytes required in [NEW RULE VIII];

(b) the laboratory's processes and practices are compliant with ISO/IEC 17025:2017 standards;

(c) the laboratory maintains quality practices in the pre-analytic, analytic, and post-analytic phases of testing;

(d) testing personnel have been appropriately trained and demonstrate competency prior to providing testing services;

(e) policies and procedures are in place for monitoring personnel competence;

(f) approved standard operating procedures are in place, have been reviewed, and are followed by all testing personnel;

(g) appropriate test methods are in place;

(h) test method validations have been performed to determine the accuracy, precision, and limitations of methods;

(i) acceptable analytical test performance is established and maintained for each test system;

(j) quality assurance and quality control programs are established and maintained;

(k) remedial actions are taken and documented when significant deviations from the laboratory's established performance characteristics are identified and test results are reported only when test systems are functioning properly;

(l) the laboratory successfully participates in an approved proficiency testing (PT) program(s), as described in this subchapter, for all methods/analytes required in [NEW RULE VIII];

(m) the physical and environmental conditions of the laboratory are adequate and appropriate for the testing performed; and

(n) the environment for employees is safe from physical, chemical, and biological hazards, and safety and biohazard requirements are followed.

(3) A scientific director must be physically present at the laboratory for the majority of time that testing is performed in order to adequately carry out their responsibilities.

(4) A licensed marijuana testing laboratory must be able to perform at least 75% of the quality assurance testing requirements defined in [NEW RULE VIII].

(5) A licensed marijuana testing laboratory can only refer quality assurance testing to another licensed marijuana testing laboratory in Montana which has met the requirements of this subchapter, and the referred testing laboratory must be identified in all testing reports, the certificates of analysis and in METRC.

(6) A licensed marijuana testing laboratory must obtain written permission from the test batch sample's provider prior to sending the provider's test batch sample to another licensed marijuana laboratory in Montana or return the product to the provider at their request.

(7) A licensed marijuana testing laboratory may:

(a) obtain samples of marijuana items from providers or other licensees for testing as provided in this subchapter;

(b) transport and dispose of samples as provided in this subchapter; and

(c) perform testing on marijuana items in a manner consistent with the laboratory's accreditation.

(8) A licensed laboratory may return a marijuana item obtained for purposes of testing to the provider. The return of such marijuana items must be documented in METRC.

(9) A licensed laboratory must document the following:

(a) receipt of samples for testing;

- (b) size, weight, or quantity of the sample;
 - (c) provider from whom the sample was obtained;
 - (d) date the sample was collected, and who collected it;
 - (e) tests performed on samples;
 - (f) date(s) testing was performed;
 - (g) results of all testing performed;
 - (h) certification of all testing performed and corresponding results in a certificate of analysis; and
 - (i) disposition of any remaining test sample material.
- (10) A laboratory licensee must clearly identify all limited access areas at the premises.
- (11) All laboratory licensee employees must wear a department-issued identification badge.
- (12) A laboratory licensee must maintain a daily log of all visitor activity at a registered premise. The log must contain:
- (a) visitor first and last name;
 - (b) the date;
 - (c) arrival and departure times;
 - (d) visitor affiliation; and
 - (e) purpose of visit.
- (13) Visitors must be accompanied by a laboratory licensee employee at all times.
- (14) A laboratory licensee is responsible for the security of all marijuana items on the premises, in transit, and under the supervision of the licensee or licensee employee.
- (15) A laboratory licensee must have a written security plan maintained on the premises that safeguards against theft, diversion, corruption, or tampering of quality assurance samples, and corresponding data/reports both on the premises, during transit, and storage.
- (16) Commercial grade locks must be installed on every external door or gate of the laboratory, if applicable, as well as storage or transfer stations.
- (17) A laboratory licensee must ensure general sanitary requirements are met on the premises to include:
- (a) hand-washing facilities;
 - (b) proper and timely removal of all litter and waste; and
 - (c) toilet facilities that are maintained in a sanitary condition and good repair.
- (18) A laboratory licensee must maintain the following records/data for at least three years:
- (a) financial records that clearly reflect all financial transactions;
 - (b) testing data and reports to include quality control (QC) data, standard curves, raw instrument data, calculations, spreadsheets, certificates of analysis, provider reports, etc.; and
 - (c) all laboratory licensee employee training and payroll records.
- (19) Records/data may be kept in either paper or electronic form on the premises and must be readily available for quality assurance and audit purposes.
- (20) A laboratory licensee must establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergency at all premises.

(21) A laboratory licensee must provide and maintain, at its own expense, analytical testing laboratory professional liability insurance with an aggregate limit of one million dollars prior to the issuance of a license.

(22) A laboratory licensee must obtain and maintain a \$25,000 surety bond which names the department as loss payee in the event the laboratory licensee fails to adhere to the security plan approved by the department, or it otherwise operates the facility in a manner that allows for, or results in theft, loss, or diversion of marijuana items. A copy of the bond must be submitted to the department prior to a license being issued.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-329, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE III MARIJUANA TESTING LABORATORY QUALITY

ASSURANCE PROGRAM (1) The laboratory shall develop and implement a quality assurance program to assure the reliability and validity of the analytical data produced by the laboratory. The quality assurance program shall, at a minimum, include a written quality assurance plan that addresses the following:

- (a) quality control procedures;
- (b) laboratory organization and employee training and responsibilities, including good laboratory practice (GLP);
- (c) quality assurance objectives for measurement data;
- (d) traceability of data and analytical results;
- (e) instrument maintenance, calibration procedures, and frequency;
- (f) performance and system audits;
- (g) corrective and preventative action procedures;
- (h) steps to change processes when necessary;
- (i) record retention and document control;
- (j) quality assurance sample retention and disposal;
- (k) test procedure standardization; and
- (l) method validation.

(2) The scientific director shall annually review, amend if necessary, and approve the quality assurance program and plan both when they are created and when there is a change in methods, laboratory equipment, or the scientific director.

(3) All laboratory personnel involved in pre-analytic, analytic, and/or post-analytic testing processes for marijuana, marijuana concentrates, marijuana extracts, or marijuana-infused products shall review the quality assurance plan upon revision or at least annually.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-326, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE IV MARIJUANA TESTING LABORATORY QUALITY CONTROL

(1) The marijuana testing laboratory shall use laboratory quality control (LQC) samples and adhere to good laboratory practices (GLP) in the performance of all quality assurance testing according to the following specifications:

(a) the laboratory shall analyze quality control samples in the same manner as the laboratory analyzes marijuana, marijuana concentrates, marijuana extracts, or marijuana-infused product quality assurance testing samples;

(b) the laboratory shall use at least one negative control and one positive control in each analytical batch for each target organism during microbial testing;

(c) if either of the controls produces unexpected results or fails, then the results for each sample in the analytical batch are invalid and the samples shall be re-prepped and reanalyzed with a new set of controls; and

(d) if the positive and negative controls produce the expected results then the results for each sample in the analytical batch are valid and must be reported.

(2) If the result of the quality control analysis is outside the laboratory's specified acceptance criteria, listed in the laboratory's quality assurance plan, specific method standard operating procedure (SOP), or the product instructions for use, the laboratory shall determine the cause and take corrective action steps to remedy the problem until the result is within the specified acceptance criteria.

(3) The laboratory shall prepare and analyze at least one each of the following quality control samples for each analytical chemistry batch:

(a) method blank;

(b) laboratory control sample (LCS);

(c) laboratory replicate sample; and

(d) laboratory matrix spike sample.

(4) The laboratory shall analyze, at minimum, a continuing calibration verification (CCV) sample at the beginning of each analytical sequence and at least every 10 samples thereafter.

(5) If the result of the quality control analysis is outside the laboratory's specified acceptance criteria, listed in the laboratory's quality assurance plan or specific method SOP, the laboratory shall determine the cause and take corrective action steps to remedy the problem until the result is within the specified acceptance criteria.

(6) If any quality control sample produces a result outside the specified acceptance criteria, the laboratory cannot report the result and the entire batch cannot be released for retail sale. The laboratory shall determine the cause and take steps to remedy the problem until the result is within the specified acceptance criteria.

(7) The laboratory must calculate the method detection limit and method reporting limit for each chemical method analysis according to the United States Food and Drug Administration (USFDA) "Elemental Analysis Manual for Food and Related Products," the United States Environmental Protection Agency (USEPA) "Definition and Procedure for the Determination of the Method Detection Limit, Revision 2," or a substantially equivalent standard.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-326, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE V MARIJUANA TESTING LABORATORY REQUIRED
PROFICIENCY TESTING (1) For a laboratory to become approved to conduct

quality assurance testing, the laboratory must, at its own expense, meet the proficiency testing requirements of this subchapter.

(2) A laboratory shall successfully participate in a proficiency testing program(s):

(a) at least every six months for each analyte/method in [NEW RULE VIII] that the laboratory performs on marijuana or marijuana-infused products;

(b) that are matrix specific or controlled when available; and

(c) that are provided by an organization operating in conformance with the requirements of ISO/IEC 17043:2010.

(3) The laboratory shall report all analytes available by the proficiency testing program provider and for which the laboratory licensee is required to test as required under this subchapter.

(4) The laboratory shall participate in the proficiency testing program by following the laboratory's existing standard operating procedures for testing marijuana or marijuana-infused products.

(5) The laboratory shall rotate the proficiency testing among all of the laboratory testing personnel who perform a specific test method(s) or have multiple analysts perform the same proficiency test, when sample quantity/volume permits.

(6) Laboratory testing personnel who participate in a proficiency testing program shall sign the corresponding analytical reports and proficiency providers attestation forms, if provided, to certify that the proficiency testing program was conducted in the same manner as the laboratory tests marijuana or marijuana-infused products.

(7) The scientific director shall review and verify the accuracy of results reported for all proficiency testing program samples analyzed.

(8) The laboratory shall request the proficiency testing program provider to send all proficiency data and results concurrently to the state laboratory, when the data and results become available. If the proficiency provider does not provide this service then it is the responsibility of the laboratory to provide the proficiency testing program data and results to the state laboratory within three business days after the laboratory receives notification of their test results from the proficiency testing program provider.

(9) The laboratory must maintain a paper and/or electronic copy of all proficiency testing records, including analytical data, quality control, standard curves, spreadsheets, calculations, and worksheets and a copy of the proficiency testing provider report forms for a period of three years. The records must be easily and readily available to state laboratory staff or state auditors upon request.

(10) When performing a proficiency test, a marijuana testing laboratory may not:

(a) perform multiple analyses (such as replicates or duplicates) that are not normally performed in the course of analysis of a routine sample;

(b) average the results of multiple analyses for reporting when not specifically required to do so by the analytic method in question;

(c) permit anyone other than bona fide testing personnel who perform the analyses on a day-to-day basis for the laboratory to participate in the generation of data or reporting of results;

(d) discuss the results of proficiency testing with any other laboratory until after the deadline set for receipt of results by the proficiency testing provider;

(e) discuss the results of a proficiency testing audit across sites or locations, if the laboratory has multiple testing sites, until after the deadline set for receipt of results by the proficiency testing provider;

(f) send proficiency testing samples or portions of samples to another laboratory to be tested; or

(g) knowingly receive a proficiency testing sample from another laboratory for analysis and fail to notify the state laboratory of the receipt of the other laboratory's sample within five business days of discovery.

(11) The state laboratory may also provide inter-laboratory proficiency testing samples to laboratory licensees in order to ensure that Montana marijuana testing laboratories are providing consistent and uniform results.

(12) For the purposes of this subchapter, the department adopts and incorporates by reference ISO/IEC 17043:2010, which specifies general requirements for the competence of providers of proficiency testing schemes and for the development and operation of proficiency testing schemes. A copy of the publication may be obtained from the American National Standards Institute (ANSI), 1899 L St. NW, 11th Floor, Washington, DC 20036; <https://webstore.ansi.org/SDO/ISO>.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-326, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE VI MARIJUANA TESTING LABORATORY SATISFACTORY AND UNSATISFACTORY PROFICIENCY TEST PERFORMANCE

(1) The marijuana testing laboratory shall be deemed to have "successfully" participated in a proficiency testing program for an analyte tested in a specific method if the test results demonstrate a "satisfactory," "passed," or otherwise proficient performance determination by the proficiency testing program provider.

(2) The marijuana testing laboratory shall be deemed to have "unsuccessfully" participated in a proficiency testing program for an analyte tested in a specific method if the test results demonstrate an "unsatisfactory," "unacceptable," "questionable," or "failed or otherwise deficient" performance determination by the proficiency testing program provider.

(3) If a marijuana testing laboratory is notified by a proficiency provider of an "unsuccessful" result for an analyte tested in a specific method, the laboratory may continue to report test results for the analyte(s) if all of the following conditions are met:

(a) the laboratory notifies the state laboratory of the "unsuccessful" proficiency result in writing within five business days of receiving the report from the proficiency provider;

(b) the laboratory has "successfully" participated in a proficiency program for the failed analyte(s) in the specific method in the previous six months;

(c) the laboratory submits to the state laboratory, for approval, a corrective/preventative action plan detailing how the laboratory will proceed to

determine the cause of the failure within 10 business days of receiving the "unsuccessful" performance determination by the proficiency testing provider; and

(d) within 30 days of plan approval by the state laboratory, submit a corrective/preventative action final report describing the cause of the failure, the corrective action, and processes that will ensure the effectiveness of the corrective action.

(4) The state laboratory will approve or reject corrective action plans and final corrective action reports as soon as reasonably practicable.

(5) If a marijuana testing laboratory is notified by a proficiency provider of an "unsuccessful" result for an analyte tested in a specific method and the laboratory has not "successfully" participated in a proficiency program for the failed analyte(s) in the previous six months, the laboratory may not continue to report test results for the analyte(s) until all of the following conditions are met:

(a) the laboratory notifies the state laboratory of the "unsuccessful" proficiency result in writing within five business days of receiving the report from the proficiency provider;

(b) the laboratory submits to the state laboratory, for its approval, a corrective/preventative action plan detailing how the laboratory will proceed to determine the cause of the failure within 10 business days of receiving the "unsuccessful" performance determination by the proficiency testing provider;

(c) within 30 days of plan approval by the state laboratory, submit a corrective/preventative action final report demonstrating the cause of the failure, the corrective action, and processes that will ensure the effectiveness of the corrective action; and

(d) "successfully" participate in a proficiency test for the failed analyte(s) by a proficiency testing provider that meets the requirements of this subchapter.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-329, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE VII MARIJUANA TESTING LABORATORY FAILED TEST

SAMPLES (1) If the results of quality assurance testing for any analyte/method exceed the action limits defined in [NEW RULE VIII], then the sample and related lot or test batch has "failed" quality assurance testing.

(2) When a marijuana testing laboratory performs quality assurance testing, the laboratory must verify that the following quality control criteria are within acceptable limits based upon the laboratory's method specific standard operating procedures, the laboratory quality assurance plan, and the manufacturer's instructions for use, if applicable:

- (a) standard curves;
- (b) method blank;
- (c) laboratory control sample(s);
- (d) positive and negative controls;
- (e) laboratory replicate values;
- (f) matrix spike sample(s);
- (g) continuing calibration verification sample;
- (h) sample preparation controls; and

(i) crossing thresholds.

(3) If the quality control criteria for initial quality assurance testing are within acceptable limits, then the results of all individual samples within the analytical batch are considered valid, including "failed" samples and must be reported.

(4) A provider may request that the laboratory resample the failed batch or lot for repeat testing within seven calendar days of receiving notice from the laboratory of any failed testing and resampled analyses must be completed by the laboratory within 30 days of receiving the request from the provider.

(5) Quality assurance testing on resampled batches or lots must include all of the analytes defined in [NEW RULE VIII].

(6) The results of resample quality assurance tests are considered valid and must be reported if the quality control criteria are within the acceptable limits.

(7) The provider is responsible for the costs of resampling and retesting.

(8) If the quality control criteria for initial quality assurance testing are not within acceptable limits, then the results of all individual samples within an analytical batch are considered invalid (failed run) and the entire run must be repeated with new controls and not reported.

(9) The laboratory should document and investigate failed runs, as part of the laboratory's quality assurance plan, to determine the root cause of the failure and whether corrective and preventative action measures are warranted.

(10) A provider is not permitted to sell or transfer to a registered cardholder, marijuana items that have a failed quality assurance test.

(11) Failed harvests, lots, or test batches may be remediated as long as the remediation method does not impart any substance or effect to the usable marijuana, marijuana concentrates, or marijuana-infused products that may have a toxic or deleterious effect on the health of the consumer.

(12) Remediation methods used on specific lots or batches of marijuana or marijuana-infused products that have failed initial quality assurance testing must be disclosed to the state laboratory and to the Medical Marijuana Program prior to remediation.

(13) No remediated harvests, lots, or test batches may be sold or transferred to a provider for sale until the completion and successful passage of all quality assurance testing, and the results certified in a certificate of analysis, as required in these rules and Montana statute.

(14) If a remediated sample from a failed harvest, lot, or test batch fails quality assurance testing it cannot be remediated again and the test batch must be destroyed.

(15) A laboratory licensee must document all sampling, testing, retesting, remediation, and destruction that are a result of failing a test under this subchapter.

AUTH: 50-46-344, MCA

IMP: 50-46-311, 50-46-326, 50-46-329, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

NEW RULE VIII MARIJUANA TESTING LABORATORY QUALITY ASSURANCE TESTING REQUIREMENTS (1) Except as provided in (10), a provider must submit for testing a sample of every test batch from a harvest lot of

marijuana and process lots of marijuana-infused products, extracts, and concentrates intended for use by a registered cardholder prior to selling or transferring the marijuana item to a registered cardholder.

(2) Usable marijuana lots consisting of dried leaves and flowers must be tested for the following:

- (a) cannabinoid profile;
- (b) moisture analysis;
- (c) foreign matter screening;
- (d) microbiological screening; and
- (e) pesticides screening.

(3) Marijuana concentrate and extract lots must be tested for the following:

- (a) cannabinoid profile;
- (b) microbiological screening;
- (c) residual solvents screening; and
- (d) pesticides screening.

(4) Marijuana-infused products must be tested for the following:

- (a) cannabinoid profile.

(5) The cannabinoid profile for each sample must include:

- (a) THCA;
- (b) THC;
- (c) Total THC;
- (d) CBDA;
- (e) CBD; and
- (f) Total CBD.

(6) The sample and related lot or test batch fail quality assurance testing for moisture analysis if the results exceed moisture content of more than twelve percent.

(7) The sample and related lot or test batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:

- (a) five percent of stems 3mm or more in diameter; and
- (b) two percent of seeds or other foreign matter.

(8) The sample and related lot or test batch fail quality assurance testing for microbiological screening if the results exceed the following limits:

- (a) Salmonella: non-detectable in a gram of material;
- (b) E. Coli: non-detectable in a gram of material;
- (c) Mold: more than 10,000 colony forming units (CFU) per gram of culturable mold;

(d) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg; and

(e) Ochratoxin A: 20 µg/kg of substance.

(9) A sample and related lot or test batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below.

Residual Solvents	
Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000

Chloroform	2
Cyclohexane	3,880
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% m-xylene, 14% p-xylene, 9% o-xylene with 17% ethyl benzene.

(10) Heavy metals will be tested at random. A sample and related lot or test batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Heavy Metals

	Limits; Unprocessed/Dry Flower	Limits; Extract
Inorganic arsenic	2.0 µg/g	10 µg/g
Cadmium	0.82 µg/g	4.1 µg/g
Lead	1.2 µg/g	6.0 µg/g
Mercury	0.4 µg/g	2.0 µg/g

(11) A sample and related lot or test batch fail quality assurance testing for pesticides if the results exceed the limits provided in the table below.

Pesticides

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppl; Unprocessed/Dry Flower	Action Level ppm; Extract
Abamectin	71751-41-2	0.5	2.5
Acequinocyl	57960-19-7	2	10
Bifenazate	149877-41-8	0.2	1
Bifenthrin	82657-04-3	0.2	1
Chlormequat Chloride	999-81-5	1	5
Cyfluthrin	68359-37-5	1	5
Daminozide	1596-84-5	1	5
Etiozazole	153233-91-1	0.2	1

Fenoxycarb	72490-01-8	0.2	1
Imazalil	35554-44-0	0.2	1
Imidacloprid	138261-41-3	0.4	2
Myclobutanil	88671-89-0	0.2	0.6
Paclobutrazol	76738-62-0	0.4	2
Pyrethrins†	8003-34-7	1	5
Spinosad	168316-95-8	0.2	1
Spirotetramat	203313-25-1	0.2	1
Trifloxystrobin	141517-21-7	0.2	1

† Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively).

(12) Providers must adhere to testing requirements for all marijuana and marijuana products intended for sale or transfer to cardholders.

(a) Usable marijuana, including trim and manicure must be tested for:

- (i) pesticides;
- (ii) moisture content;
- (iii) cannabinoid profile/potency;
- (iv) microbiological;
- (v) mycotoxin;
- (vi) filth and foreign matter; and
- (vii) heavy metals (random testing).

(b) A provider has the option to forgo testing of usable marijuana, including trim and manicure, if that usable marijuana is subject to further processing before sale or transfer to cardholders.

(c) Marijuana extract and concentrate that is intended for direct sale or transfer to cardholders must be tested for:

- (i) pesticides;
- (ii) cannabinoid profile/potency;
- (iii) microbiological;
- (iv) mycotoxin;
- (v) heavy metals (random testing); and
- (vi) residual solvents.

(d) Marijuana extract and concentrate that is intended for further processing before direct sale or transfer to cardholders must be tested for:

- (i) pesticides;
- (ii) residual solvents;
- (iii) mycotoxin; and
- (iv) heavy metals (random testing).

(e) Cannabinoid products intended for human consumption, ingestion, and cannabinoid suppositories, topicals, and transdermal patches must be tested for:

- (i) cannabinoid profile; and
- (ii) microbiological.

(f) All cannabinoid products listed in (e) must use marijuana extract and concentrate that has passed testing requirements for direct sale or transfer to cardholders as set forth in (d).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, 50-46-344, Chap. 292, section 7, L. of 2019, MCA

4. The department proposes to repeal the following rules:

37.107.305 MARIJUANA TESTING LABORATORY LICENSEE REQUIREMENTS, found on page 37-26731 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-328, 50-46-329, MCA

37.107.306 MARIJUANA TESTING LABORATORIES ACCREDITATION, found on page 37-26732 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, MCA

5. STATEMENT OF REASONABLE NECESSITY

In 2019, Montana's 66th Legislature passed Senate Bill (SB) 265 and House Bill (HB) 598, which revise the Montana Medical Marijuana Act. With respect to medical marijuana testing laboratories, the bills shift responsibility for licensing and inspection to the Department of Public Health and Human Services' State Laboratory. The bills also direct the department's state laboratory to promulgate administrative rules pertaining to requirements for the licensure, accreditation, and operation of medical marijuana testing laboratories.

In order to implement the statutory mandates of SB 265 and HB 598, the department is proposing to adopt New Rules I through VIII, pertaining to medical marijuana testing laboratories. The proposed rules have been developed by the department's state laboratory to address requirements for licensure, accreditation, and operation of medical marijuana testing laboratories.

New Rule I – Marijuana Testing Laboratory Licensure and Accreditation

The department is proposing New Rule I to address the requirements medical marijuana testing laboratories must meet to qualify for licensure and licensure renewal. The rule identifies requirements for issuance or renewal of a license and specifies the process under which the department will review license applications. The rule also implements new requirements for medical marijuana testing laboratories under SB 265 and HB 598 such as International Organization Standardization (ISO) certification. The rule is necessary to identify the

requirements for obtaining a license and the process under which the department will review license applications.

New Rule II – Marijuana Testing Laboratory General Requirements

The department is proposing New Rule II to address the general requirements for operation of medical marijuana testing laboratories, including the role and responsibilities of the scientific director referenced in SB 265 and HB 598. The rule also specifies general operational requirements for medical marijuana testing laboratories including recordkeeping requirements, security requirements, personnel requirements, and insurance and bonding requirements.

The rule is necessary to provide medical marijuana testing laboratories with notice of the rules they must follow and to implement the requirements of SB 265 and HB 598.

New Rule III – Marijuana Testing Laboratory Quality Assurance Program

The department is proposing New Rule III to address the requirements and content of the quality assurance program and plan that must be developed and maintained by each medical marijuana testing laboratory. The rule is necessary to ensure medical marijuana testing laboratories maintain and follow written procedures to conduct testing in a manner that assures the reliability and validity of analytical testing data produced by the laboratory.

New Rule IV – Marijuana Testing Laboratory Quality Control

The department is proposing New Rule IV to address requirements for marijuana testing and laboratory quality control samples and use thereof for quality assurance test interpretation. The rule is necessary to ensure the reliability and validity of analytical testing data produced by the laboratory.

New Rule V – Marijuana Testing Laboratory Required Proficiency Testing

The department is proposing New Rule V to address requirements for frequency, quality, and use of marijuana proficiency samples, as well as requirements to provide proficiency testing data and results to the state laboratory. The rule is necessary to monitor the performance of medical marijuana testing laboratories and to ensure medical marijuana laboratories maintain their own level of competence in performing specific tests.

New Rule VI – Marijuana Testing Laboratory Satisfactory and Unsatisfactory Proficiency Test Performance

The department is proposing New Rule VI to specify what constitutes a successful and unsuccessful performance. The rule is necessary to provide medical marijuana testing laboratories with notice of how proficiency testing will be evaluated by the

department and to ensure that laboratories who fail a proficiency test take corrective measures to ensure future testing is properly performed.

New Rule VII – Marijuana Testing Laboratory Failed Test Samples

The department proposes New Rule VII to specify the process for interpretation of testing results and retesting of quality assurance samples when a quality assurance analyte/method exceeds the action limits defined in New Rule VIII. This rule is necessary to provide notice of the ability to have a sample retested, the requirements for retesting, and the consequence of failure to pass the initial or subsequent test.

New Rule VIII – Marijuana Testing Laboratory Quality Assurance Testing Requirements

The department is proposing New Rule VIII to address required tests and corresponding action limits for quality assurance tests performed on marijuana, marijuana concentrates, marijuana extracts, and marijuana-infused products. This rule is necessary to implement the requirements of SB 265 regarding the substances for which marijuana and marijuana products must be tested, establish permissible contaminant levels, and to provide notice of these testing requirements.

ARM 37.107.305 and 37.107.306

The department is proposing to repeal these rules because licensing and operational requirements for medical marijuana testing laboratories are addressed in New Rules I and II, which have been proposed by the department's state laboratory in accordance with SB 265 and HB 598.

Fiscal Impact

The department anticipates no fiscal impact regarding the proposed rulemaking.

6. The department intends these proposed rule adoptions and repeals to be applied retroactively to October 1, 2019.

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: Gwen Knight, 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., October 4, 2019.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by letters sent via U.S. mail on July 23, 2019.

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Marie Matthews, for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 27, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I, amendment of ARM	)	PROPOSED ADOPTION,
42.13.111, 42.13.201, 42.13.401,	)	AMENDMENT, AND REPEAL
42.13.806, 42.13.1002, 42.13.1003,)	
and repeal of ARM 42.12.317 and)	
42.13.404 pertaining to implementing)	
legislative changes to table wine,)	
hard cider, and sacramental wine tax)	
reporting requirements and)	
microdistillery production changes;)	
and updating labeling and packaging)	
requirements)	

TO: All Concerned Persons

1. On September 30, 2019 at 11:30 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 adoption, amendment, and repeal 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 September 13, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

NEW RULE I TABLE WINE, HARD CIDER, AND SACRAMENTAL WINE REPORTING REQUIREMENTS (1) All wineries and table wine distributors that sell table wine, hard cider, or sacramental wine in Montana must electronically file the tax returns and reports listed in (2) through (5), on forms provided by the department, and pay any tax due in accordance with the filing frequencies prescribed in 16-1-411, MCA.

(2) The following entities shall file a wine tax return for table wine sold in Montana and a hard cider tax return for hard cider sold in Montana:

(a) registered or licensed wineries with a direct shipment endorsement for table wine, hard cider, or both sold directly to consumers;

(b) licensed wineries for table wine, hard cider, or both sold to licensed retailers;

(c) licensed wineries, located in Montana, for table wine, hard cider, or both sold to consumers through the winery's sample room; and

(d) table wine distributors for table wine, hard cider, or both sold to licensed retailers.

(3) The following licensed entities shall file a wine tax return for sacramental wine sold in Montana:

(a) sacramental wine licensees located outside Montana for sacramental wine sold to officials of churches or other established religious organizations;

(b) licensed wineries for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees; and

(c) table wine distributors for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees.

(4) Licensed out-of-state wineries that sell table wine, hard cider, or sacramental wine directly to licensed retailers shall report the amount of table wine, hard cider, and sacramental wine sold to each licensed retailer.

(5) Licensed or registered wineries that sell table wine, hard cider, or sacramental wine to a table wine distributor shall report the amount of table wine, hard cider, and sacramental wine sold to each table wine distributor.

(6) Licensed retailers that purchase table wine, hard cider, or sacramental wine directly from a licensed out-of-state winery shall report the amount of table wine, hard cider, and sacramental wine purchased from each winery on or before the 15th day of each month following the purchase of the table wine, hard cider, and sacramental wine.

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-404, 16-3-411, 16-4-107, 16-4-313, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I regarding new tax and reporting requirements that apply when table wine, hard cider, and sacramental wine are sold in the state. It is necessary for the department to propose New Rule I to implement House Bill 84 (HB 84) by the 66th Montana Legislature, which amended 16-1-411, MCA, and the frequency of licensee or registrant tax return filing to the department based on the type of license or registration that is held, and by the amount of table wine, hard cider, and sacramental wine the entity sold during the reported period.

HB 84, and proposed New Rule I, seek to improve reporting efficiency by minimizing the number of returns filed and the frequency of reporting that is required by wine and hard cider licensees or registrants and providing for electronic filing of any required return or report. The current reporting requirements for wine products can be found in ARM 42.12.317 and 42.13.404 and much of New Rule I content is based on the content of these rules. The department intends for New Rule I to reflect the new filing frequency criteria provided in 16-1-411, MCA, as amended, combine tax and

reporting requirements for all three wine product types into one location, and justify the repeal of ARM 42.12.317 and 42.13.404.

The department also proposes through New Rule I to remove existing form name references from rule because the department believes its webpage and online reporting portal provide sufficient information to direct filing parties to the correct form.

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

42.13.111 DEFINITIONS The following definitions apply to this chapter:

(1) through (16) remain the same.

~~(17) "Microdistillery" means a distillery located in Montana that produces 25,000 gallons or less of liquor annually.~~

(18) through (34) remain the same but are renumbered (17) through (33).

AUTH: 16-1-303, MCA

IMP: 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to strike the definition of microdistillery in (17) due to the passage of Senate Bill 182 by the 66th Montana Legislature. Senate Bill 182 revised the definition of microdistillery to include any distillery located in Montana that produces 200,000 proof gallons or less of liquor annually. Rather than amending the definition to the new production threshold, the department proposes to strike the definition as it is already provided for in statute and unnecessary to repeat in rule.

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) remains the same.

(2) Alcoholic beverage products are a mature product category, restricted by law to only consumers age 21 and older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a beer, wine, or hard cider label or primary package that:

(a) and (b) remain the same.

(c) contains graphics or elements that:

(i) and (ii) remain the same.

(iii) alludes to or suggests irresponsible, excessive, or underage consumption; or

(d) is in powdered or crystalline form.

(3) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.201 to prohibit the sale of beer and wine products packaged in powdered form. This amendment is necessary and an exercise of the department authority to

protect the health, welfare, and safety of the citizens of Montana. The department does not believe that allowing Montana to be a test market in determining whether the social impact concerns related to these products are valid would be in the best interest of the health, welfare, and safety of Montana's citizens.

Further, the department contends this rule amendment is necessary to apply consistent labeling and packaging restrictions to beer and wine with those present in ARM 42.11.402(3)(e) for liquor products. It is important that the department provide regulatory consistency across all alcoholic beverage product types.

42.13.401 IMPORTATION OF WINE (1) A foreign winery or importer, not otherwise licensed in Montana, desiring to ship table wine, sacramental wine, or hard cider to Montana must submit an application for registration specified in 16-4-107, MCA. The registration must be renewed annually by October 1 and be accompanied by the applicable registration fee shown in (3).

(2) remains the same.

(3) For the first year, the registration fee is based on the total number of 9-liter cases the registrant intends to ship to Montana that year. For subsequent years, the registration fee is based on the total number of 9-liter cases the registrant actually shipped to Montana during the preceding year. The registration fee schedule is as follows:

- (a) 0-60 9-liter cases = no charge;
 - (b) 61-500 9-liter cases = \$100;
 - (c) 501-1000 9-liter cases = \$200;
 - (d) 1001- 2000 9-liter cases = \$300; or
 - (e) 2001 + 9-liter cases = \$400.
- (4) through (6) remain the same.

AUTH: 16-1-303, 16-4-1103, MCA

IMP: 16-3-402, 16-4-107, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.401(1) to include sacramental wine and hard cider in the list of products a foreign winery or importer is allowed to ship to Montana once registered. This amendment is necessary because all three product types can be shipped under the registration.

The department also proposes to amend (3) to base the foreign winery or importer registration fee on 9-liter cases rather than a general case reference. This amendment is necessary to apply a consistent measurement of volume for determining the foreign winery or importer's registration fee. The proposed 9-liter measurement of volume is well known and uniform in the alcoholic beverage industry.

42.13.806 USE OF OUTSOURCED DISTILLED SPIRITS IN THE MANUFACTURING OF DISTILLED SPIRITS (1) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, ~~16-3-214~~ 16-4-311, 16-4-312, MCA

REASONABLE NECESSITY: The department proposes correcting implementing citation errors in this rule. These amendments are necessary for the rule to comply with 2-4-305(3), MCA.

42.13.1002 ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) through (3) remain the same.

(4) To apply, the tenant and host shall submit a complete application to the department that includes:

(a) and (b) remain the same.

(c) a copy of the host's ~~floorplan~~ floor plan identifying the areas to be used by the tenant; and

(d) through (12) remain the same.

(13) In addition to all other requirements imposed by this rule, where the tenant is a brewery:

(a) remains the same.

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery ~~40,000~~ 60,000 barrel production cap in 16-3-213, MCA, and the ~~60,000 barrel production cap in 16-3-214, MCA~~, all beer produced by a tenant at a host's premises shall be considered as part of the tenant's annual nationwide production; and

(c) a tenant with an annual nationwide production between 100 and ~~40,000~~ 60,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a tenant providing beer in its sample room that was brewed or fermented at a host's premises. A tenant that brewed and fermented beer at its premises and packaged the beer at a host's premises may provide that beer, with or without charge, in the tenant's sample room; and

~~(d) a tenant with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a host's premises.~~

(14) remains the same.

(15) In addition to all other requirements imposed by this rule, where the tenant is a distillery:

(a) remains the same.

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery ~~25,000~~ 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a tenant at a host's premises shall be considered liquor produced by the tenant; and

(c) a tenant distillery with an annual production of ~~25,000~~ 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a tenant distillery providing liquor in its sample room that was produced at a host's premises, subject to the production exception in ARM ~~42.13.805(3)~~ 42.13.802.

(16) remains the same.

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: The department proposes to amend (4)(c) to correct a grammatical error and for continuity with other instances of the word "floor plan" stated in chapters 12 and 13.

Subsection (13) is proposed for amendment due to the passage of House Bill 541 during the 65th Montana Legislature. House Bill 541 revised the definition of small brewery to a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels. The amendments proposed in (13) are necessary to reflect 16-3-213, MCA, as amended.

Subsection (15)(b) is proposed for amendment due to the passage of Senate Bill 182 during the 66th Montana Legislature, which increased the microdistillery production cap from 25,000 gallons to 200,000 proof gallons. The amendments in (15) are necessary for consistency with statute, as amended.

Subsection (15)(c) is also proposed for amendment for the same reason as (15)(b) and to correct an internal cross-reference to another administrative rule. The cross-reference should be to ARM 42.13.802, not ARM 42.13.805(3).

42.13.1003 CONTRACT MANUFACTURING (1) through (6) remain the same.

(7) In addition to all other requirements imposed by this rule, where the client is a brewery:

(a) remains the same.

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery ~~10,000~~ 60,000 barrel production cap set forth in 16-3-213, MCA, and the ~~60,000 barrel production cap set forth in~~ 16-3-214, MCA, all beer produced by the contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual nationwide production between 100 and ~~40,000~~ 60,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a client providing beer in its sample room that was brewed or fermented at a contract manufacturer's premises. A client that brewed and fermented beer at its premises and then had the beer packaged at a contract manufacturer's premises may provide that beer, with or without charge, in the client's sample room; and

~~(d) a client with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a contract manufacturer's premises.~~

(8) remains the same.

(9) In addition to all other requirements imposed by this rule, where the client is a distillery:

(a) remains the same.

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery ~~25,000~~ 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual production of ~~25,000~~ 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a client providing liquor in its sample room that was produced at a contract manufacturer's premises, subject to the production exception in ARM ~~42.13.805(3)~~ 42.13.802.

(10) and (11) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: Section (7) is proposed for amendment due to the passage of House Bill 541 during the 65th Montana Legislature. House Bill 541 revised the definition of small brewery to a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels. The amendments proposed in (7) are necessary to reflect 16-3-213, MCA, as amended.

Subsections (9)(b) and (c) are proposed for amendment due to the passage of Senate Bill 182 during the 66th Montana Legislature, which increased the microdistillery production cap from 25,000 gallons to 200,000 proof gallons. The amendments in these subsections are necessary for consistency with the statute, as amended.

Subsection (9)(c) is also proposed for amendment to correct an internal cross-reference to another administrative rule. The cross-reference should be to ARM 42.13.802, not ARM 42.13.805(3).

5. The department proposes to repeal the following rules:

42.12.317 SACRAMENTAL WINE MONTHLY REPORTS AND TAX RETURNS

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-4-313, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.12.317 and incorporating the content into proposed New Rule I. New Rule I, as proposed, will include the filing requirements for entities that sell table wine, sacramental wine, or hard cider in Montana into one rule. The department believes the proposed repeal is necessary and advisable, for efficiency, because it will eliminate the registrant or licensee from referring to multiple rules as those entities are typically filing a combination of these tax returns and related reports.

42.13.404 WINE REPORTING REQUIREMENTS

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-411, 16-4-107, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.13.404 and incorporating the content into proposed New Rule I. New Rule I includes the filing requirements for entities that sell table wine, sacramental wine, or hard cider in Montana into one rule. Consistent with its statement of reasonable necessity for the repeal of ARM 42.12.317, the department also believes the proposed repeal of this rule is necessary and advisable, for efficiency, because it will eliminate the registrant or licensee from referring to multiple rules as those entities are typically filing a combination of these tax returns and related reports.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., October 4, 2019.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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 number 6 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, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 22, 2019.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State August 27, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.12.222 and 42.13.101) PROPOSED AMENDMENT
pertaining to implementation of a)
point-based penalty system and)
revising procedures relating to)
revocation, lapse, or suspension of)
alcoholic beverage licenses)

TO: All Concerned Persons

1. On September 30, 2019, at 1:30 p.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 September 13, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.12.222 PROCEDURE UPON REVOCATION, LAPSE, OR SUSPENSION
OF LICENSE (1) Except as provided in (2), ~~When~~ any alcoholic beverages license is suspended or revoked by the department, the department shall cause a notice to be posted on the inside of the licensed premises so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice issued by the department must be dated and signed. The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of 10 days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension.

(2) The department, in its sole discretion, may waive the notice and posting requirements provided in (1).

(3) When a license has been revoked or lapsed, the department shall not accept an application from the underlying individuals qualified for licensure pursuant to 16-4-401, MCA, for one year from the date of revocation or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department that sufficient steps have been taken to prevent future violations or to operate a going establishment.

(4) A revoked or lapsed license affects a license quota area as follows:

(a) if an action against the license causes the creation of the last remaining license for that license type in the quota area, the department shall publish the availability of a retail alcoholic beverage license in accordance with ARM 42.12.502; or

(b) if the number of licenses issued for a quota area exceeds statutory limitations, the license will cease to exist, and the department will adjust the license quota accordingly.

(5) If a revoked or lapsed beer license originally issued within an incorporated city quota area before October 1, 1997, is reinstated, the license may not be used for premises where gambling is conducted.

AUTH: 16-1-303, MCA

IMP: 16-1-303, 16-4-406, MCA

REASONABLE NECESSITY: The department proposes to amend (1) to include an exception to revocation and suspension notice posting requirements proposed in (2). The department finds the proposed amendments necessary to address circumstances where it may be impossible or impractical for the department to post a notice, such as when a licensee no longer operates the business associated with the license or, in the case of leased space, when an entirely different tenant and business occupies the space. The result will also allow the department to expedite quota area license adjustments described in proposed (4).

The department proposes (3), (4), and (5) which comprise language relocated from ARM 42.13.101 to 42.12.222, with revisions that the department believes improves clarity by removal of industry jargon. The department proposes these amendments because ARM 42.12.222 is topically better suited than ARM 42.13.101. The department intends the rule content to be easier to locate and in more plain language.

The department proposes (4)(a) to align department processes for a last available license based on a revocation or lapse with the competitive bidding process provided in 16-4-430, MCA, and ARM 42.12.502. Section 16-4-430, MCA, resulting from the 2019 Legislative session requires licenses, available due to these circumstances, to be issued through the competitive bidding process.

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents, and employees, and concessionaires must conduct the premises operate in compliance with the rules of other state and local agencies and abide by all:

(a) through (d) remain the same.

(2) Proof of violation by a licensee, a concessionaire, or the licensee's or concessionaire's agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license or department termination of a concession agreement, and licensees or concessionaires may be warned, reprimanded, or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) ~~The department may use a range of progressive and proportional penalties for any combination of violations of any laws, ordinances, and rules. The progressive penalty schedule is not an exhaustive list of the grounds for administrative action. The schedule does not preclude the department's use of discretion to propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances. For purposes of determining penalties under the progressive penalty schedule, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action. The department may seek license revocation based upon a combination of any four violations during a three-year period.~~

Progressive Penalty Schedule

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to Underage Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Sale to Intoxicated Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Open after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Sale or Consumption after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Refilling of Bottles	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Unapproved Premises Alteration	\$300	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Location Manager	\$150	\$600	\$1,000/12-day Suspension	Revocation

Improper Use of Catering Endorsement	\$150	\$600	\$1,000/12-day Suspension	Revocation
Accept More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Extend More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Exceed Sample Room Service Limits	\$150	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Ownership Interest	\$1,500/Revocation			
Denial of Inspection of Premises or Records	\$1,500/Revocation			

(3) The department shall use a point-based penalty system for determination of proposed penalties. The department may use a range of penalties for any combination of violations of any laws, ordinances, or administrative rules. For purposes of determining penalties under the point-based penalty system, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action.

(a) The point-based penalty system is not an exhaustive list of the grounds for administrative action. The department may propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances.

(b) The following schedule details violations with the corresponding point values and monetary penalty amounts:

<u>Violation</u>	<u>Points</u>	<u>Monetary Penalty</u>
<u>Sold Alcoholic Beverages to an Underage Person</u>	<u>5</u>	<u>\$1,500</u>
<u>Sold Alcoholic Beverages to an Intoxicated Person</u>	<u>5</u>	<u>\$1,500</u>
<u>Denied Inspection of Premises</u>	<u>5</u>	<u>\$1,500</u>
<u>Denied Inspection of Records</u>	<u>5</u>	<u>\$1,500</u>
<u>Entered into a Concession Agreement Without Department Approval</u>	<u>5</u>	<u>\$1,500</u>

<u>Failed to Seek Prior Department Approval of a New Owner Pursuant to 16-4-401, MCA</u>	<u>5</u>	<u>\$1,500</u>
<u>Sold/Served Alcoholic Beverages at an Unlicensed Location</u>	<u>5</u>	<u>\$1,500</u>
<u>Stored Alcoholic Beverages at a Location Not Approved by the Department</u>	<u>4</u>	<u>\$1,200</u>
<u>Delivered Alcoholic Beverages to a Retailer at an Unlicensed Location</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Ensure Licensee, Employee, or Employee's Immediate Supervisor Possess Valid Responsible Sales and Service Proof of Training Document</u>	<u>4</u>	<u>\$50 (1st) \$200 (2nd) \$350 (3rd +)</u>
<u>Failed to Notify the Department or Local Law Enforcement Before Implementing an Access Control System</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold/Served Alcoholic Beverages After Hours</u>	<u>4</u>	<u>\$1,200</u>
<u>Allowed Alcoholic Beverages to Be Consumed After Hours</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold Alcoholic Beverages Not Approved by the Department</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold Beer or Wine to the Public (Distributor/Wholesaler)</u>	<u>4</u>	<u>\$1,200</u>
<u>Allowed the Self-Service of an Alcoholic Beverage on the Premises</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Seek Approval of a Location Manager</u>	<u>4</u>	<u>\$1,200</u>
<u>Refilled Liquor Bottles</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Maintain an Active Participation in the Business</u>	<u>3</u>	<u>\$900</u>
<u>Exceeded Sample Room Service Limits</u>	<u>3</u>	<u>\$900</u>
<u>Served Alcoholic Beverages Not Manufactured on the Premises</u>	<u>3</u>	<u>\$900</u>
<u>Failed to Report New Officers or Board Members</u>	<u>3</u>	<u>\$900</u>
<u>Catered an Event Without Notifying Local Law Enforcement</u>	<u>3</u>	<u>\$900</u>
<u>Failed to Timely Seek Approval of a Location Manager</u>	<u>2</u>	<u>\$600</u>
<u>Catered an Event More Than 100 Miles From the Licensee's Premises</u>	<u>2</u>	<u>\$600</u>
<u>Catered an Event Without a Sponsor or Agreement in Place</u>	<u>2</u>	<u>\$600</u>

<u>Catered an Event Longer Than Allowed in ARM 42.12.128</u>	<u>2</u>	<u>\$600</u>
<u>Altered the Premises Without Approval</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Maintain Possessory Interest in the Premises</u>	<u>2</u>	<u>\$600</u>
<u>Allowed Unapproved Individuals to Participate in Profits or Losses of the Business</u>	<u>2</u>	<u>\$600</u>
<u>Served Beer or Wine to a Patron Who Did Not Order Food (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Operated Premises With More Seats Than Licensed (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Meet the 65% Annual Gross Income Food Requirement (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Accepted More Than 7 Days Credit (Retailer)</u>	<u>2</u>	<u>\$600</u>
<u>Extended More Than 7 Days Credit (Distributor/Wholesaler)</u>	<u>2</u>	<u>\$600</u>
<u>Allowed Consumption of Alcoholic Beverages on Premises Not Sold or Provided by the Licensee</u>	<u>2</u>	<u>\$600</u>
<u>Shipped Table Wine to Consumers Without a Direct Shipping Endorsement</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Maintain at Least Twelve Seats, Exclusive of any Seats at Gambling Machines</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Submit or Timely Submit an Abbreviated Application for License Modification Pursuant to ARM 42.12.118</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Comply With Approved Loan Standards</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Seek Department Approval for a Noninstitutional Lender</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Submit or Failed to Timely Submit Monthly Catering Reports</u>	<u>1</u>	<u>\$300</u>
<u>Sold Liquor at Less Than Posted Price</u>	<u>1</u>	<u>\$300</u>
<u>Accepted Return of Alcoholic Beverages Beyond Ordinary/Usual Reasons</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Notify the Department Before 90 Days of Nonuse Occurs</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Operate a Going Establishment</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Post License or Age Placard in a Conspicuous Place on the Premises</u>	<u>1</u>	<u>\$300</u>

<u>Failed to Notify the Department or Local Law Enforcement an Access Control System Was Removed</u>	<u>1</u>	<u>\$300</u>
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(c) The following penalty point ranges are used for determination of proposed suspension periods and revocation:

(i) upon the accumulation of 15 to 19 points during a three-year period, the department may propose a suspension not to exceed 30 days;

(ii) upon the accumulation of 20 to 24 points during a three-year period, the department may propose a suspension not to exceed 60 days;

(iii) upon the accumulation of 25 to 29 points during a three-year period, the department may propose a suspension not to exceed 90 days; and

(iv) the department may seek license revocation, or concession agreement revocation, or both, based upon the accumulation of 30 or more points during a three-year period.

(d) Suspensions shall occur on consecutive days and when the licensee or concessionaire are normally open for business.

(e) For violations that are ongoing and not resolved by the payment of a monetary penalty or imposition of a suspension, the department may propose revocation of the license, or concession agreement, or both, in addition to any other penalty authorized by Montana law. Ongoing violations that are not resolved by the payment of a monetary penalty or imposition of a suspension include, but are not limited to:

(i) failing to submit a completed application to obtain department approval of a new owner who is subject to the requirements in 16-4-401, MCA;

(ii) failing to submit a completed application to obtain department approval of a premises alteration;

(iii) failing to submit a completed annual license renewal form, or pay the annual license renewal fee, or both; or

(iv) failing to electronically submit a completed alcoholic beverage tax return, or pay alcoholic beverage taxes, or both.

(f) Prior to the issuance of a notice of proposed department action, the department may enter into informal negotiations to resolve a violation.

(g) If the department issues a proposed department action after October 19, 2019, the department shall assign a point value in accordance with (b) and (c) to all admitted, settled, and adjudicated progressive penalty schedule violations during the three-year lookback prior to issuing the proposed department action.

(4) When a license has been revoked or lapsed, the department shall not accept an application from those owners vetted pursuant to 16-4-401, MCA, for one year from the date of revocation or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department's satisfaction that sufficient steps were taken to prevent future violations or to operate a going establishment.

(4) The failure of an employee to possess a valid responsible alcohol sales and service proof of training document constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date shall constitute a single violation; continued noncompliance shall constitute an

additional violation.

~~(5) A revoked or lapsed license affects a license quota area as follows:~~

~~(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license; or~~

~~(b) if the area is over quota, the revoked or lapsed license will cease to be available for issuance.~~

~~(6) A revoked or lapsed beer license issued within a city quota area before October 1997, if reinstated, will not allow any gaming or gambling activity on the premises.~~

~~(7) The failure of an employee to possess a valid alcohol server training certificate constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date shall constitute a single violation; continued noncompliance shall constitute an additional violation. Regardless of other violations within the three-year period, the civil penalties assessed for a violation of the Responsible Alcohol Sales and Service Act shall be \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense.~~

~~(8) A licensee shall receive a reprimand for the violation of selling to an underage person only if:~~

~~(a) it is the licensee's first offense of any kind under that license in the past three years;~~

~~(b) the person who made the sale possesses a valid proof of training document; and~~

~~(c) the licensee has not previously received a reprimand for sale to an underage person under that license.~~

(5) The department may reprimand a licensee, or concessionaire, or both.

(9) In the event a reprimand is issued:

(a) the incident shall not be considered to be a first an offense for purposes of the progressive point-based penalty schedule system unless the licensee or concessionaire commits the same any offense within one year of the date of the offense leading to the reprimand; and

(b) remains the same.

(6) The department may warn a licensee, or concessionaire, or both. The department may consider prior warnings as an aggravating circumstance.

~~(10) (7) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive point-based penalty schedule system.~~

~~(11) (8) Aggravating circumstances include, but are not limited to:~~

~~(a) no effort on the part of a licensee, or concessionaire, or both to prevent a violation from occurring;~~

~~(b) remains the same.~~

~~(c) a licensee's, or concessionaire's, or both involvement in the violation;~~

~~(d) and (e) remain the same.~~

~~(f) lack of cooperation by the licensee, or concessionaire, or both in an investigation; and~~

~~(g) a violation's significant negative effect on the health and welfare of the community in which the licensee, or concessionaire, or both operates; and~~

(h) a licensee's lack of participation or involvement in the business.

~~(42)~~ (9) Nothing in this rule prevents the department from revoking, suspending, or refusing the renewal of a license, or concession agreement, or both if revocation, suspension, or refusing renewal is expressly allowed in law or rule with reference to a prohibited act.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: 16-1-302, 16-3-301, 16-4-406, 16-4-418, 16-4-1004, 16-4-1008, 16-6-314, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.101 by removing the existing progressive penalty schedule in (3) and replacing it with a point-based penalty system based on industry feedback provided to the department that the existing system is too inflexible and does not take into consideration the public harm associated with the violation. The existing progressive penalty schedule subjects a licensee to monetary fees, suspensions, and ultimately revocation of the license when four violations occur within a three-year lookback period. Revocation of the license was administratively required, regardless of the types of violations the licensee committed.

To achieve a violation and penalty system that meets the department's regulatory duties for alcoholic beverage compliance while addressing industry concerns, the department proposes a point-based penalty system where licensees are assessed both points and monetary penalties for violations of the Montana Alcoholic Beverage Code or the department's related administrative rules. The proposed system assigns a point value to each violation type between one and five and a monetary penalty of \$300 for each point. The department also proposes implementing a tiered process where a licensee may be subject to suspension or revocation of the license depending on how many points the licensee has accumulated in the three-year lookback period. The three-year lookback period is in existing rule and the department believes is necessary to maintain in this proposed point-based penalty system.

In the point-based penalty system, the department proposes that violations that pose the most public harm are assessed five points each. Examples include selling alcoholic beverages to an underage person, selling alcoholic beverages to an intoxicated person, or denying department access to the premises or records. Violations that pose the least public harm are assessed one point each. Examples include failing to submit catering reports or failing to post the alcoholic beverage license or age placards in the licensee's premises.

The department's table of proposed violations in (3)(b) is not an exhaustive list but lists more violation types compared to the existing progressive penalty schedule. The department believes the expanded list of violations is necessary to provide licensees with a better understanding of point accumulation and monetary penalties that will be assessed for the various types of violations that could occur. This larger list is in response to industry feedback and, the department contends, will create a more transparent system for licensees.

In addition to changing from a progressive penalty schedule to a point-based penalty system, the department proposes the following amendments:

The addition of the term "concessionaire" in many areas of the rule, where applicable, due to the passage of House Bill 727 during the 2019 Legislative Session. House Bill 727 also amended 16-4-406, MCA, which gives the department authority to also take administrative action against a concessionaire for violations of the Montana Alcoholic Beverage Code or Administrative Rules of Montana.

Section (3) has been revised to reference the new proposed point-based penalty system; otherwise, the three-year lookback process that existed in the progressive penalty schedule will continue to be used. This is necessary for calculating how many points a licensee has accumulated to determine if suspension or revocation is necessary as a next step in the administrative action process.

Subsection (3)(a) reaffirms the department's use of mitigating and aggravating circumstances for determining penalties greater or less than prescribed in the chart as authorized by 16-4-406, MCA. This is language that carries over from existing (3), and has been amended to reference the new point-based penalty system.

Subsection (3)(b) includes the list of violations types with their proposed point value and monetary penalty. This is not an exhaustive list of violation types but includes those that the department has encountered. Within this list the department is proposing to include:

- Violation types for failing to notify the department or local law enforcement prior to implementing an access control system and failing to notify the department or local law enforcement when an access control system has been removed were included because of the passage of Senate Bill 119 during the 2019 Legislative Session.

- The violation "Failed to Ensure Licensee, Employee, or Employee's Immediate Supervisor Possess Valid Responsible Sales and Service Proof of Training Document" has been included within the table. This was previously located in (7) but is easier to locate when included with other violations in the table. Section 16-4-1008, MCA prescribes the penalties for this violation as \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense in a three-year period. Because the statute does not take into consideration additional offenses, the department is proposing the monetary penalty remains at \$350 for each offense in a three-year period after the third offense.

- Violations for "Failed to Seek Prior Department Approval of a New Owner Pursuant to 16-4-401, MCA," "Allowed Unapproved Individuals to Participate in Profits and/or Losses," "Failed to Submit or Timely Submit an Abbreviated Application for License Modification Pursuant to ARM 42.12.118," "Failed to Comply with Approved Loan Standards," and "Failed to Seek Department Approval for a Noninstitutional Lender" have been added to the penalty schedule. This is necessary to distinguish between varying levels of public harm. These types of violations all have an acceptable resolution in place. In other words, the appropriate application and paperwork to fix the violation has been submitted to the department. When an acceptable resolution is not in place, the department will seek revocation of the license for these violations as addressed in (3)(e)(i).

Subsection (3)(c) provides the tiered process by which suspension or revocation may be sought based on the number of points the license was assessed in the three-year lookback period. Clarification in (3)(d) is provided that if a

suspension is assessed, those days shall be consecutive and on days the business is normally open. Conducting the suspension on days the business is normally closed has no impact on the licensee and will not be allowed.

Subsection (3)(e) provides that where the department may seek revocation of the license if the violation is ongoing and not cured by the payment of a monetary penalty or imposition of a suspension. The instances provided are situations where the licensee has failed to comply with the laws and rules of the state and no cure is in place to resolve it. The non-exhaustive list provides examples of the instances where the department may initially seek revocation of the license because paying a monetary fee or agreeing to a suspension does not fix the issue of the violation, so proposing revocation of the license is necessary.

Subsection (3)(f) provides the allowance for the department to enter informal negotiations with a licensee to resolve one or more violations prior to issuance of a proposed department action. The department believes this course towards alternative dispute resolution is necessary and beneficial to the public as it will allow the licensee and department the ability to determine a final decision on a penalty, if agreed on between both parties, without the time, resources, and expenses that often accompany formal litigation.

Because the department is proposing to convert from the progressive penalty schedule to a point-based penalty system, the department is proposing in (3)(g) to assign violations that occurred prior to the effective date of this rulemaking the point values that are established in the point-based penalty system. This is necessary to maintain prior licensee violations issued under the progressive penalty schedule, and is the only feasible way for determining a licensee's total points when using a three-year lookback period.

Section (4) includes language pertaining to responsible sales and service training. This language was previously located in (7). Reorganizing the rule is necessary to enhance the readability of the rule.

Sections (4), (5), and (6) have been stricken and the department proposes to relocate that content into ARM 42.12.222. The content of those sections fits better with the content in ARM 42.12.222 as that rule describes the process for when a license has been suspended, lapsed, or revoked.

Section (5) is amended to affirm the department's authority to issue reprimands pursuant to 16-4-406, MCA, and the text is now broadened to be applicable to all potential violations. This amendment is necessary to provide better guidance to the industry regarding the issuance of reprimands for violations of the Montana Alcoholic Beverage Code. Although the department is proposing to allow any reprimand to be revived regardless if the next offense is the same. This is necessary to ensure future compliance with the Montana Alcoholic Beverage Code.

Section (6) provides the allowance for the department to issue a warning rather than pursuing a reprimand or civil penalty. This allows a licensee to take corrective actions to avoid further disciplinary action.

Section (7) is in existing rule and the department believes it is necessary to maintain this language in the point-based penalty system as the department is statutorily required to consider aggravating circumstances. This section has been revised to remove the reference to the progressive penalty schedule and replace it with a reference to the point-based penalty system.

Section (8) is amended to include a licensee's lack of participation or involvement in the business as an aggravating circumstance because the licensee is ultimately responsible for ensuring the business operations follow all alcoholic beverage laws and regulations. The department believes this is necessary to place the public on notice that the department considers this conduct as an aggravating circumstance.

Lastly, the department has added 16-4-418, MCA, as an implementing citation for this rule, which is necessary for the rule to comply with 2-4-305(3), MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., October 4, 2019.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 22, 2019.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State August 27, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	AMENDED NOTICE OF PROPOSED
RULE I pertaining to performance	)	ADOPTION
standards for devices that provide)	
accessible voting technology for)	
electors with hearing, vision, speech,)	
or ambulatory impairments)	

TO: All Concerned Persons

1. On July 26, 2019, the Secretary of State published MAR Notice No. 44-2-234 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1045 of the 2019 Montana Administrative Register, Issue Number 14.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Austin James, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-6197; fax (406) 444-3976, or e-mail Austin.James@mt.gov.

3. The legislature's adoption of SB 291 directed the Secretary of State to adopt rules setting a benchmark performance standard based on commonly accepted industry standards for readily available technology that must be met in tests by each voting system.

In doing so, the proposed matter by the Secretary of State adopts the Voluntary Voting System Guidelines created by the U.S. Election Assistance Commission.

Due to the proposed adoption's incorporation by reference, the Secretary of State is obligated to satisfy certain requirements. Therefore, the purpose of this amended notice is to extend the written comment period and provide the material required. NEW RULE I remains as proposed in the original proposal.

The U.S. Election Assistance Commission (EAC) was created for the purpose of helping states implement the HAVA act. The EAC is an independent, bipartisan commission charged with developing guidance to meet HAVA requirements, and adopting voluntary voting system guidelines (VVSG).

VVSG are a set of specifications and requirements against which voting systems can be tested to determine if the systems meet required standards. Some factors examined under these tests include basic functionality, accessibility, and

security capabilities. HAVA mandates that EAC develop and maintain these requirements.

For the purposes of SB 291, the Office of the Secretary of State adopts version 1 and subsequent versions of the EAC's VVSG.

4. The material adopted by reference is cited as VVSG 1.0. The VVSG 1.0 document is sourced at www.eac.gov. The material may be found at: <https://www.eac.gov/documents/2017/03/15/vvsg-10-vol-1-voluntary-voting-system-guidelines-vvsg/>.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption in writing to: Austin James, Office of the Secretary of State, P.O. Box 202801, Helena, MT, 59620; telephone (406) 444-6197; fax (406) 444-3976, or e-mail Austin.James@mt.gov, and must be received no later than 5:00 p.m., September 26, 2019.

/s/ AUSTIN JAMES

Austin James
Rule Reviewer

/s/ DANA CORSON

Dana Corson
Director of Elections and Voter Services
Office of Secretary of State

Certified to the Secretary of State August 27, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.14.310 and 44.14.312 and) PROPOSED AMENDMENT AND
the repeal of ARM 44.14.301,) REPEAL
44.14.302, 44.14.304 through)
44.14.309, and 44.14.311 pertaining)
to records and information)
management fees)

TO: All Concerned Persons

1. On September 26, 2019, at 10:00 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 amendment and repeal of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m., September 19, 2019, to advise us of the nature of the accommodation that you need. Please contact Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5476; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail jdefilippis@mt.gov.

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

44.14.310 FEES FOR RECORDS CENTER SERVICES (1) The following fees shall be charged for services provided for records housed in the state records center:

(a) <u>1/2 cubic foot storage, per month</u>	<u>\$1.17</u>
(b) <u>(a) one cubic foot carton storage, (per cubic foot per month)</u>	<u>\$2.22</u> .33
<u>(b) receiving and entering - carton (per cubic foot)</u>	<u>\$1.00</u>
<u>(c) regular retrieval/re-file - carton, each (per cubic foot)</u>	<u>\$1.50</u> 1.20
<u>(d) emergency retrieval, each</u>	<u>25.00</u>
<u>(e) large retrievals, delivery, interfiling, per hour</u>	<u>25.00</u>
<u>(f) records disposal, per hour</u>	<u>25.00</u>
<u>(g) shredding confidential records, per hour</u>	<u>25.00</u>
<u>(h) tape storage, per inch</u>	<u>.55</u>
<u>(i) permanent withdrawal (remove or dispose)</u>	<u>25.00 per hour</u>
<u>(j) database set-up</u>	<u>25.00 per hour</u>
<u>(k) unsuccessful search</u>	<u>1.20</u>
<u>(l) data research</u>	<u>25.00 per hour</u>
<u>(m) record center, enter new box into database (each)</u>	<u>.40</u>

(d) regular retrieval from/re-file to carton (per file)	\$1.50
(e) rush retrieval - carton (per cubic foot)	\$6.00
(f) rush retrieval - file from carton (per file)	\$8.00
(g) regular interfile - carton (each)	\$5.00
(h) next day delivery (per visit plus handling charge)	\$15.00
(i) regular pickup (per visit plus handling charge)	\$15.00
(j) half day delivery (per visit plus handling charge)	\$40.00
(k) rush pickup/delivery – business day (per visit plus handling charge)	\$75.00
(l) rush delivery – weekends/holidays/after hours (per visit plus handling charge)	\$200.00
(m) handling charge (per cubic foot)	\$1.50
(n) miscellaneous services - labor (per hour)	\$45.00
(o) re-boxing (per labor plus new carton)	\$6.55

AUTH: 2-6-1101, 2-15-405, MCA

IMP: 2-6-1101, 2-6-1114, MCA

44.14.312 FEES FOR IMAGING SERVICES (1) The following fees shall be charged for imaging services:

(a) indexing/document preparation, per hour	\$25.00
(b) scanning (per image)	.15
(a) image on demand – digital images scanned (in excess of the first 50 images) (per image)	\$.10
(b) image on demand – imaging minimum (includes first 50 images)	\$10
(c) image on demand – hourly labor (per hour)	\$45

AUTH: 2-6-1101, 2-15-405, MCA

IMP: 2-6-1101, MCA

4. The rules proposed to be repealed are:

44.14.301 FEES FOR 16MM MICROFILM SERVICES

AUTH: 2-15-405, MCA

IMP: 2-6-1101, 2-6-1114, MCA

44.14.302 FEES FOR 35MM MICROFILM SERVICES

AUTH: 2-15-405, MCA

IMP: 2-6-1101, 2-6-1114, MCA

44.14.304 FEES FOR FILM PROCESSING

AUTH: 2-15-405, MCA

IMP: 2-6-1101, 2-6-1114, MCA

44.14.305 FEES FOR FILM INSPECTING

AUTH: 2-15-405, MCA
IMP: 2-6-1101, 2-6-1114, MCA

44.14.306 FEES FOR FILM DUPLICATION

AUTH: 2-15-405, MCA
IMP: 2-6-1101, 2-6-1114, MCA

44.14.307 FEES FOR JACKET LOADING/TITLING

AUTH: 2-15-405, MCA
IMP: 2-6-1101, 2-6-1114, MCA

44.14.308 MISCELLANEOUS FEES

AUTH: 2-15-405, MCA
IMP: 2-6-1114, MCA

44.14.309 MISCELLANEOUS SUPPLIES

AUTH: 2-15-405, MCA
IMP: 2-6-1101, 2-6-1114, MCA

44.14.311 FEES FOR RECORDS CENTER BOXES

AUTH: 2-15-405, MCA
IMP: 2-6-1114, MCA

5. STATEMENT OF REASONABLE NECESSITY: These proposed rule changes reflect the transfer of state records to a new storage facility that is more secure and safe and has environmental controls to prolong the life of paper records. The proposed changes reflect a net cost decrease for state agencies. For example, the storage fees are decreased by 1/3 of the cost agencies were paying as of July 1, 2019 (from 33 cents to 22 cents). Currently, 17 state agencies and 8 local government entities use the state records center and will benefit from this price reduction. Filming storage has been eliminated from the state records center due to the high cost of microfilm and maintaining equipment, and because filming is no longer an industry standard but has been replaced by scanning per the National Archives and Records Administration and the National Association of Government Archives and Records Administrator. Scanning has been eliminated since the Department of Administration Print and Mail Services Bureau has obtained high-speed scanners and is now working with agencies. The authorizing and implementing statutes also have been updated to reflect the current law (previously cited statutes were repealed).

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing Jdefilippis@mt.gov, and must be received no later than 5:00 p.m., October 4, 2019.

7. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. 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, 1301 E. 6th Ave, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ AISLINN BROWN
Aislinn Brown
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 27th day of August, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 4.10.701, 4.10.709, 4.10.807,	)	REPEAL
4.10.1009, 4.10.1803, 4.10.1804, and)	
4.10.1806 and repeal of ARM)	
4.10.702 pertaining to pesticide)	
registrations, worker protection)	
standards, containers and disposal)	
program)	

TO: All Concerned Persons

1. On July 5, 2019, the Department of Agriculture published MAR Notice No. 4-19-261 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 905 of the 2019 Montana Administrative Register, Issue Number 13.

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

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

COMMENT #1: The commenter requested an outlined process for "other restrictions" imposed by the department as referenced in ARM 4.10.701(2) and "additional requirements" referenced in ARM 4.10.701(6)(a).

RESPONSE #1: The "other restrictions" and "additional requirements" referenced are intended to regulate any future pesticides. Regulations will be created through regular Administrative Rules of Montana processes. Examples of currently regulated pesticides that are considered "other restrictions" include those referenced under Aquatic Herbicide Rules in ARM 4.10.301 through 4.10.318. Registrants and the public will receive notice through the rulemaking process for the regulation of future "other restrictions" and "additional requirements" proposed by the department.

COMMENT #2: The commenter requested minimum requirements for pesticide container collection and recycling sites be listed clearly and consistently as referenced in ARM 4.10.1804(6).

RESPONSE #2: The department's document titled "Pesticide Container Recycling Program Minimum Requirements" lists pesticide container collection and recycling site guidelines. Interested persons may view guidelines on the department's website at: <https://agr.mt.gov/Pesticide-Waste-Disposal>.

COMMENT #3: The commenter requested the department establish requirements rather than guidelines for individuals to participate in the container recycling program as referenced in ARM 4.10.1804(6)(a).

RESPONSE #3: Requirements for the pesticide container rinsing, handling, and disposal, including recycling, are found on the product label as well as in ARM 4.10.801 through 4.10.808.

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State August 27, 2019.

BEFORE THE BOARD OF AERONAUTICS AND
THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 18.13.404 and 18.13.406 and	)	REPEAL
the repeal of ARM 18.13.501,)	
18.13.502, 18.13.503, 18.13.504, and)	
18.13.505 pertaining to Board of)	
Aeronautics Loan and Grant Program)	
and Pavement Preservation Grants)	

TO: All Concerned Persons

1. On July 5, 2019, the Board of Aeronautics and the Department of Transportation published MAR Notice No. 18-175 pertaining to the proposed amendment and repeal of the above-stated rules at page 930 of the 2019 Montana Administrative Register, Issue Number 13.

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

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

/s/ Tricia McKenna
Tricia McKenna
Chair
Board of Aeronautics

Certified to the Secretary of State August 27, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.97.102, 37.97.132,)
37.97.140, and 37.97.903 pertaining)
to youth care facilities)

TO: All Concerned Persons

1. On July 26, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-885 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1034 of the 2019 Montana Administrative Register, Issue Number 14.

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

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

COMMENT #1: One comment was received asking if the "lead clinical staff" (LCS) must be employed by the facility.

RESPONSE #1: The LCS must be employed by the youth care facility licensed as a therapeutic youth group home. This is not a new requirement.

COMMENT #2: A commenter asked if, in the absence of an LCS or mental health clinician, there are minimal qualifications for staff persons employed by a facility.

RESPONSE #2: Minimum qualifications for all staff are listed in ARM 37.97.132.

COMMENT #3: A commenter asked if accreditation exists for the facilities.

RESPONSE #3: The department believes the commenter is asking if licensure rules allow for a license to be issued based on a facility's program accreditation. The youth care facility statute and rules do not allow for licensure to be based on accreditation.

COMMENT #4: A commenter agreed that the background check requirements are appropriate and important; however the commenter does not agree that a person convicted of a misdemeanor for partner and family member assault may not be employed or a person that is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense should not provide care pending the outcome of the criminal proceeding.

RESPONSE #4: The requirements in question are not new requirements. The comment is beyond the scope of these proposed rule changes.

COMMENT #5: The department received two comments regarding the lack of direction provided by the department on the process of completing the fingerprint background checks. One commenter requested information regarding all expectations, policies, procedures, and cost impact so that they may provide input to the rulemaking process.

RESPONSE #5: The department agrees that the proposed rule notice did not provide direction on the process of implementing fingerprint background checks. The department has been collaborating with the Department of Justice on developing tools that will provide clear guidance on conducting fingerprint background checks. This information will be available prior to the implementation of this rule. The department provided a fiscal impact statement within the MAR notice to address increased cost to providers. The department disagrees that this information must be provided in order to provide input into the rulemaking process.

COMMENT #6: A commenter estimated the fingerprint background check process will increase the time of hire by 45 to 90 days.

RESPONSE #6: The department disagrees with the commenter. The department is working collaboratively with the Department of Justice to implement a process to decrease the time required to process the fingerprint background checks.

COMMENT #7: A commenter would like the department to amend the rule to allow individuals to enter employment pending the fingerprint background checks. The commenter believes this will ensure they can continue to provide effective care to the youth in Montana. The commenter believes providing a reasonable timeline to complete these checks will help mitigate the fiscal and quality impact on services.

RESPONSE #7: Current rule requires criminal background checks prior to staff working in the youth care facility. The department disagrees with the comment and believes the safety of youth could be compromised by allowing staff to work in the youth care facility prior to receiving background check results.

COMMENT #8: A commenter requested clarification of how continued ARM 37.97.140 requirements will be coordinated with these new requirements so that they may provide meaningful input into the rulemaking process.

RESPONSE #8: The State of Montana background check will be included within the FBI fingerprint background check which is \$30. The cost of out-of-state background checks varies from one state to another and will continue to be required for anyone who has lived out of state within the last five years, unless the state an applicant lived in participates in the national fingerprint file program. In those cases, there will be no additional costs for out-of-state background checks. The department will be

providing specific guidance prior to the adoption date of the rule. If there is any increased cost, the provider may opt to pass it along to the applicant.

COMMENT #9: The department received four comments concerning the cost of implementing fingerprint background checks. One commenter requested the department provide a fiscal impact on providers, including cost associated with increased fees, staff vacancies, and lost revenue.

RESPONSE #9: Please see response to #8.

COMMENT #10: A commenter requested information on efforts the department will take to mitigate the increased cost to providers including any rate adjustments.

RESPONSE #10: Please see responses to #5 and #8.

COMMENT #11: A commenter requested clarification regarding whether current employees will be required to have fingerprint background checks or be grandfathered in.

RESPONSE #11: Proposed amendments to ARM 37.97.140(1) states fingerprint background checks must be conducted on all staff hired after October 1, 2019.

COMMENT #12: A commenter requested clarification if current or future employees providing Care Management to Therapeutic Foster Care will be required to be fingerprinted.

RESPONSE #12: These proposed rule amendments apply to youth care facilities only. The comment goes beyond the scope of the proposed rule changes.

COMMENT #13: A commenter requested language be added to rule that allows for either a name based state or tribal criminal history check or an FBI fingerprint check prior to working in a youth care facility allowing an additional 90 days after hire to complete the background check that was not obtained prior to employee date of hire.

RESPONSE #13: The department disagrees; the commenter's proposed language would require an additional criminal history background to be completed for staff: one check completed at the time of hire, and one completed within 90 days of hire. This would place an additional burden on providers and increase costs. Allowing individuals to work in facilities up to 90 days without receiving a complete background check increases the risk of harm to youth.

Please see response to #8.

COMMENT #14: A commenter had several questions regarding the process of completing the fingerprint background checks.

RESPONSE #14: Please see response #5.

4. These rule amendments are effective October 1, 2019.

/s/ Flint Murfitt

Flint Murfitt
Rule Reviewer

/s/ Erica Johnston for

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 27, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULE I and the amendment of ARM	)	AMENDMENT
44.15.101, 44.15.103, 44.15.105,)	
44.15.106, 44.15.108, and 44.15.109)	
pertaining to notaries public)	

TO: All Concerned Persons

1. On July 5, 2019, the Secretary of State published MAR Notice No. 44-2-232 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 948 of the 2019 Montana Administrative Register, Issue Number 13.

2. The Secretary of State has adopted NEW RULE I (44.15.110) as proposed.

3. The Secretary of State has amended ARM 44.15.101, 44.15.103, 44.15.106, 44.15.108, and 44.15.109 as proposed.

4. The Secretary of State has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.15.105 REQUEST FOR CERTIFICATE OF AUTHORITY (1) A person requesting certificate of authority of a record for a foreign country shall submit a \$10 nonrefundable fee for each certification, together with a request form as prescribed by the Secretary of State.

5. The Secretary of State has thoroughly considered the comments and testimony received. A summary of the comments received and the Secretary's responses follow:

COMMENT #1: A commenter said the proposed wording in ARM 44.15.105 is unclear.

RESPONSE #1: The Secretary agrees and amends the language to clarify that a request for a certificate of authority must be accompanied by the fee and a request form as prescribed by the Secretary.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 27th day of August, 2019.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 44.6.105, 44.6.109, 44.6.113,	)	REPEAL
and 44.6.202 and the repeal of ARM)	
44.6.108 pertaining to filing UCC)	
documents)	

TO: All Concerned Persons

1. On July 26, 2019, the Secretary of State published MAR Notice No. 44-2-233 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1040 of the 2019 Montana Administrative Register, Issue Number 14.

2. The Secretary of State has amended ARM 44.6.105, 44.6.113, and 44.6.202 as proposed.

3. Due to a numbering error, the following rule has been amended from the original proposal as follows:

44.6.109 FORMAT REQUIREMENTS FOR FILING AN EFFECTIVE
FINANCING STATEMENT LIEN UNDER THE FEDERAL FOOD SECURITY ACT
OF 1985 (1) and (2) remain as proposed.

(5) remains as proposed but is renumbered (3).

4. The Secretary of State has repealed ARM 44.6.108 as proposed.

5. No comments or testimony were received.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 27th day of August, 2019.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2019. This table includes notices in which those rules adopted during the period March 15, 2019, through August 23, 2019, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2019, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2019 Montana Administrative Registers.

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COREY STAPLETON
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620