MONTANA ADMINISTRATIVE REGISTER

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE MONTANA BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.22.2705 and 8.22.3001 pertaining to the Montana Board of Horse Racing	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 21, 2020, the Board of Horse Racing proposes to amend the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., April 8, 2020, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov.

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

8.22.2705 PURSE DISBURSEMENT FORMULA (1) Prior to the beginning of the live racing season, all funds collected under 23-4-202 , MCA, to the board's state special revenue account, including percentages collected on live handle, winter simulcast handle, and summer simulcast handle, shall be distributed by the board to each live race meet licensed by the board. ~~All live handle percentages and on-site simulcast funds shall be held separate for the benefit of each live track licensee until distribution. Nonsite simulcast funds shall be distributed by percentages based on amount of handle by the individual track licensee during the prior live race season.~~ The licensees must use all funds distributed by the board for track purses except for the percentage amount set by the board for track operations or other purposes approved by the board.

(2) through (6) remain the same.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-302, 23-4-304, MCA

REASON: The Board of Horse Racing currently has limited simulcast sites at this time. The proposed language change of this rule gives the board flexibility in deciding where the funds need to be disbursed.

8.22.3001 GENERAL REQUIREMENTS (1) through (16) remain the same.

(17) No horse shall be allowed to ~~enter~~ start in any race unless it has been tattooed or microchipped and fully identified; however, Arabians may be identified by either tattoo or freeze brand.

(18) through (65) remain the same.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The Association of Racing Commissioners International (ARCI) passed a model rule regarding digital tattoos. The model rule states, effective January 1, 2020, the racing secretary shall ensure that the registration certificates for all thoroughbred horses that were foaled in 2017 or thereafter have a digital tattoo prior to entry in a race.

4. Concerned persons may submit their data, views, or arguments in written form or a request for opportunity to submit data, views, or arguments in oral form to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 10, 2020.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., April 10, 2020.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 150 persons based on 1,500 licensees.

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 may make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to

docadministrativerules@mt.gov, or by completing a request form at any rules hearing held by the department.

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

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

MONTANA BOARD OF HORSE RACING
JOHN HAYES
CHAIRPERSON

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State March 3, 2020.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3727, 8.94.3729, and 8.94.3730, and the repeal of ARM 8.94.3726 pertaining to the administration of the CDBG program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 2, 2020, at 2:00 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, or by conference call 1-877-273-4202, conference room 7865396, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., March 31, 2020, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE ~~2015-2016~~ CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the following as rules for the administration of the CDBG and NSP programs:

~~(a) the Montana Community Development Block Grant Program FFY 2015-2016 Application Guidelines for Community Planning Grants;~~

~~(b) the FFY 2015-2016 Application Guidelines for Noncompetitive Housing Grants;~~

~~(c) the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012;~~

(a) ~~(d)~~ the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; and

(b) ~~(e)~~ the Montana Community Development Block Grant Program and Neighborhood Stabilization Program FFY 2015-2016 Grant Administration Manual~~;~~

~~(f) the Montana Community Development Block Grant Program FFY 2015-2016 Application Guidelines for Public Facilities Projects; and~~

~~(g) the FFY 2015-2016 Application Guidelines for Housing and Neighborhood Renewal Projects~~.

(2) The rules incorporated by reference in (1) relate to the following:
(a) remains the same.
(b) requirements for CDBG Economic Development applicants;
(c) procedures for evaluating CDBG Economic Development applications;
(d) through (3) remain the same.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to remove outdated material for the administration of the CDBG and NSP grant programs.

8.94.3729 INCORPORATION BY REFERENCE OF RULES FOR THE ~~ADMINISTRATION OF THE~~ COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – COMMUNITY AND PUBLIC FACILITIES PROJECTS APPLICATION AND GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the ~~2018-2019 Application and Administrative Guidelines for Public Facilities Projects Grants~~ 2020 Community and Public Facilities Application and Guidelines as rules for the administration of the ~~2018-2019~~ Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for ~~the~~ applying and awarding~~, administration, monitoring, and close-out of matching planning~~ grants to cities, towns, counties, and consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community Development Division's web site at ~~http://comdev.mt.gov/Programs/CDBG/Facilities/Overview~~ https://comdev.mt.gov/Programs/CDBG/Facilities/ApplicationForms.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the 2020 Community and Public Facilities Application and Guidelines.

8.94.3730 INCORPORATION BY REFERENCE OF RULES FOR THE ~~ADMINISTRATION OF THE~~ COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – AFFORDABLE HOUSING DEVELOPMENT AND REHABILITATION PROJECTS APPLICATION AND GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the ~~2018-2019 Application and Administrative Guidelines for Affordable Housing Development Projects~~ 2020 Affordable Housing Development and Rehabilitation Application and Guidelines as rules for the administration of the ~~2018-2019~~ Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for ~~the~~ applying and awarding~~, administration, monitoring, and close-out of matching project~~ grants to cities, towns, counties, and consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community Development Division's web site at ~~http://comdev.mt.gov/Programs/CDBG/Housing/Overview~~ https://comdev.mt.gov/Programs/CDBG/Housing/ApplicationForms.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the 2020 Affordable Housing Development and Rehabilitation Application and Guidelines.

4. The department proposes to repeal the following rule:

8.94.3726 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2010-2011 CDBG

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: The Department of Commerce has determined there is reasonable necessity to repeal ARM 8.94.3726 because all projects initiated hereunder have been closed out. Therefore, this rule is no longer necessary and has no effect.

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 the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 10, 2020.

6. The Office of Legal Affairs, Department of Commerce, 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 listed in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State March 3, 2020.

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

In the matter of the amendment of ARM 24.225.301 definitions, 24.225.514 patient medical records and recordkeeping, 24.225.550 unprofessional conduct, 24.225.709 continuing education, 24.225.904 certified euthanasia technicians – license requirements, 24.225.907 board-approved training program criteria, 24.225.910 certified euthanasia technician examinations – written and practical, 24.225.920 application for certified euthanasia agencies, 24.225.921 inspections – initial and annual, 24.225.925 continuing education – certified euthanasia technicians, 24.225.950 unprofessional conduct; the adoption of New Rule I certified euthanasia agency operation standards, New Rule II change of attorney-in-fact, New Rule III closure of a certified euthanasia agency or loss of DEA permit; and the repeal of 24.225.901 definitions, 24.225.926 termination of certified euthanasia technician employment and retirement of certificate	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On April 7, 2020, at 1:00 p.m., a public hearing will be held in the Small 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 Veterinary Medicine no later than 5:00 p.m., on March 31, 2020, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-

2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdvet@mt.gov (board's e-mail).

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

24.225.301 DEFINITIONS (1) "Animal" means any member of the animal kingdom other than humans, whether living or dead.

(2) "Approved euthanasia and restraint drugs" means those substances as defined in 37-18-602, MCA, and ARM 24.225.930 which are approved by the board for euthanizing animals under subchapter 9 of these rules.

(3) "Attorney-in-fact" means the individual given power of attorney by a certified euthanasia agency as designated on the agency's DEA permit application.

(4) "Drug Enforcement Administration" or "DEA" means the United States Department of Justice agency responsible for enforcing narcotics laws.

~~(1)~~ (5) "Emergency" ~~shall mean~~ means any instance in which an animal has a condition that threatens its life and immediate treatment is required to sustain life.

(6) "Encounter" means an in-person visit, telephone conversation, or any telehealth interactions between the licensee and a client.

~~(2)~~ (7) "For remuneration or hire" ~~shall mean~~ means direct or indirect payment for the services rendered. This includes not only monetary payments but also payment by giving or receiving of material goods or services.

~~(3)~~ (8) "Occasional case" means the practice of veterinary medicine in this state no more than three days in any calendar year by a veterinarian actively licensed and in good standing in another state or jurisdiction who is supervised by a veterinarian licensed in this state ~~practices veterinary medicine in this state no more than three days in any calendar year who is supervised by a veterinarian licensed in this state~~. As per 37-18-104, MCA, veterinarians meeting this definition are exempt from licensing requirements.

(9) "Patient" means any animal or group of animals receiving veterinary care from a licensee.

~~(4)~~ (10) "Support personnel" ~~shall mean~~ means any person employed by a licensed veterinarian who assists a licensed veterinarian in the practice of veterinary medicine. The term does not include embryo transfer technicians.

~~(5)~~ (11) "Veterinarian/client/patient relationship" or "VCPR" exists when ~~all of the following conditions have been met~~:

(a) ~~the veterinarian~~ both the veterinarian and client acknowledge the veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal(s) and the need for medical treatment, and the client has agreed to ~~follow the veterinarian's instructions~~ allow the veterinarian to assume that responsibility;

(b) the veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by:

(i) virtue of ~~an~~ a physical examination of the animal(s); or

(ii) remains the same.

(c) the veterinarian is available for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen or the veterinarian has made reasonable arrangements for follow-up care.

(6) remains the same but is renumbered (12).

AUTH: 37-18-202, 37-18-603, MCA
IMP: 37-18-102, 37-18-104, 37-18-603, MCA

REASON: The board determined it is reasonably necessary to amend this rule to consolidate all definitions into a single location. Definitions located in ARM 24.219.901 are being moved to this rule at (1), (2), and (4) for simplicity and better organization, and to eliminate duplicative definitions.

Additionally, the board is defining "attorney-in-fact" at (3) as it applies to the application process and operating requirements for a certified euthanasia agency. This is not a commonly understood term by applicants and licensees and the definition will address repeated questions to staff.

The board is defining "encounter" at (6) and "patient" at (9) to align with the proposed changes to recordkeeping requirements in ARM 24.225.514.

The board is updating the definition of VCPR in (11) to align more closely with national standards. It is also reasonably necessary to add the term "physical" to (11)(b)(i) to address questions from the public and licensees regarding the specific type of examination required to initiate a VCPR.

Additional amendments provide consistency, simplicity, better organization, and ease of use for the reader. The board is clarifying the definitions at (8) and (10) to address confusion from the public and licensees and numerous questions to staff.

The board is updating the authority and implementation citations to accurately reflect all statutes implemented through the rule and provide the complete and current sources of the board's rulemaking authority.

24.225.514 PATIENT MEDICAL RECORDS AND RECORDKEEPING STANDARDS ~~(1) The required standards of practice of veterinary medical record-keeping are as follows:~~

~~(a)~~ (1) Patient medical records~~, either written or electronic,~~ shall be maintained for every animal accepted and treated by a veterinarian as:

(a) an individual patient; ~~by a veterinarian,~~ and ~~for~~

(b) every animal group (e.g., herd, litter, flock) ~~treated by a veterinarian~~. ~~These records shall be maintained and stored in an orderly manner lending itself to retrieval.~~

(2) Patient medical records:

(a) must be maintained for a minimum of three years after the last visit by the patient;

(b) are the property of the practice and the practice owner where the records were prepared;

(c) must be legibly written;

(d) must be maintained and stored in an orderly, legible manner for easy retrieval by the veterinarian;

(e) must be safeguarded against loss, tampering, or use by unauthorized persons, readily available; and

(f) must contain sufficient information to permit any authorized veterinarian to proceed with the care and treatment of the patient by reading the medical record.

(3) In no case do the requirements in this rule eliminate the requirement to maintain drug records as specified by state and federal law and other rules in this chapter.

~~(b)~~ (4) ~~When appropriate, licensees~~ Veterinarians may substitute the words "herd," "flock," or other collective term in place of the word "patient" when appropriate ~~of this section~~.

(5) ~~Records to be maintained on these animals~~ Patient medical records may be kept in a daily log or in the billing records, provided the records meet the requirements of this rule ~~that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and board rules~~.

~~(c)~~ (6) ~~The following data shall be clearly noted~~ Patient medical records must include, but are not limited to the following:

(a) patient identification, including description, sex (if readily determinable), breed, and age;

(b) presenting complaint and relevant patient history;

(c) client identification, including name, address, and phone number;

(d) a record of every encounter and consultation regarding the patient;

~~(i) name, address, and phone number of owner or agent;~~

~~(ii) description, sex (if readily determinable), breed, and age of or description of group;~~

~~(iii) date animal or group was seen, admitted, and discharged;~~

~~(iv)~~ (e) results of any part of a physical examination, including but not limited to weight, temperature, pulse, and respiration, and condition~~, and diagnoses suspected~~;

(f) all written records and notes, radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory reports;

~~(v) all medication, treatment, prescriptions, or prophylaxis given, including amount and frequency for both inpatient and outpatient care; and~~

(g) treatments or intended treatment plans, or both, including:

(i) medications; and

(ii) amounts of medications administered, dispensed, or prescribed including amount and frequency for both inpatient and outpatient care;

~~(vi)~~ (h) diagnosis or tentative diagnosis, including diagnostic and laboratory tests or techniques utilized, and the results of each;

(i) when pertinent, a prognosis; and

(j) any authorizations, details of conversations, releases, waivers, discharge instructions, or other related documents.

~~(d)~~ (7) Veterinarians ~~who practice with other veterinarians~~ shall indicate by recognizable means on each patient's ~~or animal group's~~ medical record any treatment the licensee has performed, or which the ~~licensee~~ veterinarian has directed support personnel to perform.

~~(e)~~ (8) All radiographs referenced in (6) shall be permanently labeled to identify:

(a) the veterinarian ~~or premises,~~ or business name of the practice;

(b) the patient~~,~~;

(c) the owner~~,~~;

(d) ~~the~~ date the radiograph was taken~~,~~; and

(e) anatomical orientation of the radiograph.

~~(f) Medical records of both individual and group patients shall be maintained for a minimum of three years after the last visit.~~

~~(g) Consent forms, if used, should be part of the medical record.~~

~~(h) Veterinary medical records and images are the property of the practice and the practice owner.~~

(9) Information within ~~veterinary~~ patient medical records is privileged and confidential, and may not be released to anyone ~~other than the~~ except the following:

(a) owner of the patient~~,~~;

(b) persons authorized by the owner~~, or~~;

(c) other veterinarians involved with the treatment and care of the patient; or

(d) as required by (12).

(10) Information within patient medical records must be released upon consent of the owner or authorized person(s). Consent may be in written, electronic, or other form of waiver, and must be documented in the patient's medical ~~file~~ record. Confidentiality is waived under the conditions of ~~(j)~~ (12).

~~(i)~~ (11) When requested by the owner~~,~~ or person(s) authorized by the owner~~,~~ as per ~~(h)~~ (9), copies or summaries of the veterinary medical records and images must be provided by the veterinarian within a reasonable time period~~,~~ and as promptly as required by medical necessity. The veterinary practice may charge a reasonable fee for the preparation of summaries and copying of the records and images.

(j) remains the same but is renumbered (12).

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

~~(iii)~~ (c) upon request for statistical or scientific research, as long as the information is abstracted and de-identified; ~~or~~

~~(iv)~~ (d) upon request of public health officials, animal health officials, federal, state, or local officials, or agricultural authorities when it is deemed necessary to protect the welfare of the animal, and/or to protect public health and safety; or

(e) in response to a complaint filed with the board.

~~(k) A veterinarian who reasonably and in good faith reports or discloses records in accordance with (j) shall not be considered to be engaging in unprofessional conduct.~~

(l) remains the same but is renumbered (13).

~~(m)~~ (14) A veterinarian-practice owner terminating practice, retiring, relocating, or selling a practice shall:

(a) notify clients within 30 days by local newspaper, in writing, or via other electronic means that they are no longer available to patients~~, and shall~~;

(b) offer clients the opportunity to obtain a copy of their veterinary records~~,~~; and ~~shall~~

(c) specify who the new records owner is, and when applicable, ~~and~~ where the patient medical records can be obtained. ~~A failure~~ Failure to comply with this subsection may lead to disciplinary action.

~~(n)~~ (15) A veterinarian may not remove, copy, or use any part of any ~~veterinary~~ patient medical records without the express permission of the practice owner or ~~as stated in (h)~~ per (9) and (10).

~~(o)~~ (16) If a veterinarian, based upon ~~his or her~~ the veterinarian's medical opinion, is willing to dispense medication~~, then~~ the veterinarian must also provide a prescription in place of said medication should the owner request a prescription. ~~If a veterinarian, based upon his or her medical opinion, is not willing to dispense medication, then the licensee should deny a request for a prescription.~~

AUTH: 37-1-131, 37-1-319, ~~37-18-202,~~ MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: Based on recommendations and concerns from the screening panel and department, the board concluded that licensees' recordkeeping practices vary widely and that licensees are reporting confusion about recordkeeping requirements. Therefore, the board determined it is reasonably necessary to update and standardize this rule and ARM 24.225.550 to better align the recordkeeping and unprofessional conduct rules with current national standards of practice.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

24.225.550 UNPROFESSIONAL CONDUCT (1) remains the same.

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

(b) remains the same.

(c) ~~incompetence, negligence, or use of any practice or procedure in the practice of the profession, which creates an unreasonable risk of physical harm or serious financial loss to the client~~ failing to provide care in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian. Licensees must meet the currently accepted standards of practice for the profession of veterinary medicine as described under:

(i) Title 37, chapter 18, MCA;

(ii) ARM Title 24, chapter 225; and

(iii) as otherwise found to be accepted within the profession as gauged by the reasonable conduct of other professionals engaged in the practice of veterinary medicine;

(d) remains the same.

(e) dispensing or prescribing a veterinary prescription drug or veterinary feed directive drug without a valid ~~veterinarian/client/patient relationship~~ VCPR;

(f) failure to ~~cooperate with an investigation authorized by the Board of Veterinary Medicine by~~ respond to a request from the board, including:

(i) not furnishing any papers or documents in the possession of and under the control of the licensee related to a complaint; or

(ii) not furnishing in writing a full and complete explanation covering the matter contained in ~~the~~ a complaint; ~~or~~

~~(iii) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings.~~

(g) through (j) remain the same.

~~(k) willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof;~~

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

~~(n) violation of the veterinarian/client/patient relationship by making public any information about, or photos of, the owner or patient, without consent of the owner or person(s) authorized by the owner;~~

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

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

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

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

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

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

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

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA
IMP: 37-1-131, 37-1-136, ~~37-1-141,~~ 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered as unprofessional conduct based on recommendations and concerns from the department counsel. The board, through its screening panel, has encountered difficulty reviewing and processing complaints under the current rule. To better protect public health, safety, and welfare, the board is amending this rule to enable the board to more clearly set forth the actions considered by the board as unprofessional conduct and enable the board to better address future complaints.

The board is updating the authority and implementation citations to accurately reflect all statutes implemented through the rule and provide the complete and current sources of the board's rulemaking authority.

24.225.709 ~~RENEWALS AND~~ CONTINUING EDUCATION (1) Nonsurgical embryo transfer technicians are required to obtain a total of ten continuing education (CE) hours prior to renewal on November 1.

(2) No more than five of the ten hours may be obtained through online courses.

(3) Continuing education requirements will not apply until after the licensee's first renewal.

(4) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to nonsurgical embryo transfer technicians' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the scope of practice of nonsurgical embryo transfer as defined in board statutes and rules;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in nonsurgical embryo transfer; and/or

(e) reinforce professional conduct or ethical obligations of the licensee.

(5) All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of annual license renewal.

(6) The board may randomly audit up to 50 percent of renewed licensees.

(7) All CE must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period and for making those records available upon board request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(8) 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 education reporting period.

(9) Any CE hours required by disciplinary order do not apply toward the ten hours that are required annually under this rule.

(10) A licensee may request a hardship exemption from CE requirements due to certified illness or undue hardship. Requests will be considered by the board.

~~(1) A person certified as an embryo transfer technician under these rules must renew the certificate before the date set by ARM 24.101.413.~~

~~(2) The certificate shall be issued by the department upon payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the certificate holder has ten credit hours of continuing education in embryo transfer during the preceding year.~~

~~(3) New certificate holders shall be granted the renewal the first year without attending the educational programs.~~

~~(4) The board may waive, revise, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship.~~

~~(5) A certificate holder may be granted a grace period of three months after the renewal date set by ARM 24.101.413 in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee. A certificate valid for the duration of the grace period will be issued only to a person granted a grace period. At the conclusion of the grace period, verification of CE compliance shall be submitted to the board, prior to the issuance of a full license.~~

~~(6) It is the responsibility of the certificate holder to maintain proof of the certificate holder's continuing education attendance. The board will randomly audit two percent of the renewed licensees and all licensees requesting a grace period.~~

~~(7) Continuing education programs attended during a license year or grace period cannot be used for the next year.~~

~~(8) Proposed continuing education programs must be approved in advance by the board.~~

~~(9) Persons exempt from these provisions are licensed veterinarians and new certificate holders applying for their first renewal.~~

AUTH: 37-1-319, ~~37-18-202,~~ MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, ~~37-18-104,~~ MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use. As part of the standardization, the board is placing the responsibility on embryo transfer technicians to select quality continuing education (CE) programs that contribute to their knowledge and competence. Following amendment, the board will no longer approve programs as the licensees must choose CE that meets the education objectives described in this rule. The board is removing renewal provisions as they are adequately addressed in the department's standardized renewal procedure.

The board determined it is necessary to restrict in (2) the number of hours that may be earned through online courses as some of the continuing education (CE) areas for nonsurgical embryo transfer are better learned in person.

Following a recommendation by department legal staff, the board is adding (5) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is adding (6) to allow flexibility in conducting random CE audits. Currently, the board randomly audits two percent of all renewed licensees per reporting period. The new language 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 clarifying in (8) 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. To address licensee and staff questions, (9) is intended to clarify that any CE required pursuant to a licensee's disciplinary action is independent of regular CE requirements.

The board is eliminating the provisions for licensees to request CE grace periods to align CE and renewal requirements with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and the grace period is no longer necessary. Licensees may still request hardship exemptions.

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.

24.225.904 ~~APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION AND ENDORSEMENT AS A~~ CERTIFIED EUTHANASIA TECHNICIANS – LICENSE REQUIREMENTS (1) Application for ~~certification~~ licensure as a certified euthanasia technician ~~(CET)~~ must be made on forms prescribed by the department. Completed applications include appropriate fees and required documentation.

(2) ~~Applications~~ Applicants for an original license must ~~include~~:

(a) be at least 18 years of age;

(b) have completed a euthanasia training program as described in ARM 24.225.907;

(c) have passed both a written and practical euthanasia training and exam as described in ARM 24.225.910 within 36 months of the application date; and

(d) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

~~(a) a current, within two years, photograph of the applicant, certified by a notary;~~

~~(b) documentation of successful completion of a board-approved training program taken within three years from the application date;~~

~~(c) documentation of successful completion of a board-approved written and practical examination;~~

~~(d) verification of all current employment at certified agencies;~~

~~(e) Montana Department of Justice background check verifying that the applicant has no previous criminal convictions involving dangerous drugs and/or controlled substances, domestic violence, or animal cruelty;~~

~~(f) verification from any other state or province where the applicant is certified as a euthanasia technician, that the applicant has never had certification revoked, suspended, or denied;~~

~~(g) verification that applicant is at least 18 years of age or an emancipated minor; and~~

~~(h) payment of the proper application fee.~~

~~(3) The board may allow submission of a current euthanasia technician license from another state or province to meet the requirements of (2)(b) and (c), if the board determines that the other state's or province's standards for the euthanasia certification are substantially equivalent to or greater than the standards of this state.~~

~~(4) An application shall remain active for one year from the date it is received at the board office. An applicant who, for any reason, fails or neglects to complete the licensing process within one year shall be required to file another application and submit another application fee.~~

(3) Applicants for licensure currently licensed as a certified euthanasia technician in another jurisdiction must:

(a) hold a current, active license in good standing to practice euthanasia in another state or jurisdiction whose standards at the time of application are substantially equivalent to Montana standards; and

(b) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

(4) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-1-304, 37-18-603, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate outdated, redundant, and unnecessary provisions, and provide consistency, simplicity, better organization, and ease of use for the reader. It is reasonably necessary to amend this rule and replace "certification" for "licensure" of euthanasia technicians. The department and board have always viewed the two terms synonymously, and the board is now updating the rule to utilize a single term.

To address licensee questions and confusion, the board is removing the requirement that an applicant be employed at a certified euthanasia agency (CEA) to qualify for a CET license. A CET can only euthanize animals at a CEA. However, statute allows an individual to be an actively licensed CET regardless of whether or not that person is currently engaging in the practice at a CEA. The CEA, through the attorney-in-fact who holds power of attorney, is the individual that is authorized to obtain approved euthanasia drugs using its DEA permit. A CET would only be able to obtain and store approved euthanasia drugs if that person were also the individual with power of attorney at a CEA.

The board is amending this rule to no longer require background checks for certified euthanasia technicians. Following a review of the rules and implemented statutes, staff determined the board lacks the statutory authority to require a background check on CET applicants.

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

24.225.907 BOARD-APPROVED TRAINING PROGRAM CRITERIA ~~(1) To qualify for approval under ARM 24.225.904, a euthanasia training program must:~~

~~(a) be conducted by a qualified instructor;~~

~~(b) include but not be limited to instruction in:~~

(1) Training courses for euthanasia technicians must include instruction on the following topics:

~~(i)~~ (a) proper dosage~~,~~ ~~and~~ handling, and storage of approved euthanasia and restraint drugs listed in ARM 24.225.930;

~~(ii)~~ (b) maintaining human safety when conducting animal euthanasia ~~and proper injection techniques~~;

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

~~(iv)~~ (d) proper animal handling techniques to ease trauma and stress;

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

~~(vi)~~ (f) proper euthanasia and restraint drug storage and security ~~precautions~~ per state and federal regulations;

~~(vii) proper record keeping; and~~

(g) state and federal recordkeeping requirements for euthanasia and restraint drugs; and

~~(viii)~~ (h) ~~appropriate verification of~~ how to verify and record death of the animal~~; and~~

~~(c) issue a certificate of approval containing:~~

~~(i) name of applicant;~~

~~(ii) name of instructor;~~

~~(iii) title of course;~~

~~(iv) date of course;~~

~~(v) number of hours; and~~

~~(vi) presentation format~~.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, MCA

REASON: The board is amending this rule and ARM 24.225.910 to eliminate outdated, redundant, and unnecessary provisions, and provide consistency, simplicity, better organization, and ease of use for licensees, staff, educators, program administrators, and the public. Since applicants must take a course and pass an examination, the board is standardizing these two rules to reflect the same sets of criteria for course instruction and the material on which applicants are tested.

Additionally, the board is strengthening the language in (1) to make it clear that course material must include instruction regarding relevant state and federal laws pertaining to recordkeeping and storage of euthanasia and restraint drugs. The board concluded that to better protect the public, an understanding of those laws is a key certification requirement for CET applicants.

The board is relocating the provisions on examination passage from ARM 24.225.910 to the license application rule, ARM 24.219.904. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.225.910 CERTIFIED EUTHANASIA TECHNICIAN EXAMINATIONS – WRITTEN AND PRACTICAL ~~TEST CRITERIA~~ ~~(1) A board-approved written and practical test for CETs must include:~~

~~(a) Montana regulations governing CETs;~~

~~(b) state and DEA drug record keeping requirements including disposal of out-of-date drugs and reporting of loss or theft of drugs;~~

~~(c) human safety in administration of animal euthanasia;~~

~~(d) pharmacology of sodium pentobarbital, xylazine, and acepromazine;~~

~~(e) proper dosage and injection techniques of approved euthanasia and restraint drugs;~~

~~(f) animal anatomy; and~~

~~(g) verification of death.~~

(1) The written and practical examinations for euthanasia must test on all criteria taught as part of the required training course in ARM 24.225.907.

(2) ~~A passing score on the written portion of the examination of 70 percent is required~~ Seventy percent is the passing score for the written examination.

(3) The practical examination will be graded by the instructor on a pass or fail basis. The practical exam must consist of a hands-on demonstration by the individual showing the individual can conduct euthanasia by:

(a) safely and effectively restraining an animal; and

(b) administering the required euthanasia and restraint drugs.

~~(3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations, which indicate that the applicant has been properly trained in procedures, which enable the applicant safely and effectively to restrain and perform humane euthanasia with restraint drugs and sodium pentobarbital. The practical examination will be graded on a pass/fail basis. The practical test shall be administered by the board-approved course provider.~~

~~(4) Applicants who fail to achieve a passing score on any portion of the exam will not be eligible for certification.~~

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, MCA

REASON: See REASON for ARM 24.225.907. Implementation citations are being updated to accurately reflect all statutes implemented through the rule.

24.225.920 APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES

(1) Application for licensure as a certified euthanasia agency must be made on forms prescribed by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants for licensure as a certified euthanasia agency must:

(a) complete a power of attorney form appointing an attorney-in-fact for purposes of DEA orders;

(b) pass an initial inspection by a board-designated inspector as described in ARM 24.225.921; and

(c) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

(3) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.

~~(1) A certified euthanasia agency (CEA) may purchase and possess controlled substances approved for the purpose of euthanasia. The application for initial certification as a CEA must be made on forms provided by the department.~~

~~(2) Applications must include:~~

~~(a) documentation of passage of an inspection by a board-approved inspector;~~

~~(b) a copy of completed application sent to the DEA to possess and store controlled substances approved by the board for the purpose of euthanasia, DEA number to be reported to board when issued;~~

~~(c) a list of all CETs or veterinarians employed by the agency with the day, month, and year that each individual began employment;~~

~~(d) indication of which CET is responsible for all aspects of euthanasia at the agency;~~

~~(e) completed power of attorney form as required by the DEA; and~~

~~(f) payment of the proper fee.~~

~~(3) An application will remain active for one year from the date it is received at the board office. An applicant who fails or neglects to complete the licensing process within one year shall be required to file a new application and submit another application fee.~~

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, 37-18-604, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with current standardized department procedures for licensure application processing. The board is further amending this rule to eliminate outdated, redundant, and unnecessary provisions, and provide consistency, simplicity, better organization, and ease of use for licensees, staff, educators, program administrators, and the public.

The board is amending this rule to clarify the application requirements regarding submission of power of attorney forms for purposes of DEA orders. The new language in (2)(a) which references the power of attorney form and "attorney-in-fact" will work in conjunction with the new definition for "attorney-in-fact" in ARM 24.225.301.

The board is also removing the requirement that a copy of the DEA permit application be submitted as part of the board's application. The DEA permit is more appropriately addressed in NEW RULE I on CEA operating requirements.

Because the attorney-in-fact is the person with authority under the DEA permit to obtain and store euthanasia drugs, the board only needs to know the attorney-in-fact as part of the initial application process, not persons licensed as CET or veterinarians. Lastly, all CETs are qualified to perform euthanasia per statutory authority, so it is not necessary to require applicants specify which CET is responsible for all aspects of euthanasia.

The board is updating the implementation citations to accurately reflect all statutes implemented through the rule.

24.225.921 ~~CERTIFIED EUTHANASIA AGENCY INSPECTION CRITERIA - NOTIFICATION OF DEFICIENCIES AND CORRECTIONS~~ INSPECTIONS – INITIAL AND ANNUAL (1) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.

(a) Results of the inspection will be provided to the licensee.

(b) If there are any items of noncompliance, the attorney-in-fact must submit a written response to the board which addresses those items of noncompliance. The response must be received by the department within ten days of the attorney-in-fact receiving notification of noncompliance.

(c) If issues of noncompliance are not corrected within ten days of the attorney-in-fact receiving notice of noncompliance, a report of noncompliance will be reviewed by the board at the next regularly scheduled board meeting following the initial inspection. For good cause the board may order a re-inspection, the cost of which will be paid by the applicant.

(2) A board-designated inspector will conduct annual on-site inspections of all existing certified euthanasia agency facilities.

(a) Inspections may be conducted with or without advance notice to the licensee.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the attorney-in-fact must submit a written response to the board which addresses those items of noncompliance. The response must be received by the board within ten days of the licensee receiving notification of noncompliance.

(d) A report of significant noncompliance will be reviewed by the board screening panel per the department's standard compliance process.

(3) If the inspector determines that an item of noncompliance substantially affects the public health, safety, or welfare, or jeopardizes animals under the control of the certified euthanasia agency, the inspector must immediately inform law enforcement and the board, which may summarily suspend the licensee's certificate pursuant to 2-4-631, MCA, and applicable Montana law.

~~(1) An inspection of a CEA must be conducted annually by the board or a person authorized by the board with its full authority.~~

~~(2) The inspection must include:~~

~~(a) verification that the area and equipment is appropriate for animal euthanasia;~~

~~(b) verification of the correct security, storage, disposal, and labeling of euthanasia and restraint drugs;~~

~~(c) verification of correct drug record-keeping;~~

~~(d) appropriate sanitation; and~~

~~(e) any other condition that the board determines is relevant to the proper euthanasia of animals.~~

~~(3) If the inspector determines that a deficiency substantially affects the public health, safety, or welfare, or jeopardizes animals under the control of the CEA, the inspector must immediately inform law enforcement and the board, which may summarily suspend the CEA's certificate pursuant to 2-4-631, MCA, and applicable Montana law. If a less serious deficiency is found after inspection, it must be communicated to the agency and the board in writing. The CEA must correct any such deficiency within 30 days from the date of the inspection. If a second inspection is required, a second inspection fee must be paid by the agency. Failure to sufficiently correct a noted deficiency will be addressed as a disciplinary matter by the screening panel of the board, and the board may notify the DEA.~~

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, MCA

REASON: The board determined it is reasonably necessary to amend this rule to remove outdated, redundant, and unnecessary provisions and add clarifying language where needed to address questions, and provide consistency, simplicity, better organization, and ease of use for licensees.

Currently the rule does not specify the different processes for initial inspection for certification and annual inspection once a CEA has been licensed so the board is amending this rule to address questions in this area. The board also determined it is reasonably necessary to clarify for the public, applicants, current licensees, and department staff what the process is for noncompliance using department inspections standards and processes for noncompliance.

The board is reducing the number of days that the attorney-in-fact has to respond and address noncompliance from 30 days from the inspection to ten days from notification of the deficiencies. The board concluded that ten days is a reasonable amount of time given the risk to public safety since CEA are obtaining and storing euthanasia and restraint drugs on the premises.

The board is moving provisions on actual inspection criteria to NEW RULE I since inspection criteria are based on operating criteria instead of the reverse.

The board is updating the implementation citations to accurately reflect all statutes implemented through the rule.

24.225.925 ~~RENEWALS~~ CONTINUING EDUCATION – CERTIFIED EUTHANASIA TECHNICIANS (1) Certified euthanasia technicians are required to obtain continuing education (CE) hours prior to renewal on May 30 every three years after the first year of licensure. The CE must be obtained within the twelve months between the second and third renewals.

(2) Approved CE to meet board requirements consists of both:

(a) a euthanasia training program as described in ARM 24.225.907; and

(b) passing both a written and practical euthanasia training exam as described in ARM 24.225.910.

(3) All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of annual license renewal.

(4) The board may randomly audit up to 50 percent of renewed licensees.

(5) All CE must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period and for making those records available upon board request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(6) 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 education reporting period.

(7) Any CE hours required by disciplinary order do not apply toward the CE that are required annually under this rule.

(8) A licensee may request a hardship exemption from CE requirements due to certified illness or undue hardship. Requests will be considered by the board.

~~(1) CETs must recertify on a form or by a method approved by the board on or before the date set by ARM 24.101.413 of every year, beginning in 2005. The certification renewal application must include:~~

~~(a) verification of satisfactory completion of a board-approved euthanasia course and examination documenting continued competency taken within the 36 months immediately preceding the current renewal deadline date;~~

~~(b) verification of current employment at a CEA; and~~

~~(c) payment of the proper fee.~~

~~(2) CEAs must renew certification on a form or by a method approved by the board on or before the date set by ARM 24.101.413 of every year, beginning in 2005. The renewal application must include:~~

~~(a) verification of completion of satisfactory inspection within 12 months of the current renewal deadline date;~~

~~(b) a list of currently employed CETs or veterinarians with day, month, and year that each individual began employment and indication of which CET is responsible for all aspects of euthanasia at the agency;~~

~~(c) the proper fee; and~~

~~(d) verification of current DEA registration.~~

~~(3) Renewal notices will be sent as specified in ARM 24.101.414.~~

~~(4) A CET's or CEA's renewal certificate shall be valid for one year following the renewal date of the previously held certificate.~~

~~(5) The fee for any certificate holder who fails to recertify or submit the proper fee prior to the renewal date must pay the late penalty fee specified in ARM 24.101.403. Certification renewal forms may not be processed until all required documentation is received in the board office and all fees are paid.~~

~~(6) The provisions of ARM 24.101.408 apply.~~

AUTH: 37-1-131, 37-1-319, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-1-141,~~ 37-18-603, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

Following a recommendation by department legal staff, the board is adding (3) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is amending (4) to allow flexibility in conducting random CE audits. Currently, the board randomly audits two 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 clarifying in (6) 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. To address licensee and staff questions, (7) is intended to clarify that any CE required pursuant to a licensee's disciplinary action is independent of regular CE requirements.

The current rule does not allow CET to request a CE hardship exemption. The board is adding that option to be consistent with the other CE rules.

The board is updating the authority and implementation citations to accurately reflect all statutes implemented through the rule and provide the complete and current sources of the board's rulemaking authority.

24.225.950 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) violation of any state or federal ~~statute or administrative rule~~ regulations regulating the practice of animal euthanasia~~, including any statute or rule defining or establishing standards of animal euthanasia or professional conduct or practice~~;

(b) and (c) remain the same.

(d) possession~~, use, addiction to, diversion, or distribution of controlled substances in any way other than for legitimate euthanasia purposes, or violation of any drug law~~ and use of euthanasia and restraint drugs for any purpose other than animal euthanasia as described in these rules;

(e) violation of any state or federal drug laws;

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

~~(f)~~ (g) failure to ~~maintain sanitary facilities or apply sanitary procedures for euthanizing animals~~ meet the certified euthanasia agency operation standards described in these rules, including but not limited to maintaining sanitary conditions and appropriate records of euthanasia and restraint drugs;

~~(g)~~ (h) practicing as a CEA or as a CET if a certificate is ~~retired,~~ expired, terminated, revoked, or suspended;

~~(h)~~ (i) willful or repeated violations of rules regarding euthanasia established by any health agency or authority of the state or a political subdivision thereof;

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

~~(j)~~ (k) failure of a certified euthanasia agency to have current DEA registration;

~~(k) failure to report to the board termination or change of employment for a CET within ten days;~~

(l) use of unapproved drugs or methods for euthanasia; ~~or~~

(m) euthanasia of an animal for which the ~~CET~~ certified euthanasia technician has not received training; or

(n) failure to store euthanasia or restraint drugs or other controlled substances used in the euthanasia of animals in compliance with established DEA requirements.

AUTH: 37-1-131, 37-1-319, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, 37-18-603, 37-18-604, 37-18-605,

MCA

REASON: It is reasonably necessary to amend this rule to remove outdated, redundant, and unnecessary provisions and add clarifying language where needed to address questions, and provide consistency, simplicity, better organization, and ease of use for the public, licensees, and department staff.

The board is amending this rule to clarify that the drugs specifically referred to are euthanasia drugs, which are the types of drugs that CEA and CET working at CEA are allowed to possess under these particular scopes of practice. See the REASON for the repeal of ARM 24.219.926 for the striking of (1)(k).

The board is updating the implementation citations to accurately reflect all statutes implemented through the rule.

4. The proposed new rules are as follows:

NEW RULE I CERTIFIED EUTHANASIA AGENCY OPERATION STANDARDS (1) A certified euthanasia agency cannot operate unless:

(a) a license has been issued by the board;

(b) the licensee has a current DEA permit, including a DEA number; and

(c) the certified euthanasia agency has a designated attorney-in-fact.

(2) Certified euthanasia agencies must:

(a) have a designated area for euthanasia that can hold at least two people;

(b) maintain the euthanasia area in a clean and sanitary condition at all times;

(c) have bright, even light in the euthanasia area;

(d) have proper ventilation in the euthanasia area;

(e) have a table or work area for handling animals during euthanasia;

(f) have a designated surface or cabinet to store equipment;

(g) display the facility license and licenses of all licensed staff in a conspicuous place so they can be seen by members of the public. Personal addresses on licenses may be covered;

(h) have sufficient materials on-site for euthanasia, including, but not limited to:

(i) medical quality needles;

(ii) disposal container for used sharps as defined in 75-10-1003, MCA, that meets the requirements in 75-10-1005, MCA;

(iii) syringes;

(iv) first aid kit;

(v) electric clippers;

(vi) stethoscope;

(vii) humane restraint devices;

(viii) towels; and

(ix) disinfectant;

(i) comply with all state and federal laws pertaining to storage of approved euthanasia and restraint drugs; and

(j) comply with all state and federal laws pertaining to recordkeeping requirements for approved euthanasia and restraint drugs.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, 37-18-604, MCA

REASON: The board determined it is reasonably necessary to clarify the operating criteria for CEA in rule. Currently the criteria are scattered throughout ARM 24.225.921 and the application rules or are listed only in the board's inspection checklist. Locating the requirements in a single rule provides additional clarity and transparency for the public, applicants, current licensees, and department staff.

NEW RULE II CHANGE OF ATTORNEY-IN-FACT (1) When there is a change of the appointed attorney-in-fact, the certified euthanasia agency must:

(a) comply with any DEA notification requirements concerning the change of the attorney-in-fact; and

(b) complete a department power of attorney form appointing a new attorney-in-fact. The form must be submitted to the board within ten days of the change.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, 37-18-604, MCA

REASON: Based on information that department staff obtained during inspections and to address licensee confusion, the board is adopting this new rule to clarify what needs to occur when a CEA has a change of attorney-in-fact. Through the power of attorney, the attorney-in-fact is responsible for all the euthanasia drugs obtained and held on the premises under the DEA permit. A CEA must have an attorney-in-fact in order to obtain and hold drugs.

NEW RULE III CLOSURE OF A CERTIFIED EUTHANASIA AGENCY OR LOSS OF DEA PERMIT (1) The designated attorney-in-fact must notify the board within ten days of closure of a certified euthanasia agency.

(2) As part of the notification in (1) the designated attorney-in-fact must:

(a) provide current contact information for the attorney-in-fact including but not limited to a mailing address and telephone number; and

(b) verify that all euthanasia and restraint drugs and records are managed according to state and federal laws pertaining to these types of substances. The verification must confirm:

(i) all euthanasia and restraint drugs, including controlled substances, have been either:

(A) destroyed; or

(B) transferred to an authorized person(s), including the name and address of the person(s) to whom the euthanasia and restraint drugs were transferred;

(ii) for controlled substances, the following:

(A) the date of transfer; and

(B) the name and amount of controlled substances transferred; and

(iii) the return of DEA registration and all unused DEA 222 forms (order forms) to the DEA.

(3) The designated attorney-in-fact must notify the board within ten days if a certified euthanasia agency loses its existing DEA permit and comply with the requirements in (2)(b).

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-18-603, 37-18-604, MCA

REASON: The board has determined it is reasonably necessary to clearly delineate licensees' obligation to notify the board when a CEA closes and/or loses its DEA permit. Information obtained by staff has shown that most licensees are unaware of all the steps needed to remain in compliance with state and federal drug laws if they close and/or lose their DEA permit. Locating the requirements in this new rule provides additional clarity and transparency of requirements and processes for the public, applicants, current licensees, and department staff.

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

24.225.901 DEFINITIONS

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

REASON: The board is repealing this rule as all relevant provisions are being relocated to ARM 24.225.301.

24.225.926 TERMINATION OF CERTIFIED EUTHANASIA TECHNICIAN EMPLOYMENT AND RETIREMENT OF CERTIFICATE

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board is repealing this rule as unnecessary. A CET can only euthanize animals at a certified euthanasia agency. However, statute allows an individual to be an actively licensed CET regardless of whether that person is currently engaging in the practice at a CEA. The CEA through attorney-in-fact who holds power of attorney is authorized to obtain approved euthanasia drugs using its DEA permit. A CET would only be able to obtain and store approved euthanasia drugs if that person were also the individual with power of attorney at a CEA.

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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdvet@mt.gov, and must be received no later than 5:00 p.m., April 10, 2020.

7. An electronic copy of this notice of public hearing is available at http://boards.bsd.dli.mt.gov/vet (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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdvet@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, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.225.301, 24.225.514, 24.225.550, 24.225.709, 24.225.904, 24.225.907, 24.225.910, 24.225.920, 24.225.921, 24.225.925, and 24.225.950 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 through III 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 24.225.901 and 24.225.926 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdvet@mt.gov.

11. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
PAUL MCCANN, DVM, PRESIDENT

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 3, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.12.101, 42.12.106, 42.12.130, 42.12.133, 42.12.209, 42.13.101, and 42.13.107, and the repeal of ARM 42.12.207 pertaining to approval of a licensee without premises and concession agreements	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 6, 2020, 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 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 March 20, 2020. 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. GENERAL STATEMENT OF REASONABLE NECESSITY. The 2019 Montana Legislature passed House Bill 727 (HB 727) which adopts and implements 16-4-417 and 16-4-418, MCA, and amends other statutes located in Title 16, chapter 4, MCA. Section 16-4-417, MCA, allows for department approval of certain alcoholic beverage licenses without a premises which replaces conditional license approval provided in 16-4-402, MCA. Section 16-4-418, MCA, provides statutory authority for the use of alcoholic beverages concession agreements between licensees and non-licensees.

Based on the statutory changes contained in HB 727, the department finds it necessary to propose amendments to ARM 42.12.101, 42.12.106, 42.12.130, 42.12.133, 42.12.209, and 42.13.107, and to repeal ARM 42.12.207, to implement the bill. The department proposes amendments to the rules to reflect changes in legislative policy and also department license application processes which were developed through department policy and administrative rule.

The department proposes other amendments to the above-described rules which are based on the department's periodic rule review for outdated business processes, terminology, and language use. The department believes these amendments reflect better rule language usage and are necessary for clarity, brevity, and internal consistency.

Implementing citation amendments are also proposed throughout the rulemaking which are necessary for the administrative rules to align with HB 727, and comply with 2-4-305, MCA.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking actions, it is supplemented below to explain rule-specific changes.

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

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell, manufacture, or distribute alcoholic beverages shall be made to the department upon forms supplied by the department or through the department's licensing portal. An abbreviated application may be ~~permissible~~ used for license modifications as specified in ARM 42.12.118. In all other cases, the application process specified below shall be followed.

(2) and (3) remain the same.

(4) At any time during the application process, an applicant must notify the department of any changes in the information and documents submitted under (3) and immediately provide the department with any corrected or updated information or documents.

(5) An applicant who does not have a premises ready to operate may apply for an available license pursuant to 16-4-417, MCA. The applicant must electronically apply for the license through the department's licensing portal and submit any applicable information under (3) for the department to review the application. A license issued without an approved premises will be automatically placed on nonuse status by the department.

(6) Failure of a licensee to fulfill the requirements of 16-4-417, MCA, shall subject the license to revocation.

~~(4)~~ (7) The department~~, in its sole discretion,~~ may waive an application requirement set forth in this rule in its sole discretion.

~~(5)~~ (8) ~~The department shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for licensing.~~ The disqualification of any applicant to hold the license disqualifies all.

~~(6)~~ (9) The department~~, in its sole discretion,~~ may issue a license in its sole discretion. ~~If approved, the~~ A licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved. ~~A licensee's failure to remain in compliance with a statute or rule shall constitute a violation of that statute or rule and may subject the licensee to administrative action.~~

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.12.101 as follows:

Amend (1) to recognize the department's use of its online licensing portal in addition to paper applications. The amendment is necessary for procedural guidance to applicants of current department practices.

Propose (4) to include the requirement that an applicant must provide updated supportive documentation if the information or documents has changed at any time during the application process. This has been a department practice for some time, but the department believes it is important to clarify, in rule, the necessity for an applicant's most current and accurate information so the department can make its license approval determinations in accordance with state law.

Propose (5) which is necessary for the department to effectuate the licensee's premises requirements provided under 16-4-417, MCA, and implement the department's proposed premises application using its online licensing portal and existing authority under statute and administrative rule. The requirement for the electronic submission of 16-4-417, MCA, license applications is necessary because of case processing functionality for paper applications within the computer system that the department and the Montana Department of Justice, Gambling Control Division, utilize for all license application matters. The department weighed its application implementation options and determined the best outcome, given the estimated number of applications submitted, is to advance electronic-only application submissions.

Propose (6) as a reiteration of the license conditions requirements found in 16-4-417, MCA, and discuss failure in fulfilling each of the license conditions. A license issued under the conditions of 16-4-417, MCA, is no different than any other license, and stating that a licensee's failure to meet the stated license conditions will subject the license to revocation is necessary and consistent with department actions involving lapse of a license under 16-3-310, MCA.

Propose (7), (8), and (9) which, collectively, contain amendments for improved clarity by moving sentence clauses to the end of section sentences, removing unnecessary introductory language, and proposing removal of unnecessary sentences. The proposed removal of the sentence in (7) is already stated in 16-4-402, MCA, and the sentence at the end of proposed (8) is provided in ARM 42.13.101 - Compliance with Laws and Rules.

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (11) remain the same.

~~(12) "Conditional approval letter" means a letter that is issued upon completion of the license application investigation and public protest period, but prior to approval of the premises. A conditional approval letter precedes issuance of a license, is not an approval to operate, and is not to be confused with a license with conditions written on the face of the license itself pursuant to 16-1-302, MCA. The conditions appearing on the face of the license are permanent and last through the existence of ownership by the current licensee.~~

(13) through (46) remain the same but are renumbered (12) through (45).

AUTH: 16-1-303, MCA
IMP: 16-1-302, MCA

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) Any applicant applying to the department for a new license or transfer of location of an existing license under the quota limitations provided for under 16-4-105, 16-4-201, and 16-4-420, MCA, must submit to the department ~~a sworn statement or affidavit from the local county or city surveyor or a private licensed land surveyor attesting to the location~~ the legal description or street address of the proposed premises.

~~(2) If the location of the proposed premises is not within the boundaries of an incorporated city or incorporated town, the surveyor must attest to the exact distance from the nearest corporate boundary to the proposed premises as measured from official city or county plats.~~

~~(a) The distance must be measured from the nearest corporate city boundary to the nearest entrance of the proposed premises.~~

(2) If the department determines the proposed premises are in close proximity to a quota area boundary line, the department may request the applicant complete and submit a survey affidavit form, provided by the department, from the local county or city surveyor or a private licensed land surveyor attesting to the location of the proposed premises. Any cost in obtaining the completed survey affidavit shall be paid by the applicant.

~~(3) The sworn statement or affidavit must be substantially in the following form or on a form provided by the department entitled Certified Survey Affidavit:~~

~~(a) Legal description and/or street address of proposed premises:~~

~~I, (individual's name), (title), have the knowledge and the authority to attest to the location of the premises known as (trade or business name).~~

~~The location of this premises is within the incorporated boundaries of (name of city) or is located (number) miles from the incorporated boundaries of (name of city).~~

~~(b) In the case of a location outside the corporate boundary include the following:~~

~~The distance was measured from the nearest corporate city boundary to the nearest entrance of the proposed premises. Plat(s)/map(s) verifying the location that indicate the points between which the measurement was made and the distance can be provided upon request.~~

~~(c) In the case of a location inside the corporate boundary include the following:~~

~~The location of the premises was determined by examination of corporate plats or other official records.~~

~~(d) A signature block, title of the parties, and the document must be dated and notarized.~~

AUTH: 16-1-303, 16-4-105, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-420, 16-4-501, MCA

REASONABLE NECESSITY: In addition to the general statement of

reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.12.130 to remove the universal requirement that an applicant submit a sworn statement from a land surveyor attesting the location of a proposed premises. However, in situations where the proposed premises is located near a quota area boundary, the department reserves the right to request an applicant to submit a certified survey affidavit from a land surveyor to confirm the location of the proposed premises in relation to the quota area boundary.

The department believes this is a positive simplification of the process to confirm the location of an applicant's premises because many proposed premises are locatable through computer-aided mapping resources available to the department. And in those instances that require additional verification, the existing form and department process can still be used.

42.12.133 CONCESSION AGREEMENTS (1) Concession agreements, authorized under 16-4-418, MCA, are written agreements that provide the terms where a licensee extends its licensed premises into the concessionaire's business for the purpose of selling and serving the licensee's alcoholic beverages to the concessionaire's customers. A concession agreement may only be entered if the premises suitability requirements in ARM 42.12.145 are met.

(2) All new concession agreements must be submitted to the department for review and approval prior to their execution ~~and/~~or effective date~~,~~ and must ~~set forth~~ include the following:

~~(a) the nature of the agreement is one that arises from a mutually beneficial situation only;~~

(a) a completed concession agreement request form provided by the department and the one-time processing fee;

(b) a copy of the proposed floor plan; and

(c) any additional documentation the department deems necessary to approve the concession arrangement.

(3) The concession agreement must provide that licensee and concessionaire agree:

~~(b)~~ (a) ~~the agreement gives~~ the licensee ~~authority to~~ may operate in the ~~concessioned premises~~ concessionaire's area;

~~(c) a copy of the licensee's amended floor plan, including the new service area;~~

~~(d) the licensee is responsible for the sales and service of all alcoholic beverages;~~

~~(e)~~ (b) the parties may share ~~the~~ employees. In the event of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in relation to the service of alcoholic beverages~~. Any violation of the Montana Alcoholic Beverage Code is the sole responsibility of the licensee~~;

~~(f)~~ (c) on the compensation to be paid for shared employees. The compensation may not be based on a percentage of alcoholic beverage sales;

~~(g)~~ (d) ~~the nonlicensed entity cannot order, or otherwise purchase, any alcoholic beverage product from a wholesaler or agency liquor store~~ alcoholic beverages may not be ordered, purchased, or received by the concessionaire;

~~(h)~~ (e) ~~the agreement must include language that allows~~ the licensee ~~to~~ may

terminate the agreement without cause;

~~(i)~~ (f) ~~that all~~ the proceeds from the sale of alcoholic beverages are the property of the licensee; and

~~(j)~~ (g) any proceeds of alcoholic beverages sales that are collected by the concessionaire must be returned to the licensee not less than every two weeks.

~~(2) In addition to the general suitability rule requirements in ARM 42.12.145, and other rules specific to the license type, the premises for any license operated under a concession agreement can only be considered suitable for the retail sale of alcoholic beverages if the existence of a concession agreement and the names of the parties to the concession agreement are plainly disclosed to the public both inside and outside of the licensed premises by signage as follows:~~

~~(a) at least one sign inside the licensed premises, measuring not less than 8 1/2 by 11 inches and with printing in a font size not smaller than 72, must be clearly visible to customers, and must plainly disclose:~~

~~(i) the existence of a concession agreement;~~

~~(ii) the names of the persons or entities which are party to the concession agreement and the assumed business names as filed with the Montana Secretary of State, including which party is the licensee; and~~

~~(iii) the fact that the licensee is responsible for the service of alcoholic beverages within the premises; and~~

~~(b) at least one sign outside the licensed premises so the public can easily determine that alcoholic beverages are available.~~

~~(3) The requirements of (2) regarding signage must be met for all licenses operating under a concession agreement and must be complied with for any such license to be issued or renewed for the license year beginning July 1, 2013, or thereafter.~~

~~(4) The licensee must maintain a physical possessory interest as required in ARM 42.12.145.~~

~~(5)~~ (4) The department, upon receipt of the concession agreement and any supporting documentation, will advise the licensee ~~within seven working days~~ of approval or denial of the agreement unless further documentation or an audit review is necessary.

(5) Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment. The concessionaire shall display in a prominent place, a copy of the license and a placard, issued by the department, stating the consequences for violations of the alcoholic beverage code by persons under 21 years of age.

(6) remains the same.

AUTH: 16-1-303, 16-4-418, MCA
IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.12.133 as follows:

Insert new text as (1) to provide an introduction as to what concession agreements are and which license types are able to operate under a concession

agreement. The department believes the introduction is necessary for context since the statute only acknowledges and authorizes the use of these agreements between licensees and non-licensees. The last sentence of (1) is proposed for consistency with existing operating conditions requirements for the licensees referenced in ARM 42.12.145 and is text relocated and revised from current (2).

Current rule text in current (1) regarding licensee submissions, department processes, and required concession agreement terms are proposed for relocation - and where necessary, restatement - to proposed (2) and (3), which the department believes is necessary to improve clarity and comprehension of the rule.

Proposed (2) provides the list of items the licensee is required to submit to the department for the concession agreement to be considered. The list is amended to include a department concession agreement request form and processing fee, which are new to the rule but have been in use or adopted by the department since early 2015.

In addition to the reorganization of proposed (3), the wording of the section has been revised for brevity and consistency with statute and rule. Proposed (3) removes rule language regarding a licensee's sole responsibility in the concessionaire's sale and service of alcoholic beverages, which was modified by HB 727's amendments to 16-4-406, MCA. Now, a concessionaire is subject to department action for violations of the alcoholic beverage code or department rules in the sale and service of the licensee's alcoholic beverages.

Current (2) is proposed for removal in its entirety as the requirement to have a specific concessionaire sign is unnecessary. Instead, the department proposes (5) to require the concessionaire to post a copy of the licensee's license and age placard. This requirement is less burdensome on licensees and will be easier for law enforcement and other representatives to determine the identity of the licensee engaged in the concession.

Section (3) is proposed for removal because it contains a date-specific provision that becomes obsolete with the department's required signage alternative.

Section (4) is proposed for removal as the possessory interest requirement of (4) is contained within ARM 42.12.145, which is cross-referenced into the amendments to proposed (1).

Renumber (5) as (4) and propose amendments to remove the requirement that the department will approve or deny the concession agreement within seven working days of receipt. The department contends this amendment is necessary because the volume and complexity of concession agreements have changed dramatically since the processing deadline was adopted into rule and approval deadlines for concession agreements within seven working days is unfeasible. Furthermore, many of the concession agreement review requests are incidental to pending license applications, and this deadline may be confusing to applicants during the overall license application approval process. For any stand-alone concession agreement review requests that the department receives, the department will process the requests in as expedient a manner as time and resources permit. The last sentence of current (5) is proposed to be split into its own section which the department believes is better organization of content because proposed (5) applies to after-approval compliance requirements.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON

(1) remains the same.

(2) An ownership interest may not be transferred ~~to a new owner~~ until an application reflecting the proposed transfer is submitted to the department and the department approves the application.

(3) through (6) remain the same.

(7) Prior to the department granting written approval:

(a) remains the same.

(b) earnest money may be paid to the license seller, not to exceed five percent of the license purchase price, but any additional funds or other consideration for the ~~liquor~~ license or alcoholic beverage inventory may not be exchanged unless:

(i) temporary operating authority ~~or conditional approval~~ is granted, but any consideration other than earnest money must be returned to the buyer in the event the application is not approved; or

(ii) remains the same.

(8) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a ~~licensed liquor operation~~ license;

(b) through (10) remain the same.

(11) The buyer of the license can acquire the seller's alcoholic beverage inventory when either temporary operating authority has been granted to the buyer pursuant to ARM 42.12.208 or the transfer of the license to the buyer has been approved by the department.

AUTH: 16-1-303, MCA
IMP: 16-4-401, 16-4-402, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.12.209 as follows:

Strike the reference from (2) " . . . to a new owner." The required application to transfer ownership is applicable not only to new ownership but also when existing owners are changing ownership percentages.

Propose (11) to provide necessary cross-referencing in this rule of the circumstances under which a buyer of an alcoholic beverage license has the ability to acquire a seller's inventory when temporary operating authority is granted or when the transfer of the license has been approved. The department believes the proposed section is necessary as neither 16-4-404, MCA, or ARM 42.12.208 contain both permissible times of inventory purchase involving the transfer of an alcoholic beverage license.

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 a licensee~~s~~, a concessionaire, or both, may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) through (8) remain the same.

(9) In the event a reprimand is issued:

(a) the incident shall not be considered to be a first offense for purposes of the progressive penalty schedule unless the licensee or concessionaire commits the same offense within one year; and

(b) and (10) remain the same.

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

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

(b) remains the same.

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

(d) and (e) remain the same.

(f) lack of cooperation by ~~the~~ a licensee, a 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, the concessionaire, or both, operate~~s~~.

(12) Nothing in this rule prevents the department from revoking, suspending, or refusing the renewal of a license, or a 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, 16-4-1004, 16-4-1008, 16-6-314, MCA

REASON: The department proposes to add the term "concessionaire" in many areas of the rule due to the passage of House Bill 727 during the 2019 Legislative Session. House Bill 727 gives the department the authority to also take administrative action against a concessionaire for violations of the Montana Alcoholic Beverage Code or related administrative rules.

42.13.107 NONUSE STATUS (1) The department shall grant nonuse status to a licensee ~~that is not operating a going establishment if~~ who:

(a) is issued a license without an approved premises as provided in 16-4-417, MCA; or

(b) is not operating a going establishment if the licensee submits a written verification documenting to the department's satisfaction how the nonuse is beyond the licensee's control~~;~~ and

~~(b)~~ the request is received prior to exceeding 90 days of not operating a going establishment.

(2) Acceptable reasons for not operating a going establishment may include but are not limited to:

(a) the death of the licensee or the licensee's family member;

(b) a natural disaster;

(c) a department approved alteration is underway or is pending department approval; or

(d) the licensee lost possessory interest in the premises.

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

(8) A licensee may not purchase, sell, or otherwise provide alcoholic beverages while on nonuse status. This includes catering events and operating through a concession agreement.

AUTH: 16-1-303, 16-4-417, MCA
IMP: 16-3-310, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department proposes to amend ARM 42.13.107 as follows:

Section (1) is proposed for amendment to remove the phrase ". . . that is not operating a going establishment if. . . " because 16-4-417, MCA, provides another condition for department approved non-use not related to a going establishment and the two conditions are reorganized as (1)(a) and (1)(b).

Section (1)(a) text is proposed for the rule to implement 16-4-417, MCA, and is consistent with the department's proposed amendments to ARM 42.12.101. Proposed (1)(b) begins as a restatement of (1) and is necessary to clarify the method by which a licensee requests nonuse status when they cannot operate a going establishment, which is defined in ARM 42.13.111.

Section (2) provides a non-exhaustive list of acceptable reasons that the department may approve nonuse status. This list provides examples that are typically beyond the licensee's control.

Section (8) proposes to place into this rule, the reiteration of the prohibition of a licensee to engage in any sort of alcoholic beverage business activity while on nonuse status. The department believes this addition to the rule is necessary for clarity and guidance to licensees facing non-use - whether the nonuse arises from the conditions in (1)(a) or (1)(b) - because there is no concise prohibition such as this elsewhere in the department's administrative rules.

5. The department proposes to repeal the following rule:

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES

AUTH: 16-1-303, MCA
IMP: 16-4-104, 16-4-106, 16-4-201, 16-4-402, 16-4-404, MCA

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. on April 13, 2020.

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 www.mtrevenue.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 October 7, 2019 and on February 27, 2020.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the 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 March 3, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIV pertaining to the Montana Economic Development Industry Advancement Act (MEDIAA)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On April 8, 2020, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building. Visitors must check in at the customer service window on the third floor for access to the fourth floor.

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 March 20, 2020. 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. GENERAL STATEMENT OF REASONABLE NECESSITY The 66th Montana Legislature passed House Bill 293 (HB 293) which created the Montana Economic Development Industry Advancement Act (MEDIAA), which is codified as 15-31-1001, through 15-31-1012, MCA. The purpose of MEDIAA is to enhance Montana's economy by expanding film and related media production in the state, by increasing job opportunities for a broad array of workers, and by promoting the growth of small businesses. The objectives of MEDIAA stated in 15-31-1002(1), MCA, are achieved by offering tax incentives as provided in the Act.

The department proposes New Rules I through XIV to implement MEDIAA. The proposed new rules are necessary for the department to:

(a) adopt definitions for new terminology established in, or as an extension of, MEDIAA;

(b) provide procedural coordination and guidance with the Montana Department of Commerce (DOC) in its certification of a MEDIAA-compliant production;

(c) provide department forms and uniform application processes through which production companies or postproduction companies may apply to the department to reserve the respective media production or postproduction tax credits;

(d) determine qualified production expenditures allowed under 15-31-1007, MCA, and qualified postproduction wages allowed under 15-31-1009, MCA;

(e) review taxpayer compliance with the provisions of 15-31-1004, MCA; and

(f) administer the transfer of tax credits.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoptions, it is supplemented below to explain rule-specific proposals.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Credit base" means the qualified production expenditures base or compensation base used to calculate media production or postproduction tax credits.

(2) "Credit year" means the calendar year allocated to a tax credit.

(3) "Crew member" means a person hired by a production company or a hired production company, including production staff members, that is not an actor, director, producer, or writer, and who is directly participating in a state-certified production. An individual who receives compensation that is less than Montana minimum wage as described in 39-3-409, MCA, is not a crew member.

(4) "Employee" means the same as in 15-30-2501, MCA, and for purposes of these rules also includes an owner, partner, shareholder, or member of a loan-out company to the extent the individual performed personal services on behalf of a loan-out company.

(5) "Hired production company" means a company, including a loan-out company, hired to undertake production functions that are directly related to principal photography on behalf of a production company. A hired production company agrees to provide the production company with all necessary information and documentation for the calculation of media production or media postproduction tax credits. A hired production company does not include a travel agency, travel company, insurance agency, lodging service, or equipment rental service.

(6) "In-studio facility and equipment" means a permanent, enclosed building or structure that a production company rents for a "qualified production activity," as defined under 15-31-1003(16)(a) MCA. The facility must not be used exclusively for storage and the equipment must be provided by the party renting the facility.

(7) "Montana insurance agency" means an insurance company maintaining a permanent place of business in Montana that pays the Montana premium tax and meets the criteria as an authorized insurer, as provided in 33-2-705(4), MCA.

(8) "Montana office" means the principal place of business of the production company claiming the media production tax credit.

(9) "Montana travel agency" means an entity registered to do business in Montana as a travel agency and maintains a permanent place of business in the state.

(10) "Multi-year production" means a state-certified production that has principal photography occurring over two or more tax periods.

(11) "Permanent place of business in Montana" means a physical presence in Montana through which a business's activity is conducted. Non-exhaustive examples of permanent places of business in Montana are: an office, factory, store, workshop, warehouse, or similar commercial space. Further, a digital-only business

presence, such as the operation of a computer server, does not meet the necessary level of physical presence for these rules.

(12) "Personal service company" means a personal service corporation, as defined in IRC 269A(b), or any other entity meeting the principal activity and the ownership requirements of IRC 269A(b), and also includes a sole proprietorship or an individual being paid as an independent contractor.

(13) "Production company" means the same as provided in 15-31-1003, MCA, and for the purposes of these rules applies to an individual; a disregarded entity, a C corporation, or an S corporation, defined in ARM 42.2.304, including any affiliates required to submit a combined report under ARM 42.26.204, or in a consolidated return under 15-31-141, MCA; a partnership; an estate; or a trust. The production company must maintain a Montana office as provided in 15-30-1004(2)(b), MCA, for the duration of the production and must file a Montana income tax return, as required under Title 15, MCA, for the tax years it directly or indirectly incurs the expenses giving rise to the media production tax credit.

(14) "Series interim production period" means the period of time between two state-certified productions of the same production company.

(15) "Unique credit reference number (UCRN)" means the reference number generated by the department associated with a valid tax credit amount for a given credit year.

(16) "Wages" means the same as provided in 15-30-2501, MCA.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule I to provide necessary definitions for new terminology relating to the department's implementation of MEDIAA and to incorporate compliance terms related to the department's role in the administration of MEDIAA and Montana's revenue laws.

NEW RULE II MEDIA PRODUCTION TAX CREDITS - DETERMINATION OF CREDIT BASE (1) The media production tax credit is the sum of one or more of the production tax credits provided under 15-31-1007, MCA. The basis for each tax credit is determined separately.

(a) Production expenditures, as defined in 15-31-1003, MCA, include expenditures incurred by a production company or a hired production company, including preproduction expenses. Production expenditures paid to an entity which is also a loan-out company must be segregated from personal services as a separate item of expense. Production expenditures paid to another company, which is not a hired production company or a loan-out company, may be included regardless of whether the expenditures include compensation. The basis of an additional tax credit as provided in 15-31-1007(3)(b)(v) through (vii), MCA, may include the same expenditure used under 15-31-1007(3)(a)(i), MCA.

(b) Compensation, as described in 15-31-1003(3), MCA, can only be used in one of the credits provided in 15-31-1007(3)(b)(i) through (iv), MCA, and includes the portion of a payment to a loan-out company for personal services.

Compensation incurred in Montana within six months from the beginning of principal photography may be included.

(c) Payments to a loan-out company cannot be included in any credit base if the production company, its affiliate, or hired production company did not pay withholding on the compensation portion, as provided in 15-31-1003(3), MCA, and [NEW RULE III].

(2) If a production company or hired production company is organized as a corporation and files a combined report under ARM 42.26.204, or files a consolidated return under 15-31-141, MCA, the company may aggregate the production expenditures and compensation of its affiliates or subsidiaries in its credit base. A production company may not aggregate expenses incurred from entities in which they own an interest - including partnerships - unless the entity is disregarded for federal tax purposes under CFR 301.7701-1, 301.7701-3, and 301.7701-5, or the entity is a hired production company. A production company must disclose to the department the names and federal identification numbers of all disregarded entities, affiliates, and hired production companies for each category of expenses included in the credit base. No tax credits shall be allowed for expenses incurred by an undisclosed hired production company.

(3) To be included in the base investment and in the credit base, production expenditures and compensation must directly relate to a state-certified production's qualified expenditures.

(4) Production expenditures representing the cost of tangible personal property used in a state-certified production in Montana may be included under the following conditions. For these purposes, "used in a state-certified production" means a production physically located in Montana during principal photography, but not during any series interim production period.

(a) The cost of acquiring personal property with a useful life of less than a year through a vendor that has a permanent place of business in Montana may be included in qualified expenditures. Personal property acquired through a vendor that acts like a conduit to enable purchases that would otherwise not qualify as an expenditure incurred in Montana shall not qualify as a production expenditure. All other costs for the use of personal property with a useful life of less than one year shall not qualify as a production expenditure.

(b) If the personal property has a useful life of more than one year, production expenditures are allowed for the lesser of the depreciation cost taken on the production company's federal income tax return for the tax year or tax years when principal photography occurs, or the yearly depreciation calculated using the straight-line method multiplied by the number of days the personal property was used in the state-certified production divided by 365.

(5) When a production company owns or leases vehicles and uses the optional standard mileage rate to account for transportation costs in lieu of actual costs and depreciation on their income tax return, then the same method is used for the inclusion of such costs in production expenditures. Regardless of the method used, miles or distance traveled must be in Montana - even if the out-of-state destination is part of the same production - and is directly related to the state-certified production.

(6) Production expenditures for services not included in compensation may be included in production expenditures as follows.

(a) Equipment rentals, including the cost of placing the equipment in service, must be made through a vendor that has a permanent place of business in Montana. All other rental equipment or services do not qualify as production expenditures.

(b) Costs directly related to the manufacturing, assembly, or alteration of costumes, wardrobe, or accessories completed in Montana. Costs for out-of-state services provided shall not be included - even if the products are being shipped or transported to Montana.

(c) Shipping or transportation costs for equipment used in a state-certified production for transport between an original storage location and the Montana production location only; and only when the transportation service provider maintains a permanent place of business in Montana. All other shipping or transportation costs may not be included.

(d) Cost of airfare purchased through a Montana travel agency for employees to the extent that the purpose of the travel is directly related to the state-certified production. Airfare purchased to attend to business that is not related to the state-certified production, airfare that is not related to the state-certified production, airfare for personal reasons, and airfare not purchased through a Montana travel agency shall not be included - even if directly related to a state-certified production.

(e) Insurance purchased through a Montana insurance agency for any tangible personal property or real property in Montana, or for an activity directly related to the state-certified production. If the insurance pertains to a combination of state-certified production and nonstate-certified production purposes, costs that may be included are expenses incurred in the tax year multiplied by the number of days used in the state-certified production divided by the total number of days for the insurance coverage in the tax period.

(f) Per diem or actual cost for meals and lodging as set forth by the United States General Services Administration to the extent the per diem can be taken as a business deduction on the income tax return of the production company, its affiliate, or hired company.

(g) The cost of lodging or housing paid in Montana to accommodate crew members, employees, actors, directors, writers, and producers to the extent the lodging facility is subject to the Montana lodging tax, as provided under 15-65-111, MCA, or is rental housing. Rental housing must be substantiated with a copy of the signed lease or rental agreement identifying the name and address of the landlord, the address of the rental, the stated term of the rental, and the rental amount. The cost of lodging or housing in Montana to accommodate individuals involved directly or indirectly in the marketing function of the state-certified production shall not be included.

(h) Entertainment expenses shall not be included.

(7) Preproduction expenditures may be included:

(a) in the first tax year's expenditures if they are attributable to production expenditures and compensation incurred no more than six months prior to production certification by the Montana Department of Commerce and do not include any compensation of crew members, actors, directors, writers, or producers.

(b) in the production expenditures of the second state-certified production for series interim production period. Series interim production expenditures include only the cost of safe storage of sets and equipment and do not include the cost recovery of stored material.

(8) Compensation paid to crew members, actors, writers, producers, and directors who are employees of the production company, one of its affiliates, or a hired company for personal services rendered in a state-certified production must conform with the applicable individual income tax and estimated tax and withholding requirements provided in 15-30-2501, et. seq., MCA, and the department's administrative rules, to be eligible for inclusion in the base investment or the compensation credit base.

(9) The residency status of crew members on their first day of work in a state-certified production must be reported to the department on a department form. The residency status on the first day of work of an employee on a state-certified production determines whether the production company may include the compensation paid to the employee in the credit base for resident crew members or nonresident crew members.

(10) Fringe benefits paid directly by the production company, one of its affiliates, or a hired production company may be included in compensation if they are directly related to the personal services performed in a state-certified production. Fringe benefits corresponding to compensation provided by a loan-out company may be included in a compensation credit base only if the withholding in [NEW RULE III] was applied to the compensation. Fringe benefits may be included as compensation without being subject to the loan-out withholding requirement. Fringe benefits such as contributions to qualified plans or other expenses incurred under a qualified deferred compensation plan paid for the benefit of employees may be included based on the annual total contributions or deductible expenses, for tax purposes, multiplied by the number of days of personal services rendered in a state-certified production over a given year.

(11) Production expenditures and compensation included in a credit base, whether incurred by the production company, an affiliate, or a hired company, must be added as additional income to federal adjusted income in calculating the Montana net income of the production company that files a claim for the media production tax credit. This inclusion must be made in the tax year the production expenditures were incurred and compensation was paid.

(12) If production expenditures or compensation are excluded from the base investment or a credit base after the production company files its income tax return, the production company may amend its return or informational return to make an adjustment to the addition of income and claim a refund within one year of the final exclusion determination. If the production company makes an election as provided in [NEW RULE VI], this addition to federal adjusted income must be made on the return of the second tax year that is part of the election.

(13) The inclusion of production expenditures in Montana net income does not create any change in depreciation or amortization recovery schedules for future tax years.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule II to provide certain requirements in the department's determination of media production tax credits.

Section (1) is necessary to describe how expenses incurred by a production company may be allocated to the credit base used to claim the tax credit. Section (1) also states that hired companies' expenses are included in the process. Compensation paid to loan-out companies cannot be included in any base if the income tax under NEW RULE III is not withheld.

Section (2) is necessary to include affiliate expenses in the credit base, but to exclude pass-through entities' expenses when the production company owns an interest, unless a pass-through entity is a hired production company or is disregarded for federal income tax purposes. This necessary provision reduces potential abuse by limiting the scope of expenses to entities that are directly involved in the state-certified production. This section also requires that production companies disclose their affiliates, disregarded entities, and hired production companies to comply with 15-31-1003(10)(b), MCA. This section reasonably proposes to deny the tax credit for expenditures that are not clearly attributed to a hired production company.

Section (3) is necessary to state the general principle of inclusion of production expenditures in a credit base. This section emphasizes the direct relationship between the expenditures and the production activity. This section clarifies what "directly used for" means under 15-31-1003(11)(a), MCA, and the broad category of production expenditures under 15-31-1003(11)(a)(xii), MCA.

Section (4) pertains to the necessary method for the inclusion of tangible personal property costs. A distinction is made between personal property with a useful life of less than one year and that with more than one year under 15-31-1003(11)(a)(xii), MCA. Personal property with a useful life of less than a year must be purchased in Montana to comply with the statutory requirement of incurring the expense in the state. For personal property with a useful life of more than one year, costs must be construed as recovery costs even if the personal property was not acquired in Montana. The first principle is to make the inclusion of such property limited to the lesser of the cost recovery claimed on the tax year tax return or the straight-line depreciation method. The second limit reduces the inclusion to the number of days the personal property is directly used for the production during principal photography. This section also clarifies the necessity to limit the inclusion under 15-31-1003(11)(a)(xii), MCA, based on the application of (3). Specifically, expenditures for personal property acquired through other means, such as vendors acting as a conduit to circumvent the statute, are specifically excluded as production expenditures.

Section (5) provides the department's proposed approach to determine travel costs as qualified production expenditures. Since travel expenditures to Montana are likely, the department finds it necessary to propose methods that a production company must use to include travel costs as qualified expenditures and reiterate that travel must be directly related to the state-certified production.

Section (6) is necessary to explain how services that are not included in a compensation credit base may still be included in the production expenditures base if the expenditures economically benefit Montana businesses servicing a state-certified production. It is also necessary to provide the exclusion of expenses, when applicable, that are not directly related to a state-certified production.

Section (7) is proposed to include preproduction expenditures in the production expenditures base if incurred within six months of the production certification by the DOC. Section (7) also provides necessary guidance for production companies regarding permissible series interim production expenditures and the exclusion of compensation from preproduction expenditures for crew members, actors, directors, writer, or producers if similarly stated as production expenditures and compensation. Preproduction compensation does not result in the issuance of a call sheet.

Section (8) clarifies the necessity for a production company, one of its affiliates, or a hired company to comply with Montana's applicable individual income tax and estimated tax and withholding requirements for the compensation to be eligible for inclusion in a compensation base. The tax reporting and withholding compliance maintains a production company's good standing, as described in 15-31-1003(10)(b), MCA.

Section (9) requires a minimal, required process for a production company to provide its employees and the department with information regarding crew members' residency when a crew member changes their residency status during principal photography. Determination of residency is required in order to apply the compensation credit rates and thresholds under 15-30-1007(3)(b)(i) and (ii), MCA.

Section (10) is necessary to clarify that fringe benefits may be included in a compensation credit base only when the compensation paid to a loan-out company was subject to loan-out withholding. In addition, (10) limits contributions to retirement plans to the portion directly related to the personal services rendered in a state-certified production.

Sections (11) and (12) are necessary to clarify the scope of the inclusion of expenditures and compensation expenses in gross income. Section (11) clarifies when a production company acts through a hired production company and does not have nexus with Montana for income tax purposes, the hired production company must include the cost of expenditures and compensation in net income. Section (12) also provides a reference for the inclusion when an election under NEW RULE VI is made.

Section (13) is necessary to clarify that the inclusion of expenditures such as the recovery of capital assets costs does not create any change in the computation of recovery schedules.

NEW RULE III REQUIRED INCOME TAX WITHHOLDING ON COMPENSATION PAID TO A LOAN-OUT COMPANY (1) In accordance with 15-31-1003(3)(c), MCA, and to be considered for inclusion in a production company's compensation base for a state-certified production, all production company personal services payments to any loan-out company must withhold Montana income taxes at the rate of 6.9%. The production company or its agent, affiliate, or hired production company may perform the act of withholding. The

income tax withholding applies to payments made to a loan-out company that is related to personal services performed during a calendar year and must be paid by January 31 of the following year.

(2) The income tax withholding must be calculated for an employee of the loan-out company using the allocable amount of time the employee performed personal services in Montana.

(3) When the loan-out company payment involves more than one employee, the payment must be divided equally between all employees based on the total number of days of personal services rendered unless otherwise specified in the contract between the production company and the loan-out company.

(4) An allocation for the loan-out company payment attributable to the personal services rendered in Montana must be determined by making the following deductions, where applicable, from the total payment made to the loan-out company:

(a) personal services performed in another state;

(b) personal services performed in Montana for a production that is not a state-certified production;

(c) fringe benefits paid directly by the production company, its agent, its affiliate, or its hired production company; and

(d) payments not related to personal services such as but not limited to:

(i) rental of tangible personal property;

(ii) residuals or profit-sharing payments; or

(iii) royalty and image rights.

(5) A production company, hired production company, or their agent must electronically file the loan-out withholding report with the department using the department's online portal and according to department procedures. When a hired production company contracts with a loan-out company, all the withholding payments must be aggregated under the account of the production company.

(6) A loan-out company withholding report is due with payment of the withholding tax by January 31 of the calendar year following the year an employee of the loan-out company provided services to the hiring production company. If the withholding tax is not paid by January 31 of the calendar year following the year the hiring production company made a payment to the loan-out company which is included in a compensation base of a state-certified production, then the department shall apply penalties and interest, as provided in 15-1-216, MCA.

(7) Upon filing the loan-out company income tax withholding report and withholding tax payment with the department, the production company must issue a withholding certificate, for each employee to whom withholding tax is allocable on the report.

(a) Employees of a loan-out company must receive their withholding certificates no later than February 28 of the year following the calendar year the personal services were performed. The withholding certificate must include the name and address of the employee, the certification number of the production, the year for which the withholding applies, and the amount of withholding that may be claimed as a tax credit against Montana individual income tax.

(b) For audit purposes, an employee must keep the withholding certificate for a minimum of three years following the date of filing a Montana individual income tax return.

(8) An employee may claim the reported income tax withheld as a refundable tax credit by filing a Montana individual income tax return. The refund amount claimed cannot be more than the amount of withholding paid and attributed to the employee on the loan-out company withholding report, even if the certificate shows a greater amount. In the event of an error on an employee's withholding certificate, the employee and their employer must resolve the error and the employee must receive a corrected certificate.

(9) A loan-out company may reduce its wage withholding payment pursuant to 15-30-2502, MCA, and related rules, on wages paid to its employees that rendered services to a state-certified production by a maximum of the amount resulting from the calculations described in this rule. If the loan-out income tax withholding is not paid to the department, the reduction of wage withholding based on prospective qualified compensation does not relieve the loan-out company from its obligations under 15-30-2502, MCA, nor the employee from their obligation under 15-30-2512, MCA, and related penalties and interest.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule III to implement and provide guidance on the income tax withholding required on production company payments to loan-out companies to make such payments eligible for inclusion in a compensation base.

Section (1) is necessary to support the statutory requirement for production company payments to loan-out companies and to authorize agents of production companies, affiliates, or hired companies to apply the withholding on behalf of the production company. In addition, (1) provides the payment must be made by January 31 of the year following the year the payments to the loan-out company or the penalties under 15-1-216, MCA, will begin.

Sections (2) through (5) are necessary to clarify how the production company or its agent must withhold, and the sections describe income tax withholding reporting requirements which are consistent with other employers conducting business in Montana. The rule sections provide a core process for determining withholding by deducting any amount that is not directly associated with compensation in a state-certified production and provide that income tax withholding does not apply to fringe benefits paid directly by the production company, affiliates, or a hired company.

Section (6) is necessary to state that a withholding report is due, when it is due, and when penalties and interest begin to be assessed. The date of January 31 aligns the report with the required payment of income tax withholding.

Sections (7) and (8) are necessary to require an informational withholding certificate for employees, provide guidance of informational requirements for a withholding certificate, and provide recordkeeping standards in the event of a department audit. The withholding certificate information may also be used by an employee of a loan-out company to claim the income tax withheld as a refundable tax credit for the year specified on the certificate.

Section (9) is proposed as a necessary explanation of compliance with the statutory wage-based requirements of 15-31-1003(3)(c), MCA.

NEW RULE IV BASE INVESTMENT REQUIREMENT; ELECTION TO COMBINE NONQUALIFYING PRODUCTIONS (1) If a production company initiates more than one state-certified production in a single tax year and one or more of them do not meet the base investment requirement, as provided in 15-31-1005(1), MCA, the production company may elect to combine nonqualifying productions occurring in the same tax year to qualify all of the combined state-certified productions for the base investment requirement. This election is made on the media production tax credit application. When this election is made, all production expenditures must be combined into the base investment as if a single production had been certified; and the limitations to the media production tax credit apply only once on the total amount of base investment and credit base. If the production company claims the Montana screen credit under 15-31-1007(3)(b)(viii), MCA, on a base investment of combined state-certified productions, the screen tax credit provided under 15-31-1004(7), MCA, must appear on all of the media resulting from the combined productions. This production election is made prior to the election stated in [NEW RULE VI(2)].

(2) When a production company elects to combine nonqualifying productions under this rule, the production company will receive only one UCRN for the combined state-certified productions, per credit year.

AUTH: 15-31-1012, MCA
IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule IV to implement and provide a process for combining two or more state-certified productions to meet the base investment requirement for the combined productions in the event one of the productions does not meet the base investment estimated during the certification process. This rule proposes a solution to likely occurrences and seeks to prevent unnecessary repetition of the state certification process.

NEW RULE V TAX CREDIT FOR POSTPRODUCTION WAGES – CREDIT BASE (1) The credit base for the postproduction tax credit equals the sum of hourly wages directly incurred in Montana for state-certified postproduction activities during a tax year. Postproduction activities related to a state-certified production begin on the day following the last day of principal photography in Montana. Postproduction activities performed in Montana for photography performed outside Montana qualify regardless of the date of principal photography.

(2) When an employee is paid an hourly wage, the postproduction company must provide an hourly cost of the employee compensation based on a regular work week. No wages may be included in the postproduction credit base if the same wages are already included in a production credit base.

(3) The postproduction tax credit cannot exceed the total amount of compensation paid to postproduction company employees for personal services

performed in Montana. For the purpose of this rule, compensation paid includes compensation paid in the first month following the tax year in which the wages included in the postproduction credit base were incurred.

(4) To be included in the postproduction credit base, postproduction wages must be directly related to a state-certified production. A wage is directly related to a qualified postproduction activity when the personal services rendered by the employee are necessary for the completion of the postproduction activity, as defined under 15-31-1003(13), MCA. Administrative activities of the postproduction company such as secretarial, accounting, human resources, or marketing services are not directly related to qualified postproduction activities.

(5) The postproduction company must maintain current and ongoing paper or electronic employee timekeeping records of the hours spent by an employee on the state-certified postproduction activity. If no such records are kept, the employee wages shall be excluded from the postproduction credit base. Timekeeping records must contain the name of the employee, job title or work function, days and number of hours worked each day on a state-certified production, and the work location.

AUTH: 15-31-1012, MCA
IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule V to provide what expenses may be included in the base of the postproduction tax credit.

Section (1) provides the circumstances when postproduction expenditures qualify in a state-certified production.

Section (2) provides calculation guidelines for when employees are not paid on an hourly basis.

Section (3) proposes a solution to avoid timing issues of regular and normal payroll practices for compensation incurred in one tax year but paid in the first month of the next tax year, which could disqualify a postproduction company from applying for the postproduction tax credit.

Section (4) provides additional regulatory guidance for wages to be directly related to postproduction activities. Production companies that have activities extending beyond the postproduction of media will not be able to include wages paid for other purposes as a qualified expenditure.

Section (5) provides minimum record keeping requirements that the department contends are necessary, relatively simple, and are usually kept and maintained in the ordinary course of business.

NEW RULE VI CREDIT YEAR (1) The credit year of a media production or postproduction tax credit is the calendar year in which the tax year of the production company or the postproduction company applying for the tax credit according to [NEW RULE VII], or [NEW RULE VIII] begins, except when:

(a) The department receives the submission of costs, required under 15-31-1005, MCA, more than 60 calendar days after the end of principal photography or after the end of the tax year if the production is a multi-year production. In this case, the credit year is the calendar year following the calendar

year in which the tax year of the production company or the postproduction company incurring the expenses begins.

(b) A production company makes an election as described in (2), in which case the credit year may not be earlier than the calendar year in which the second tax year begins; or

(c) The tax credit limit provided in 15-31-1010, MCA, is reached and the tax credit is allocated to a subsequent credit year.

(2) Applications in [NEW RULE VII] and [NEW RULE VIII] must be made for the tax year when the qualifying expenditures were incurred and qualifying compensation was paid. When a production company undertakes a state-certified production overlapping two tax years, the production company may elect to apply the entire base investment and credit base from the first tax year to the second tax year. When the production company makes this election:

(a) the election in [NEW RULE IV] must be applied before any election under this section is made.

(b) the provision in (1)(a) applies based on the second tax year.

(c) a single media production tax credit application is required. This election must be made on a media production tax credit application.

(d) no UCRN will be issued for the first tax year.

(3) For the purpose of providing additional credit year guidance to production companies, the department provides the following example:

Example: A production company has two separate state-certified productions occurring in calendar year 2021, but with principal photography for the second production scheduled to end in calendar year 2022. If the base investment for the first production does not qualify for the media production tax credit, then the production company may elect not to file a media production tax credit application and, alternately, combine both productions into one multi-year state-certified production, as provided in [NEW RULE IV]. In this case, the production company combines its production expenditures incurred and compensation paid in 2021 and 2022, makes the election as provided in [NEW RULE VI], and submits one media production tax credit application to the department for both productions. The application is filed 61 days after the conclusion of the second production's principal photography. The result is that the entire tax credit may be reserved for tax year 2023, at the earliest, as long as the overall calendar year credit limitation in 15-31-1010, MCA, is not reached.

AUTH: 15-31-1012, MCA
IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VI to connect production expenditures and compensation and applicable tax years to the tax credit limit in 15-31-1010, MCA, which is based on a calendar year. Section (1) also clarifies how the department will apply the 60-day submission deadline under 15-31-1005, MCA.

Section (2) provides an election allowing a production company to file one application for state-certified productions that overlap two calendar years. This is necessary to simplify the application process and reduce inefficiencies.

The department provides an example in (3) of the circumstances that this rule proposes to address, and to support the necessity of the rule.

NEW RULE VII MEDIA PRODUCTION TAX CREDIT APPLICATION (1) To reserve a media production tax credit, a production company must submit a media production tax credit application (application) on a form provided by the department, including all supporting documentation provided in this rule, with payment of the fee required under 15-31-1005, MCA. The department will not consider an application "filed" until:

(a) the production company, including its affiliates if the production company is a C corporation, in the state-certified production complies with 15-31-1003(10), MCA;

(b) the production company has paid the required fee; and

(c) the supporting documentation for the application is complete, legible, and is presented in an orderly manner.

(2) The fee required under 15-31-1005, MCA, is due, in full, with each new application. Any submission of an application associated with another state-certified production, even for the same tax year, constitutes a new application and is subject to another fee. Providing additional documentation after an application is submitted to complete a department request does not constitute a new application.

(3) The application must be filed by the date provided in 15-30-2604, MCA, following the end of the tax year the expenditures were incurred and compensation was paid, or the following tax year if an election pursuant to [NEW RULE VI(2)] is made. For the purpose of this section, production expenditures and compensation incurred between July 1, 2019 and the first day of the tax year beginning in 2020 are deemed to have occurred in tax year beginning in 2020.

(4) Production companies with a multi-year production must file the media production tax credit application and pay the required fee for each tax year any base investment expenses are incurred, except:

(a) for tax years beginning after June 30, 2019, but before January 1, 2020, which must be filed with the media production tax credit application pertaining to expenditures incurred and compensation paid in tax years beginning in 2020; or

(b) if an election pursuant to [NEW RULE VI](1) or (2) is made. If so, the production company must pay the required fee for each base investment reported on the application before any election is made.

(5) An application is considered "submitted" on the day the department receives all of the information, documents, and fee described in (1) from the applicant submitted via the department's online portal, and according to department procedures. A "complete" application includes:

(a) a submission of costs, as provided in 15-31-1005, MCA, which includes a list of all the affiliates or hired production companies that incurred the qualifying production expenditures and compensation paid included in the production credit base.

(b) a production verification report, as required by 15-31-1006, MCA.

(c) detailed information on production expenditures incurred in Montana and directly used for the qualified production activity, including:

(i) the total expenditures incurred for each category of production expenditures listed in 15-31-1003(11)(a), MCA;

(ii) all receipts for expenses, in order, using account identification numbers provided by the department in the submission of costs and presented by each account in decreasing amounts of expenditures. All the receipts must include the account to which they relate. Additionally, receipts related to payments made to a Montana college or university, expenses incurred towards an in-studio facility in Montana for 20 days or more, and expenses incurred in underserved areas, must be clearly identified with a notation of "college," "in studio," or "underserved" on the first page of the receipt.

(iii) copies of all the call sheets related to compensation of employees whether they are employees of the production company or a loan-out company.

(iv) detailed amounts of withholding applied to loan-out company employees as listed on the loan-out company withholding report.

(v) copies of contracts with any loan-out companies pertaining to any inclusion of compensation in the base investment and production credit base.

(vi) copies of any agreements with any loan-out company employees pertaining to their personal services performed on behalf of the loan-out company.

(vii) copies of department Form MEDIA-COMP referencing the state-certified production and the status of each employee of a production company, hired production company, and loan-out company.

(6) Any application or submission of costs information presented to the department in a disorganized or unsystematic manner, or where source documents, receipts, and other support documents are provided in an unprepared format, will be deemed "insufficient for review" by the department and will be returned to the production company. In this case, the statutory fee will not be refunded. However, a subsequent, acceptable submission of costs will not require a second payment of the fee.

(7) If the department accepts the application for review but determines that additional documentation is necessary to correct or complete the application, it will send one written request for additional information to the applicant, or its designated, authorized representative.

(a) The department's correspondence will list the deficiencies of the items required under (5) and provide the applicant or its authorized representative 30 days to cure all deficiencies.

(b) Failure by the applicant or its authorized representative to provide the requested items within the time prescribed in (7)(a) may result in the denial of the application and the return of all application materials to the applicant. In this case, the statutory fee will not be refunded by the department.

(8) At its discretion, but not earlier than the 30-day period described in (7)(a), the department may adjust the amount of media production tax credit or base investment, or both, if the applicant is unable to provide records substantiating the inclusion of the expense in the base investment or as a qualifying expense for the calculation of the media production tax credit. Any downward adjustment to a base investment by the department is not considered a denial or a return of the

application or submission of costs. In this case, the statutory fee will not be refunded by the department.

(9) The production company is responsible for keeping records or substantiating evidence of all production expenditures and compensation payments. Copies of the media production tax credit documentation organized in the same manner as described in (5) must be provided to the certified public accountant preparing the production verification report, required under 15-31-1006, MCA.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VII to establish a media production tax credit application process, including processes to support data collection and tax credit reservation systems to apply the overall tax credit limitation based on a calendar year. Sections (1) through (5) are necessary to determine submission criteria for the application, the contents of the application, and the amount of necessary and relevant supporting documentation for the department to meet its statutory review of the submission of costs. An application will be considered filed on the day it is complete and received by the department. An incomplete submission of costs will not create a reservation of a tax credit.

Sections (6) through (9) are necessary to provide a concise process for the department to accept an application and process its review, establish clear timelines for the applicant and the department regarding fulfilling requests for additional information, and reflect department authority to adjust the amount of media production tax credit or base investment, or both, if it is believed the application or disclosures are erroneous or lack substantiation for the requested tax credits.

NEW RULE VIII POSTPRODUCTION TAX CREDIT APPLICATION (1) To reserve a postproduction tax credit, the postproduction company must submit a media postproduction tax credit application to the department, using the department's online portal and according to department procedures, each tax year the postproduction company is certified by the Montana Department of Commerce, including all supporting documentation provided in this rule, with payment of the statutory fee required under 15-31-1005, MCA. The media postproduction tax credit application will not be considered "filed" until:

(a) the postproduction company, including its affiliates if the postproduction company is a C corporation, taking part in the state-certified postproduction complies with 15-31-1003(8), MCA;

(b) the postproduction company has paid the required fee; and

(c) the application includes the documentation required in this rule presented in an orderly manner.

(2) The fee required under 15-31-1005, MCA, is due with each new submission of the postproduction tax credit application.

(3) The postproduction tax credit application must be filed by the 15th day of the fourth month following the end of the tax year the qualified wages were incurred. For the purpose of this section, qualified wages incurred from July 1, 2019 until the

first day of the tax year beginning in 2020 are deemed to have occurred in the tax year beginning in 2020.

(4) A postproduction tax credit application is considered "submitted" when the following documentation is received by the department:

(a) the items described in (1) and (2);

(b) the verification report conforming to the requirements under 15-31-1006, MCA;

(c) a list of all the affiliates that incurred the qualifying wages paid included in the postproduction credit base; and

(d) a detailed listing of employee names, individual tax identification numbers, Montana wages paid, and the nature of the personal services rendered by the employee.

(5) Any application or submission of costs information presented to the department in a disorganized or unsystematic manner, or where source documents, receipts, and other support documents are provided in an unprepared format, will be deemed "insufficient for review" by the department and will be returned to the applicant, or its designated, authorized representative. In this case, the statutory fee will not be refunded. However, a subsequent, acceptable submission of costs will not require a second payment of the fee.

(6) If the department accepts the application for review but determines that additional documentation is necessary to correct or complete the application, it will send one written request for additional information to the applicant, or its designated, authorized representative.

(a) The department's correspondence will list the deficiencies of the items required under (4) and provide the applicant or its authorized representative 30 days to cure all deficiencies.

(b) Failure by the applicant or its authorized representative to provide the requested items within the time prescribed in (6)(a) may result in the denial of the application and the return of all application materials to the applicant. In this case, the statutory fee will not be refunded by the department.

(7) The department may adjust the amount of tax credit reported on the application if the claimant is not able to provide records substantiating the inclusion of the wages in the credit base before the closure of the verification period, but not earlier than 30 days after a department's information request. Any downward adjustment to a base investment by the department is not considered a denial or a return of the submission costs. The statutory fee is not refundable.

(8) The postproduction company is responsible for keeping records of all substantiating evidence of payment of compensation. Copies of the tax credit documentation, organized in the same manner as described in (5), must be provided to the certified public accountant verifying the costs and the calculation of the tax credit.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VIII to

establish a postproduction tax credit application process, including processes for and supporting data collection and tax credit reservation system to apply the overall tax credit limitation based on a calendar year. Sections (1) through (5) are necessary to determine submission criteria for the application, the contents of the application, and the amount of necessary and relevant supporting documentation for the department to meet its statutory duties in MEDIAA. An application will be considered filed on the day it is complete and received by the department . An incomplete submission will not create a tax credit reservation.

Sections (5) through (8) are necessary to provide a concise process for the department to accept an application and process its review, establish clear timelines for the applicant and the department regarding fulfilling requests for additional information, and reflect department authority to adjust the amount of postproduction tax credit or base investment, or both, if it is believed the application or disclosures are erroneous or lack substantiation for the requested tax credits.

NEW RULE IX CERTIFIED PUBLIC ACCOUNTANT VERIFICATION REPORT (1) For the purpose of complying with 15-31-1006(3)(a), MCA, the verification report must include sufficient detail for the department to verify the accuracy of the expenditures and compensation used in the computation of any production or postproduction credit base or base investment, as described in this subchapter, and that the application is free from material misstatements.

(2) The verification report described in 15-31-1006, MCA, must be issued by a certified public accountant (CPA) authorized to practice in Montana who must be unrelated to the production or postproduction company filing the media credit application to which the verification report relates.

(a) The CPA certification that a person is unrelated, as required under 15-31-1006(2)(a), MCA, must also include the disclosure of any transactions for which the CPA has been retained as a consultant or an intermediary pertaining to any future transfers of the tax credit; including name and address of the parties.

(b) "Unrelated" means that the CPA is not:

(i) an employee of the production or postproduction company;

(ii) a holder of an interest directly or indirectly in the production or postproduction company. An indirect interest is an interest held by a spouse, lineal ascendant, lineal descendant, siblings, including step-brothers or step-sisters, step-children and step-grandchildren;

(iii) an employee of a firm, if one of the owners or associates of the firm holds direct or indirect interest in the production or postproduction company; or

(iv) a recipient of compensation for the verification of the costs that is not commensurate with industry standards.

(3) The verification report must be submitted to the department through its online portal and must meet the requirements under 15-31-1006, MCA.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule IX to

establish guidance and compliance requirements in the preparation of the CPA verification reports and to define "unrelated," which is necessary for the department to implement and administer 15-31-1012, MCA.

NEW RULE X OVERALL CALENDAR YEAR LIMITATION (1) The tax credit limit in 15-31-1010, MCA, applies to the aggregate amount of production and postproduction tax credits issued in Montana for a credit year.

(2) The aggregate amount of tax credit reserved is determined in the following order:

(a) A production or postproduction company reserves the tax credit for a credit year as determined in [NEW RULE VI].

(b) A credit is reserved on the date a complete media tax credit application is filed based on the amount requested on the application.

(c) Amounts reserved are aggregated on a "first-come, first-served" basis for each tax credit year until the tax credit limit amount in 15-31-1010, MCA, is reached. If two or more production companies file their media production tax credit application simultaneously, or if tax credit reservations are postponed on the same day to a credit year according to (d), priority will be given to the production company with the lesser base investment.

(d) Any amount reserved in excess of the overall limitation amount for a given credit year must be included in the aggregate credit amount of the earliest following credit year for which the total amount of credit reserved is less than the applicable overall limitation amount for that year. If, after review by the department, a reserved credit amount for a given credit year is not issued, the difference between the total credit amount reserved and the amount issued may only be used for credit amounts reserved but not yet issued on a first-come, first-served basis.

(e) Once a credit amount is verified and a final determination is reached, the amount of tax credit reserved becomes issued for the credit year allocated according to this rule.

(f) The credit year of a media production tax credit issued cannot be changed.

(g) The department will provide contemporaneous information to the Montana Department of Commerce to update the amount of tax credit reserved on its website.

(3) To conform with 15-31-1010(2)(b), MCA, when a credit year for a certain tax credit amount is postponed one year because the total reserved amount of tax credit exceeds the overall limitation amount for that calendar year, the carryover period provided in [NEW RULE XII] is reduced by one year. This reduction must be indicated in the UCRN associated with the tax credit as described in [NEW RULE XI]. Once the carryover period is reduced to zero because the reserved tax credit was in excess of the tax credit limitation amount for five consecutive years, any amount of reserved tax credit in excess of the total credit amount for the fifth year following the initial credit year of media tax credit application will be denied.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule X to provide terms as to how the overall calendar year limitation will be applied. Section (1) states the limitation applied to the total of production and postproduction tax credits for a credit year. Section (2) describes how the total tax credit amount is determined, and in which order. Section (3) clarifies the effect of reaching the tax credit limitation on the tax credit reserved.

NEW RULE XI VALIDATION OF TAX CREDIT - APPEAL RIGHTS (1) For each media production or postproduction tax credit application, the department must review and validate tax credit amounts that are allowed to be claimed against Montana income tax liability. Each tax credit amount validated for each state-certified production must be assigned a UCRN. If a tax credit amount is allocated to several credit years, a UCRN must be issued for each credit year. The tax credit is considered issued on the date the UCRN is issued to the applicant.

(2) If, upon the review of the production media tax credit application, the department adjusts the tax credit amount claimed and reserved, the department must provide the applicant with a written justification of the reasons for any adjustment. The applicant has 30 days from the date of the adjustment letter to accept or appeal the department's adjustment, as provided under 15-1-216, MCA. Once a final determination is made, the department will issue the appropriate tax credit as provided in (1).

(3) If the applicant does not appeal the department's adjustment, the adjustment becomes the department's final determination for the tax credit amount. The applicant may inform the department at any time that it accepts the department's determination.

(4) Once a final determination is reached, in addition to requirements in 15-31-1005(3), MCA, the department will provide the Montana Department of Commerce with a letter providing:

(a) the amount of base investment verified by the department;

(b) the credit base retained;

(c) a UCRN per credit year;

(d) a first credit year reference in which the tax credit can be claimed; and

(e) the ending credit year, which is the last credit year the tax credit may be claimed on an income tax return.

(5) No transfer of a tax credit reserved is allowed until the claimant has received a UCRN related to an amount of a tax credit.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XI to provide a process on how media production or postproduction tax credits are validated, and what the applicant may expect once a validation of tax credits is conclusive. Rule provisions are included to notify applicants of a statutory appeal right of the department action and the consequences of an appeal on the validation process.

NEW RULE XII CLAIM OF TAX CREDITS ON AN INCOME TAX RETURN

(1) A valid media production or postproduction tax credit can be claimed against Montana income tax liability at the earliest on an income tax return with a tax year beginning in the credit year indicated in the UCRN.

(2) A valid media production tax credit can be claimed against Montana income tax liability regardless of whether the taxpayer has directly or indirectly incurred the expenses relating to the tax credit.

(3) If a valid media production or postproduction tax credit is claimed by a grantor trust, the tax credit must flow entirely to the grantor. If it is claimed by a non-grantor trust or an estate, the tax credit must be allocated to the trust or estate in proportion of the Montana adjusted total income reduced by the Montana income distribution deduction over the Montana adjusted total income.

(4) If a valid tax credit is claimed by an S corporation, the tax credit must be distributed based on each shareholder's distributive share of income or loss.

(5) If a valid tax credit is claimed by a partnership, the tax credit must be distributed based on each partner's distributive share of income or loss, unless a special allocation applies. In order to comply with 15-31-1007(7)(c), MCA, and 15-31-1009(6)(c), MCA, special allocations of production or postproduction tax credit in a partnership agreement are not allowed unless the capital account of each partner receiving a Montana Schedule K-1 is adjusted in proportion of the amount of tax credit received.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XII to provide and describe the process for a taxpayer to claim a media production or postproduction tax credit on their income tax return.

NEW RULE XIII CARRYOVER PERIOD (1) If a taxpayer has not claimed or transferred the media production tax credit or claimed the postproduction tax credit on or before the tax year beginning in the ending credit year indicated on the UCRN, the tax credit is no longer available to be used against income tax liabilities. Each year, a taxpayer must include on their income tax return:

(a) the amount of tax credit available for current and each preceding credit year;

(b) the amount of tax credit that was available for each tax year and transferred during the tax year; and

(c) the carryover amount per credit year.

(2) Tax credits are used on a "first-in, first-out" basis.

(3) Tax years of less than 12 months count as one tax year.

(4) The carryover amount of media production tax credit is any amount in excess of income tax liability after deduction of all other nonrefundable tax credits, including the media postproduction tax credit.

(5) Owners of a pass-through entity may claim the tax credit in the tax year they include their distributive share of income, loss, deduction, or tax credit reported on the Montana Schedule K-1.

AUTH: 15-31-1012, MCA
IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XIII to provide how the carryover period must be determined based on the credit year.

NEW RULE XIV TRANSFER OF PRODUCTION TAX CREDIT (1) A taxpayer allowed to claim the production tax credit may elect to transfer any unused tax credit for a minimum of 85% of its value. The transferor must notify the department of the transfer and pay a transfer fee equal to two percent of the value of the tax credit no later than 30 days following the transfer of the tax credit. Time computation for deadlines falling on weekends or holidays shall conform to 1-1-307, MCA, which provides any acts required to be done may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

(2) The transfer notification must be made on a form provided by the department and include:

(a) All UCRNs associated with the tax credits transferred;

(b) The tax credit balances before and after the transfer for each tax credit associated with a UCRN;

(c) The tax identification numbers of the transferee and the transferor;

(d) The overall amount of tax credit transferred, and the price paid for each tax credit associated with a UCRN; and

(e) An acknowledgment by the transferee and the transferor that the transfer is valid, and that the transferee may claim the tax credit on a tax return only if the notification required in this rule is filed and the statutory fee is paid.

(3) If a transferor fails to notify the department and pay the fee within the period provided in (1), or before the transferee claims the tax credit on an income tax return, whichever comes first, the transaction does not constitute a valid transfer, and the transferee may not claim the tax credit.

(4) A production tax credit acquired by means of transfer may not be transferred by the transferee until the end of the tax year in which the tax credit was acquired.

(5) The tax credit cannot be sold if the carryover period under [NEW RULE XIII] has expired.

(6) A tax credit purchased in a tax year may be claimed by the transferee on a return pertaining to that tax year or the following years when permitted under [NEW RULE XIII]. It may not be carried back to a preceding tax year unless the tax credit is purchased before the due date of the transferee's income or information tax return under Title 15, MCA, in which case the tax credit can be applied against the tax liability of that preceding tax year. For example, an individual may purchase a

tax credit before April 15 of Year 2 and apply this tax credit against their individual income tax liability pertaining to Year 1.

(7) The carryover period under [NEW RULE XIII] cannot be reset or suspended due to a transfer or sale of the tax credit. The transferee must determine the number of carryover years left for the tax credit as if it had the ability to claim the tax credit in the tax year beginning in the credit year for which the tax credit was issued and using the same period in which the tax credit was bought. For example, on March 1, 2024, a corporation with a fiscal year beginning June 1, buys a tax credit. The credit year of the tax credit is 2020 with the carry-over ending in 2025. The first tax year the corporation is able to use the tax credit on a return based on its current tax period is the tax year beginning June 1, 2024. The last tax year the corporation can claim the tax credit is the tax year beginning June 1, 2025.

(8) A pass-through entity that is allowed a production tax credit for a tax year, either as a transferee or as a second-tier pass-through entity, must either claim and distribute part or all the tax credit as described in [NEW RULE XII], or elect to transfer part or all the tax credit on behalf of its owners.

(9) If an owner of a pass-through entity, who is a direct owner or an owner that is holding interest in the pass-through entity through the use of disregarded entities, sells their interest in the pass-through entity on or after the date the pass-through entity has legally received the right to claim a valid tax credit, the sale is deemed to include a transfer of the tax credit to the new owner of the pass-through interest. The transferor of the interest must notify the department and pay the two percent fee as provided in (1) and (2) within 30 days of the sale of the pass-through entity's interest or before the new owner of the pass-through interest claims the tax credit whichever comes first. If the department is not notified and the fee paid timely, the new owner of the pass-through entity's interest may not claim the tax credit. The requirement to sell the tax credit at a minimum of 85% of the tax credit sale value must be assessed using the capital account of the owner without regards to the effect of the tax credit being transferred.

(10) Any capital gain that must be recognized for federal tax purposes resulting from the direct or disguised sale of the tax credit, whether the transfer was validated or not, must be included in Montana net income, including any gain resulting from the transfer occurring through the sale of a pass-through entity interest as described in (9).

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes NEW RULE XIV to provide guidance on how the production media tax credit can be transferred and when a transfer will not be considered valid. The rule also provides additional safeguards against disguised transfers.

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: 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 April 30, 2020.

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

7. 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 5 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail and email on February 3, 2020 and via email on March 2, 2020.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State March 3, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to limited all-beverages licenses for continuing care retirement communities	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On December 27, 2019, the Department of Revenue published MAR Notice No. 42-1016 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2333 of the 2019 Montana Administrative Register, Issue Number 24.

2. On January 22, 2020, a public hearing was held to consider the proposed adoption. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. The following opponents were present and provided oral testimony: Margaret Morgan, Retirement Communities Coalition, and Joseph May, Executive Director, Touchmark on Saddle Drive. The following persons also provided written comments: Margaret Morgan, Retirement Communities Coalition; Jason Cronk, Chief Executive Officer, Immanuel Lutheran Communities; and House District 56 Representative Sue Vinton, sponsor of House Bill 613 (2019) (HB 613).

3. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.12.151) LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITY - PREMISES SUITABILITY REQUIREMENTS AND CONDITIONS FOR OPERATING (1) The department shall determine the suitability of the premises when a continuing care retirement community applies to obtain a limited all-beverage license provided in 16-4-315, MCA, changes the location where the license will be operated, or makes alterations to the department-approved premises. The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department except on-premises consumption may extend across the continuing care retirement community's campus, as provided in 16-4-315, MCA.

(2) through (5) remain as proposed.

AUTH: 16-1-303, 16-4-315, MCA
IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-315, 16-4-402, 16-4-405, 16-6-303, MCA.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses

are as follows:

COMMENT 1: Ms. Morgan and Mr. May expressed overall appreciation of the department's efforts to understand continuing care retirement communities (CCRCs) and the social togetherness of their residents in the proposal of New Rule I to implement HB 613.

RESPONSE 1: The department thanks the commenters for their comments.

COMMENT 2: All commenters expressed concern and objected to the department's proposed text in New Rule I(2)(e). All commenters stated that the department erred in the drafting of the proposed text in (2)(e) as it articulated the premises suitability requirements for operating a limited all-beverages license for a CCRC. Representative Vinton and Ms. Morgan referred to section 1(6)(c) of HB 613 which defines "on-premises" to mean ". . . [w]ithin the confines of the continuing care retirement community campus."

Ms. Morgan and Mr. Cronk contend it would be inefficient and confusing for the rule to have one definition of "premises" while the law has another considering the new license type covers the entire campus of a CCRC, which is why section 1(6)(c) of HB 613 is worded the way it is.

Representative Vinton stated the proposed rule text did not reflect legislative intent. Both Representative Vinton and Ms. Morgan request the department replace the language in New Rule I(2)(e) with that from section 1(6)(c) of HB 613.

RESPONSE 2: Facially, "premises" and "on-premises" are somewhat similar, but their respective applications under the Montana Alcoholic Beverage Code (Section 16-1-101, MCA, et. seq.) (Code) and the department's pertinent administrative rules (rules) are substantially different, cannot be interchanged as the commenters request, and the department declines to do so for the reasons provided below.

The language adopted by HB 613 (codified as 16-4-315, MCA) unambiguously indicates that a CCRC must have a " . . . [c]entral dining area at which the alcoholic beverages may be served or purchased for on-premises consumption." Section 16-4-315(1)(b), MCA. The purchase of any alcoholic beverages must be made in that central dining area but may be consumed anywhere on the CCRC campus since 16-4-315(6)(c), MCA, permits expanded on-premises consumption. To interpret "on-premises" in 16-4-315(1)(b), MCA, as the ability to sell anywhere within the CCRC campus conflicts with this statute and with other licensing requirements throughout the Code and rules. An example of such a conflict is the premises suitability requirements provided in 16-3-311 and 16-4-402, MCA - reflected in New Rule I(2)(e) - compared to 16-4-315(6)(c), MCA.

"Premises," defined in ARM 42.12.106(33), means ". . . [t]he area identified in the floor plan approved by the department on which the activities authorized under the license may be conducted." "On-premises" refers to consumption, where the department licenses a person and a premises so that the public may engage in the

lawful consumption of alcoholic beverages while on the licensed premises. Section 16-3-311, MCA, defines what a suitable premises is for operating an on-premises consumption license and 16-4-402, MCA, requires premises suitability compliance for a license issued under the chapter - which includes the special license type for CCRCs. Section 16-4-315(1), MCA, even incorporates 16-4-402, MCA, to establish the same licensing compliance for a CCRC license as for other license types. Based on the premises suitability requirements and overall compliance with the Code that 16-4-315(1), MCA, recognizes, New Rule I is consistent with the Code, the plain language of 16-4-315, MCA, and also comports with the rules pertaining to alcoholic beverage licensing. And to reiterate that New Rule I adheres to the Code, rules, and the plain language of 16-4-415, MCA, the department has inserted additional verbiage into (1) regarding the statutory expansion of on-premises consumption of alcoholic beverages to the entire CCRC campus.

The department encourages the commenters and the Montana Legislature to consider amendments to 16-3-311, 16-4-315, or 16-4-402, MCA, or other relevant portions of the Code to resolve or to except out the conflicts that this new license type presents. The department offers its expertise in the advance review of any such proposals should they present themselves.

/s/ Todd Olson	/s/ Gene Walborn
Todd Olson	Gene Walborn
Rule Reviewer	Director of Revenue

Certified to the Secretary of State March 3, 2020.

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 September 30, 2019. This table includes notices in which those rules adopted during the period September 20, 2019, through February 28, 2020, 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 September 30, 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 and 2020 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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