

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through XII pertaining to)
Certified Noxious Weed Free)
Materials)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On July 29, 2021, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building at Helena, Montana, as well as virtually through the meeting platform Zoom, to consider the proposed adoption of the above-stated rules. To request virtual meeting details, please contact Cort Jensen by email at agr@mt.gov or by phone at (406) 444-3156.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on July 22, 2021, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I PURPOSE AND SCOPE (1) The Department of Agriculture develops standards and good practices for materials other than feed to prevent the spread of noxious weeds and other invasive organisms.

AUTH: 80-7-902, MCA
IMP: 80-7-902, MCA

REASON: New Rule I clarifies the purpose of these rules per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021.

NEW RULE II TERMS AND DEFINITIONS (1) "Board" means a district weed board created under 7-22-2103, MCA.

(2) "Buffer area" means a weed free area maintained around the perimeter of a site.

(3) "Gravel" means small stones or pebbles, or a mixture of these with sand, stone, and gravel as well as recycled concrete and asphalt materials.

(4) "Inspector" means a person who is authorized or employed by the department and is certified by the department to conduct activities under the Certified Weed Free Materials Act.

(5) "Material" means natural materials such as bark, compost, wood chippings, leaves/needles, vegetation, grass, or straw, and those synthetic materials

that are included on the United State Department of Agriculture, Agricultural Marketing Service national list of allowed and prohibited substances.

(6) "Montana certified material" means products from sites that meet Montana's weed free certification standards and are approved by an agent.

(7) "Mulch" means any material or mix of materials that consists of a combination of vegetation and/or synthetic products that are manufactured as a whole and that are used for temperature, moisture, and/or erosion control, weed suppression, or aesthetic purposes, and are applied solely as a surface treatment.

(8) "Regulated area" means an area designated by an agency, group, or person that requires the use of noxious weed seed free material.

(9) "Site" means a single area where material is stored, harvested, or produced prior to being transported to where it will be utilized as a surface treatment.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule II provides clear and uniform terms that correspond with program language referenced throughout the following rules in accordance with authorities provided for in House Bill 93 passed during the 67th Legislature in 2021.

NEW RULE III NOXIOUS WEEDS (1) The Montana Noxious Weed Free Materials Certification Program includes the noxious weeds set forth in ARM 4.5.206 through 4.5.210, authorized by 7-22-2101(7)(a)(i), MCA.

(2) The regional weed free certification program includes additional noxious weeds that have been so designated by other states and provinces.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule III establishes duties of the Montana Noxious Weed Free Materials Certification Program per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021. Duties are defined more broadly than Montana noxious weeds to make the certification more useful on a regional basis.

NEW RULE IV STANDARD RANGE OF TOLERANCES FOR NOXIOUS WEEDS (1) The tolerance for noxious weeds in noxious weed free material is zero for the weeds defined in 7-22-2101(7)(a)(i), MCA, and any other weed species prohibited by a regulated area.

(a) For a site, this means that an agent finds no noxious weed plants present in the site or established buffer area at the time of inspection following the standard inspection procedures.

(b) For mulch, gravel, and other materials this means that materials are 98% free of viable additional weeds following the standard inspection procedures.

(2) For purposes of these rules, the department's certification represents the condition of the site at the time of certification. Further cautionary restrictions with respect to processing, storage, and transportation are imposed in these rules to help preserve that certification. However, the rules do not intend or provide for any

further visual or other inspection of the certified materials after the point of initial certification, other than that which may occur as a result of enforcement or other related activity.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule IV sets the tolerance level at zero to be consistent with state law and to prevent the spread and propagation of noxious weeds per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021. The 98% weed-free standard for mulch, gravel, and other materials is consistent with industry standards as well as current inspection practices in other states.

NEW RULE V MANUFACTURING AND PROCESSING FACILITIES (1) A person desiring to certify processed materials as noxious weed free must apply to the department before initial certification and/or for additional materials not previously approved.

(a) Applications for certification of materials must describe the method of cleaning to remove noxious weeds and propagative plant material. The method must follow industry standards and be approved by the department.

(b) Equipment must be cleaned of any noxious weeds prior to processing materials for certification. Cleaning the entire manufacturing system is required to prevent contamination of materials for certification.

(c) The department may deny or grant approval of the request based upon the information received from the applicant and from data and information from other sources. The department may also withdraw its approval should investigations or future studies reveal the procedure is not equivalent to accepted procedures.

(2) Any person may request Montana Noxious Weed Free Materials Certifications for materials produced out-of-state from the department.

(3) The manufacturer must document the amount (tons) of certified material processed in or shipped into Montana and submit documentation to the department on or before January 30 for the previous year's production.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule V certifies that all facilities manufacturing or processing materials sold in and/or shipped into Montana are weed free. The rule also certifies that facilities have been inspected by a certified agent, and that processes in place meet industry standards and guarantee their products do not contain any noxious weed seeds or propagative plant material. These rules assure consumers purchasing certified material that the facilities meet statewide and industry standards, and the certified material(s) will not contribute to the spread of noxious weeds in Montana or on their property.

NEW RULE VI INSPECTION PROCEDURES (1) All requests for certified noxious weed materials are voluntary.

(2) A person can request inspection of noxious weed free materials annually. The request for inspection is made with the department or certified inspector in the county in which the site is located.

(3) The following procedures and processes are required for site and material noxious weed free certification:

(a) When a portion of a site is to be certified, this portion must be plainly marked or separated by a buffer area at least 12 feet wide, to avoid mixing the certified and uncertified portions.

(b) Sites must include surrounding ditches, fence rows, roads, easements, rights-of-way, and buffer zones of a minimum of 12 feet surrounding the outside edges of the certified site.

(4) Areas associated with the site, such as equipment used to move the material, storage areas and/or bins, are inspected at the same time as the site prior to stacking or filling them with certified material. These areas must be free of noxious weeds. Contaminated storage areas cannot be approved for storage of certified materials.

(5) Bulk or packaged certified materials may be tested or inspected at any time during normal business hours by an agent or the department. Evidence that any lot of certified material has not been protected from contamination or is not properly identified or separated will be cause for certification cancellation.

(6) Gravel, mulch, and other materials that have been sourced from an unknown and/or non-certified site are ineligible for certification unless manufactured or processed to meet requirements in [New Rule V].

(7) Forms are completed by the inspector at the time of inspection of each site. At the conclusion of the inspection, the producer is provided an invoice for the inspection fees and, if applicable, markers.

(8) All equipment must be cleaned of any noxious weed prior to moving, packaging, or otherwise handling certified gravel, mulch, or materials.

(9) Site owners or managers must provide a copy of their county-approved noxious weed management plan.

(10) Gravel, mulch, other materials, and sites that appear weedy or show poor weed management practices, even though noxious weeds are not present, will not be certified under the certification standards. The local agent will document the problems and has the discretion to make this judgment. A producer can challenge this decision and petition the department to assign another agent to reinspect the field.

(11) Any site where a Priority 1A or 1B weed listed in ARM 4.5.206 and 4.5.207 is found or known to occur must implement mitigation strategies approved by the county weed district or department to produce certified materials. If Priority 1A or 1B weeds are present during an inspection, the site and materials are ineligible for certification until the following year.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule VI explains procedures taken by site owners and agents before and during an inspection per authorities provided for in House Bill 93, passed during

the 67th Legislature in 2021. The department asserts these processes as the minimum amount of additional work for businesses that are necessary for an effective and efficient inspection.

NEW RULE VII MATERIAL IDENTIFICATION AND TRANSPORTATION

(1) Identification of certified gravel, mulch, and other materials includes the following:

(a) Consumer packaging must be identified individually using a department-issued identification marker.

(b) The producer, business, or owner will make all reasonable efforts to ensure the certified gravel, mulch, or material is not contaminated with noxious weeds from the time of handling and storage, including delivery to the buyer.

(c) A separate label must be attached to provide proof of certification of the contents with the following statement: "MONTANA CERTIFIED Noxious Weed Free Material NOTE: Certification means this product has been inspected by an agent of the MT NWFM program using recognized inspection methods and no noxious weeds were detected at the time of inspection."

(d) Out-of-state products require label(s) on the product in compliance with Montana's standards for Noxious Weed Free Materials.

(e) All identification labels for certified materials from sites within Montana must be obtained from the department or its agents.

(2) A completed transportation certificate is required and must specify whether the gravel, mulch, or other material was inspected for Montana and/or regional noxious weeds.

(3) It is the responsibility of each entity to make sure that all certified materials sold under the program are properly labeled and identified with transportation certificates before they leave the premises.

(a) A noxious weed free material product transportation certificate, issued and numbered by the department, must accompany all loads of certified materials.

(b) All certified material sold by a certified entity to a second party (such as a retail outlet) for resale must be accompanied by the original transportation certificate. The second party (or retail outlet) will photocopy the original transportation certificate and provide this photocopy plus a receipt to third party buyers of the material. Third party buyers must have the photocopy of the transportation certificate and the receipt (to show where the material was purchased) in their possession when they are transporting or storing certified material in a restricted area.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule VII establishes identification and transportation requirements for certified weed free materials per authorities provided for in House Bill 93, passed during the 67th Legislature in 2021. These requirements are consistent with labeling and inspection requirements of other programs.

NEW RULE VIII CERTIFICATION OF INSPECTORS (1) Each person desiring to be an inspector must be trained and certified according to department standards.

(2) An authorized inspector must be one of the following:

(a) a Montana county weed district employee or contractor;

(b) an employee or contractor of a state, provincial, or local government or federal agency responsible for managing legislated weed species within their jurisdiction;

(c) university extension agent;

(d) representative of a state crop improvement association; or

(e) employee or agent of another authority approved by the department.

(3) If an inspector intentionally falsifies the certificate of an inspection, that inspector will lose certification status.

(4) An inspector may not inspect an entity or site in which the inspector has an ownership interest.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule VIII establishes certification standards for inspectors per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021. The department believes that standardized training allows for a uniform inspection process. The listed parties have a base level of neutrality required for an effective program. The rule does not allow for the most obvious conflict (ownership interest) and follows regional standards.

NEW RULE IX STOP SALE, USE, OR REMOVAL (1) When the department has reasonable cause to believe any lot of certified material is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written order requiring the person holding the material not to sell, use, or remove it in any manner until written permission is given by the department. The department will release the order when the provisions of the act and rules are met. If compliance is not obtained within 30 days, the department may begin proceedings for condemnation or revoke the material certification. The disposition of the material may not be ordered by the department without first giving the owner or person from whom the material was seized an opportunity to apply to the department for release of the material or for permission to process or bring it into compliance with this chapter, and an opportunity to contest any such order under the provisions of 80-7-910(2), MCA.

(2) Materials with revoked certifications may be sold to any customer or area that does not require the use of certified weed free materials.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule IX allows the department to halt contaminated material from being distributed as weed free per authorities provided for in House Bill 93, passed

during the 67th Legislature in 2021. This allows for stoppage while preserving the business' ability to market the substance as ordinary (non-certified) material.

NEW RULE X FEES (1) Costs for state sites located in Montana:

(a) A site inspection fee of \$150 per site is charged to the person for whom the material was inspected.

(i) A minimum of two inspections are required per year for sites.

(ii) One annual inspection is required for manufacturing/processing facilities.

(b) Certified inspectors must submit a copy of the inspection form and submit a \$75 inspection fee, as well as the cost of any markers sold for each site inspection, each year.

(2) Costs for inspection of sites located outside of the state of Montana may include, but are not limited to:

(a) A site inspection fee of \$150 per site will be charged to the person for whom the material was inspected.

(i) Travel expenses including mileage and per diem at the rates set by 2-18-501-502, MCA

(3) Actual costs associated with out-of-state inspections are assessed by the department or its agents. Costs may include, but are not limited to, airfare, vehicle rental, state mileage, per diem, and lodging.

(4) Only product markers provided by the department or authorized by the department may be used. Fees for markers are as follows:

(a) \$0.50/tag;

(b) \$0.15/adhesive label;

(c) \$0.25/sewn-in label; and

(d) \$50/unit of twine.

(5) If the fee is not paid or if a person improperly pays any fee or assessment under the provisions of 80-7-921, MCA, the department or its agent will not provide further services.

(6) The cost for any additional material analysis is paid by the manufacturer or owner.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule X establishes a fee schedule based on the amount that the department expects to incur as the program administrator per authorities provided for in House Bill 93, passed during the 67th Legislature in 2021. The department assumes that the program is revenue neutral.

NEW RULE XI CONTRACTS (1) The department may enter into contracts with local governments, state, federal, or provincial agencies or other organizations to conduct specific material certification activities and may specify the types of identification markers and/or transportation certificates that are acceptable.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule XI provides the ability to subcontract with other certifiers and programs that will allow consistent regional and national programs per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021. These agreements allow the program to serve the entirety of the state in a cost-effective manner.

NEW RULE XII CIVIL PENALTIES (1) Whenever the department has reason to believe that a violation of Title 80, chapter 7, part 9, MCA, or any adopted rule thereunder has occurred, it may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act.

(2) Each violation is considered a separate offense and is subject to a separate penalty not to exceed \$1,000. A repeat violation is considered a first violation if it occurred three or more years after the previous violation.

(3) The penalty matrix set forth in this rule establishes the basic penalty value for each offense. Factors dealing with the violation may cause the matrix penalty to increase or decrease. Examples of such factors include the person's history of compliance or noncompliance, or the extent of the person's actions to sell material or designate or imply material as being certified when it does not meet state certification requirements.

(4) The below penalty matrix applies to all of the following offenses:

1st offense	2nd offense	3rd offense
\$250	\$500	\$1,000

(a) violation of any lawful order, stop sale, use or removal order; or condemnation action;

(b) certification, sale, or advertisement as certified, any noxious weed free material as free from noxious weed within the state, unless material is identified under a department-approved process of certification;

(c) transportation, offer for sale, sale, or use material as noxious weed free, from another state, province, or country, unless the material meets state certification standards or is allowed by an agreement between the department and another government agency;

(d) refusal to pay for any inspection fees or department-approved identification markers;

(e) transportation of certified forage materials in a regulated area without a transportation certificate or identification markers;

(f) falsification or alteration of a transportation certificate or other weed free material identifying markers.

AUTH: 80-7-902, MCA

IMP: 80-7-902, MCA

REASON: New Rule XII allows the department to issue civil penalties when violations occur per authorities provided for in House Bill 93 passed during the 67th Legislature in 2021. The department is primarily a compliance-based enforcement agency, but penalties are necessary to prevent intentional violations of the act, and to create a level playing field for those in compliance and paying for certifications.

ECONOMIC IMPACT OF NEW RULES I through XII: Because the Montana Noxious Weed Free Materials Certification Program is not required by state law, there is no economic impact to businesses that choose not to participate in the program. Participation may provide new opportunities to businesses that acquire certifications through the program. The department expects to certify two to five Noxious Weed Free Material producers in 2021 and five to 10 per year after the program is established. Annual fees for businesses voluntarily participating in the program are estimated to cost \$600 to \$1,500 in 2021, and \$1,500 to \$3,000 in 2022 and beyond. The fees collected are anticipated to cover the cost of the programs.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor (Kenneth Walsh) was contacted by email on June 29, 2021.

8. 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/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Christy Clark

Christy Clark
Acting Director
Department of Agriculture

Certified to the Secretary of State June 29, 2021.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the Community Development Block)
Grant Cares Act (CDBG-CV) program)

TO: All Concerned Persons

1. On July 29, 2021, at 10:30 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

<https://mt.gov.zoom.us/j/81764676652?pwd=cSsycmdOMkR5dExvVEovTWVJL3djUT09>

Meeting ID: 817 6467 6652

Password: 638258

b. Phone: Dial in by Telephone: 406-444-9999

Meeting ID: 817 6467 6652

Password: 638258

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., July 27, 2021, 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 200523, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE
ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT
CARES ACT (CDBG-CV) PROGRAM APPLICATION GUIDELINES

(1) The Department of Commerce adopts and incorporates by reference the Community Development Block Grant Cares Act (CDBG-CV) Application Guidelines as rules for the Community Development Block Grant Cares Act (CDBG-CV) Program.

(2) The rules incorporated by reference in (1) relate to the application, scope, and procedures for the award of 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 web site at <https://commerce.mt.gov/Consolidated-Plan/Documents>.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt NEW RULE I to administer the funds that were allocated to the state of Montana through the Federal Coronavirus Aid, Relief, and Economic Security Act. In accordance with the United States Department of Housing and Urban Development's guidelines, the CDBG-CV funds must be used for activities that prevent, prepare for, or respond to COVID-19. In addition, 70% of the CDBG-CV funds must be used for activities that benefit low-income and moderate-income individuals.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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., August 6, 2021.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Jessica Blumberg
Jessica Blumberg
Rule Reviewer

/s/ Adam Schafer
Adam Schafer
Deputy Director
Department of Commerce

Certified to the Secretary of State June 29, 2021.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.111.409 pertaining to cash) PROPOSED AMENDMENT
advances)

TO: All Concerned Persons

1. On July 29, 2021, at 10:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

<https://mt.gov.zoom.us/j/97338298425?pwd=akEvZ1BQa1JWbWxRdFF0NW9icEVFdz09>

Meeting ID: 829 5250 2508

Password: 151557

b. Phone: Dial in by Telephone: 406-444-9999

Meeting ID: 829 5250 2508

Password: 151557

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., July 27, 2021, 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 DOCAAdministrativeRules@mt.gov.

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

8.111.409 CASH ADVANCES (1) ~~As part of the loan amount, the board may advance at closing either to the borrower or to third parties as directed by the borrower, an amount not to exceed \$30,000 to allow the borrower to satisfy any liens on the property or make repairs to the property, and in addition, a maximum amount not to exceed the actual closing costs for items such as, but not limited to, appraisals, title policies, recording of documents, and other closing costs. The board may also advance at closing either to the borrower or to third parties as directed by the borrower, an amount in excess of the above advance of \$30,000 as approved by the board on a case-by-case basis. Such amounts so advanced shall be added to the initial loan balance. To receive a cash advance, the borrower must submit a request in writing on forms supplied by the board.~~

- (1) The board may disburse a portion of the loan amount as a cash advance at closing for any one or more of the following purposes:
- (a) satisfaction of any liens on the property;
 - (b) necessary repairs to the property;
 - (c) actual loan closing costs, including but not limited to appraisals, title policies, recording of documents, and other closing costs; and
 - (d) other items to assist the borrower to continue residing in the property, including but not limited to, medical expenses, transportation expenses (including automobile purchase and loan payoff), payoff of credit card debt, and supportive and specialized care services.
- (2) To receive a cash advance at closing, the borrower must submit a request in writing on forms supplied by the board.
- (3) A cash advance for any of the purposes specified in (1) may be approved:
- (a) in an amount not to exceed \$30,000 by board staff along with other loan approvals; and
 - (b) in an amount exceeding \$30,000 by the board in a duly noticed meeting on a case-by-case basis.
- (4) A cash advance may be disbursed either to the borrower or to third parties as directed by the borrower and approved by the board. All cash advances disbursed at closing shall be added to the initial loan balance.

AUTH: 90-6-104, 90-6-106, 90-6-507, MCA

IMP: 90-6-104, 90-6-106, 90-6-502, 90-6-505, MCA

REASON: It is reasonably necessary to amend this rule to improve the process, while tightening up the language to decrease liability on cash advances.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

MONTANA BOARD OF HOUSING
Patrick E. Melby, Chairman

/s/ Jessica Blumberg

Jessica Blumberg
Rule Reviewer

/s/ Adam Schafer

Adam Schafer
Deputy Director
Department of Commerce

Certified to the Secretary of State on June 29, 2021.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PROPOSED
RULE I essential standards-library	)	ADOPTION, AMENDMENT, AND
board, governance, and working with	)	REPEAL
the director, NEW RULE II essential)	
standards-serving the community,	)	NO PUBLIC HEARING
NEW RULE III essential standards-	)	CONTEMPLATED
personnel, NEW RULE IV essential)	
standards-standard notification, final)	
arbitrator, and appeal process, and)	
NEW RULE V essential standards-)	
deferrals; the amendment of ARM)	
10.102.1156; and the repeal of ARM)	
10.102.1150A through)	
10.102.1150M, 10.102.1151 through)	
10.102.1154, and 10.102.1157)	

TO: All Concerned Persons

1. On August 19, 2021, the Montana State Library proposes to adopt, amend, and repeal the above-stated rules.

2. The Montana State Library 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 Montana State Library no later than 5:00 p.m. on August 9, 2021, to advise us of the nature of the accommodation that you need. Please contact Genevieve Lighthiser, Montana State Library, 1515 E. 6th Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov.

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

NEW RULE I LIBRARY BOARD, GOVERNANCE, AND WORKING WITH THE DIRECTOR (1) The library is established per Title 7, MCA, Title 22, MCA, or through the legal process practiced by a tribal council.

(2) The board meets at least six times a year and complies with Montana's open meeting laws when meeting.

(3) Board members learn about the services the library provides to users, the role of the board in providing administrative and financial oversight, and the role of the board in planning for new services for users.

(4) The board receives at least three hours of continuing education each year.

(5) The board understands the revenue sources that fund the library, the budgeting process, and adopts a budget for the library.

(6) For a library created under Title 7 or Title 22, MCA, at least 70% of the revenue is from local tax revenues. Grants, donations, and other revenue sources supplement but do not supplant local tax support. If a tribal college library serves tribal members, the tribal council recognizes and supports the efforts of the library to obtain funding.

(7) The library budget shows year-to-year growth reflecting community needs. The director and library board routinely present the library to the community and local government in a manner to maintain and increase the library's ability to meet their community's needs.

(8) The board and director identify in writing what they want to accomplish in the next three to five years, and that plan is focused on meeting community needs. The board and director annually review their plan and progress made.

(9) The board adopts emergency response plans that ensure the safety of the public and staff as the primary priority.

(10) The director or designee submits the Montana Public Library Annual Statistical Report to the Montana State Library. The board and director annually review public library statistics.

(11) The board adopts and regularly reviews policies that reflect the mission and goals of the library. The policies govern use of the library, its materials, and services. No single policy goes more than four years without review.

(12) The board and director review the most current Public Library Standards Road Map maintained by the Montana State Library.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: Montana's current public library standards, which can be found in ARM 10.102.1150A through 10.102.1150M, were adopted in 2010. Since that time, numerous influences have begun to shape the nature of library service. Libraries have been under increasing budgetary pressure while at the same time tasked with providing new and changing services. The changes to these standards reflect the need for library boards and directors to monitor funding resources, develop adequate budgets, and further their education to provide services that benefit community members.

NEW RULE II SERVING THE COMMUNITY (1) The library is open during convenient hours. At a minimum, the library is open at least the following number of hours weekly:

<u>Service Area Population</u>	<u>Minimum</u>	<u>Desirable</u>
Fewer than 3,500	15 hours	25-40 hours
3,501 – 9,999	30 hours	40-50 hours
10,000 – 24,999	40 hours	50-60 hours
More than 25,000	50 hours	60+ hours

(2) Everyone has safe, comfortable, and convenient access to the library and its services.

- (3) Everyone has access to updated and regularly maintained physical and digital library content and services.
- (4) Everyone can find library materials online.
- (5) Everyone has access to virtual and face-to-face programming.
- (6) Everyone has access to information about local community and government activities that assists them with understanding local community issues and allows them to engage civically in the community.
- (7) Children and caregivers have access to early literacy programming and materials either through the library or by being directed to another community organization that specializes in early literacy.
- (8) Everyone has access to information about library programs and services through internal and external marketing efforts of library staff.
- (9) Everyone has access to a library website or social media site.
- (10) Everyone can obtain materials and services from another library through interlibrary loan services.
- (11) Everyone has access to the Internet via wired and WIFI connections.
- (12) Reasonable accommodations are made so that people with disabilities have access to the library's services.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The State Library Commission, with input from the library community, articulated their vision for Montana library services that ensure that all Montanans will have access to library content and services, sufficient unto their needs. Montana's libraries are being called upon to think more deliberately about the impact they have on their communities. As the role of libraries change so too must the standards libraries strive to meet for libraries to successfully ensure that their users and communities thrive. These service-oriented standards were updated to reflect the desire for libraries to focus on community members and their changing needs for library services.

NEW RULE III PERSONNEL (1) Staff members are offered health insurance according to local policy.

- (2) Staff members are offered retirement benefits according to local policy.
- (3) The board adopts a sufficient budget for continuing education.
- (4) During 90% of open hours, paid staff are available to assist users.
- (5) Staff have the tools and training they need to perform their work.
- (6) The director is or will be certified by the Montana State Library within the required timeframe mandated by the certification program adopted by the Montana State Library Commission.
- (7) Directors of libraries that serve over 25,000 people have a Master of Library Science or equivalent degree.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: These standards were updated to reflect local policy and conditions. The Public Library Standards Task Force also recognized the importance of library staff in the delivery of excellent library services.

NEW RULE IV STANDARD NOTIFICATION, FINAL ARBITER, AND APPEAL PROCESS

(1) The State Library will notify libraries of any proposed changes to the standards at least six months before requiring libraries to implement standards.

(2) Any library shall have the right of appeal. The request for the appeal shall be made to the state librarian using the contact methods indicated on the State Library's website. Appeals must be made within 12 days of the receipt of notification denying payment.

(a) Upon receiving a notice of appeal, the state librarian, acting on behalf of the commission, shall convene an independent review committee. The committee shall consist of:

(i) a member named by the appellant who is not a member of the appellant's library staff, library board, or city or county commission;

(ii) a member chosen by the chair of the State Library Commission, who is not a commissioner or a state library staff member; and

(iii) a member from the library community who is not affiliated with the appellant's library, the State Library Commission, or state library staff, named by the president-elect of the Montana Library Association.

(b) The independent review committee shall hear the appeal based on the following procedures:

(i) Both the appellant and the State Library shall have equal opportunity to present testimony, either in writing or orally, and to respond to points raised by the other party.

(ii) The independent review committee shall make its findings and recommendations to the Montana State Library Commission, which shall take final action on the appeal.

(c) The commission can affirm, deny, or modify the findings and recommendations of the independent review committee.

(d) The state librarian, upon final determination of the appeal by the commission, shall notify the appellant in writing. This notice shall conclude the appeals process.

(e) Neither the independent review process nor any subsequent review and decision process of the commission is a contested case, and common law and statutory rules of evidence do not apply to these proceedings.

(3) For any questions arising because of [NEW RULES I through V], the final arbiter is the State Library Commission.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The State Library wished to notify libraries of the timeline for any changes to standards. The changes to these standards combine the appeals

process and the definition of the final arbiter. This simplifies the current standards and places relevant information together.

NEW RULE V DEFERRALS (1) Any library may request, in writing, a waiver from the state librarian by July 25 of each year.

(a) The state librarian may grant a waiver of any of the standards in [NEW RULES I through V] if the library:

- (i) explains why the standard(s) is not being met; and
- (ii) provides a compliance plan by which the library will meet the standard(s).

(b) State Library staff will work with the library director to decide upon a timeline for achieving the standard(s). The state librarian shall make the final decision on the amount of time the library has to comply with the standard(s) and will notify the library requesting the waiver of the decision by letter by October 1.

(2) Any library may request a one-year extension of the waiver from the state librarian in writing by July 25 of each year. The library shall provide the state librarian with an updated compliance plan with an explanation of why they cannot meet the standard(s).

(3) The state librarian may grant an extension for one year only. No further extensions will be granted.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: This standard was updated to reflect the complexity of meeting certain standards and to give flexibility to libraries and the state librarian in determining a timeline for compliance.

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

10.102.1156 EFFECTIVE DATE (1) In order to give all public libraries time to meet these standards, ~~ARM 10.102.1150A through 10.102.1150M~~ [NEW RULES I through V] will become effective on ~~July 1, 2006~~ July 1, 2022.

(2) The effective date for certification requirement of ~~ARM 10.102.1150A through 10.102.1150M~~ [NEW RULES I through V] is ~~July 1, 2007~~ July 1, 2023.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The change is due to the proposed repeal of ARM 10.102.1150A through 10.102.1150M and the adoption of NEW RULES I through V.

5. The State Library proposes to repeal the following rules:

10.102.1150A PUBLIC LIBRARY STANDARDS: GENERAL

10.102.1150B PUBLIC LIBRARY STANDARDS: POLICIES AND BYLAWS

10.102.1150C PUBLIC LIBRARY STANDARDS: PLANNING AND
EVALUATION

10.102.1150D PUBLIC LIBRARY STANDARDS: FINANCE

10.102.1150E HUMAN RESOURCES STANDARDS: LIBRARY DIRECTOR

10.102.1150F HUMAN RESOURCES STANDARDS: GENERAL

10.102.1150G HUMAN RESOURCES STANDARDS: ACCESS

10.102.1150H MATERIALS AND COLLECTIONS STANDARDS:
COLLECTION DEVELOPMENT

10.102.1150I PUBLIC LIBRARY STANDARDS: ACCESS TO THE
COLLECTION

10.102.1150J PUBLIC LIBRARY STANDARDS: COLLECTION
EVALUATION

10.102.1150K PUBLIC LIBRARY FACILITIES STANDARDS

10.102.1150L PUBLIC LIBRARY PUBLIC RELATIONS STANDARDS

10.102.1150M PUBLIC LIBRARY SERVICES STANDARDS

10.102.1151 CERTIFICATION STATEMENT

10.102.1152 DEFERRALS

10.102.1153 FINAL ARBITER

10.102.1154 APPEALS PROCESS

10.102.1157 ADDITIONAL RECOMMENDED LIBRARY STANDARDS

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The State Library Commission, with input from the library community, articulated their vision for Montana library services that ensure that all Montanans will have access to library content and services, sufficient to their needs. Montana's libraries are being called upon to think more deliberately about the impact they have on their communities.

As the role of libraries change, so too must the standards libraries strive to meet for libraries to successfully ensure that their users and communities thrive.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Genevieve Lighthiser, Montana State Library, 1515 E. 6th Avenue, Helena, Montana, 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email glighthiser@mt.gov, and must be received no later than 5:00 p.m., August 9, 2021.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Genevieve Lighthiser at the above address no later than 5:00 p.m., August 9, 2021.

8. 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 90 persons based on the staff and board members of affected libraries.

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

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

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

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

13. The proposed effective date of this rulemaking is July 1, 2022.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Bruce Newell
Bruce Newell
Chair
Montana State Library Commission

Certified to the Secretary of State June 29, 2021.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.121.301, 24.121.403, 24.121.405,	)	PROPOSED AMENDMENT,
24.121.407, 24.121.1301, 24.121.1501,	)	ADOPTION, AND REPEAL
24.121.1505, 24.121.1507,)	
24.121.1509, 24.121.1511,)	
24.121.1517, 24.121.1522,)	
24.121.2101, 24.121.2301; the)	
adoption of New Rules I through III; and)	
the repeal of 24.121.1503 pertaining to)	
salons, shops, mobile salons or shops,)	
schools, definitions, general application)	
and license display requirements,)	
variance requests, general)	
requirements and prohibitions, license)	
general information, premises, fixtures,)	
general sanitation, restrooms, sinks,)	
sanitizers, containers, cabinets,)	
implements, instruments, supplies,)	
equipment, sanitizing, disinfecting,)	
preparation storage, handling,)	
prohibited items, blood spills, continuing)	
education instructors, unprofessional)	
conduct, inspections, name change,)	
closure, change of ownership,)	
operation standards, and lighting)	

TO: All Concerned Persons

1. On August 3, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83255888370>
Meeting ID: 832 5588 8370, Passcode: 522337
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 832 5588 8370, Passcode: 522337

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists no later than 5:00 p.m., on July 27, 2021, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Barbers and Cosmetologists, 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 dlibsdcos@mt.gov (board's e-mail).

3. GENERAL REASON: The board currently licenses salons and shops and sets minimum operating and safety standards for those facilities. Historically these facilities have all been in fixed locations. With recent changes in the industry across the United States, mobile salons and shops as regulated by licensing bodies are becoming more common.

The full board has discussed the appropriate regulation of mobile salons and shops in Montana for the last several years. Licensees, the public, and board members have all expressed a need to allow more flexibility for licensees to safely practice outside fixed locations. Board members and staff have also researched other states' mobile salon/shop licensing requirements to ensure adequate public protection while allowing licensees flexibility in providing services under their individual scopes of practice. Review of the board's statutory authority during this time confirmed that the board has the authority to set requirements for mobile salons and shops in administrative rule.

Therefore, the board determined it is reasonably necessary to amend and repeal several rules and adopt new rules to establish clear operational and safety requirements for mobile salons and shops. The board is also amending rules to achieve consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Authority and implementation citations are being updated throughout to accurately reflect the statutes implemented through the rules and provide the complete and current sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.121.301 DEFINITIONS (1) through (8) remain the same.

(9) "Change in ownership" means when more than 50 percent of the equitable ownership of a salon, shop, mobile salon or shop, or school is transferred to one or more persons or any other legal entity, in a single transaction or in a related series of transactions.

(9) through (18) remain the same but are renumbered (10) through (19).

~~(19)~~ (20) "Employee" means a person employed by a salon, shop, mobile salon or shop, or school and paid wages and/or commissions in accordance with federal, state, and local regulations.

(20) through (29) remain the same but are renumbered (21) through (30).

(31) "Mobile salon or shop" means a salon or shop as defined in 37-31-101, MCA, that is readily movable and where barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring are practiced other than at a fixed location.

~~(30)~~ (32) "Needles" mean single-use, presterilized, and disposable needles of various sizes, which are stored in a manner that will maintain the sterile conditions of contents, away from wetness or extreme humidity.

(a) Needles may not be recapped, bent, or otherwise manipulated by hand prior to disposal, to avoid accidental puncture injury.

(b) Needles must be placed in a puncture-resistant sharps container immediately after use, when damaged, when contaminated before use, or when not used before the preprinted expiration date.

(31) through (37) remain the same but are renumbered (33) through (39).

~~(38)~~ (40) "Working area" means the area of a salon, shop, mobile salon or shop, or school where students or licensees perform services upon clients or members of the public.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: ~~37-1-131~~, 37-31-101, 37-31-203, 37-31-204, 37-31-302, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: For years staff have received questions on what exactly constitutes a change of ownership of a salon, shop, or school since the specifics are not set forth in current statute or rule. Noting that statute does require a facility having a change in ownership to obtain a new license, the board determined it is reasonably necessary to define this term. The definition in (9) is consistent with that used by other Montana licensing boards that have similar statutory requirements for facility licensure and change of ownership. Defining the term will address staff and licensee confusion and noncompliance with board licensing laws while increasing overall efficiencies.

24.121.403 GENERAL APPLICATION AND LICENSE DISPLAY

REQUIREMENTS ~~(1) Applicants for all licensure types shall submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation.~~

~~(2) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has one year in which to supply the remaining information or documents. If the application is not completed within one year, the application times out, and the applicant shall be required to submit a new application package and fees.~~

~~(3)~~ (1) All licensees, including salons, shops, mobile salons or shops, and schools shall display all current licenses conspicuously for members of the ~~in~~ public to view. ~~The address on the personal license~~ Addresses on personal licenses may be covered.

~~(a)~~ (2) Booth renters shall ~~display conspicuously at their working areas all current licenses and~~ also:

(a) post a clear legible sign, of at least six inches by three inches, stating that the booth/station is a booth rental and is rented by the booth renter; and

~~(b) Booth renters shall clearly label all other areas of the salon or shop maintained by the renter including, but not limited to, retail, "roll-about_s," carts, and manicure tables.~~

(3) Mobile salons or shops shall also conspicuously post the mobile salon or shop license on the exterior of the mobile salon or shop.

~~(4) Licensees shall ensure that their correct name and current mailing address is on file with the board by notifying the board of changes in name or address in writing within 30 days, and including the licensee's name, profession, and license number.~~

~~(5) Licenses must not be defaced or altered.~~

~~(6) Licensees shall immediately notify the board of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and appropriate fees to the board or through the board's web site.~~

~~(7) All licensees practicing barbering, cosmetology, electrology, esthetics, or manicuring shall provide a suitable place equipped to provide adequate services to clients, as specified in rule, and subject to inspection by the department or board designee.~~

~~(8) through (10) remain the same but are renumbered (4) through (6).~~

AUTH: ~~37-1-131~~, 37-31-203, MCA

IMP: 37-31-301, 37-31-302, 37-31-303, ~~37-31-304~~, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule for simplicity, better organization, clarity, and ease of use for the reader. The board is eliminating the general application provisions in (1) and (2) because the department administers a standardized application process applicable to all licensing boards.

The board is striking (4) as the requirement for updating licensee contact information is already set forth in ARM 24.121.612. The board is eliminating (6) as unnecessary since licensees now print their own licenses using an online system. The board is deleting (7) as the specific minimum requirements for salons and shops are set forth in other rules and this general statement is not necessary.

24.121.405 ~~VARIANCES~~ VARIANCE REQUESTS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) Applicants for licensure of a salon, shop, mobile salon or shop, or school may submit a variance request from licensing requirements related to safety and sanitation on forms provided by the department. Completed variance requests include appropriate fees and required documentation. ~~Upon application, the~~ The board may only grant a variance from requirements of the safety and sanitation rules upon the board's determination that:

(a) and (b) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-134, 37-31-204, MCA

REASON: The board is also amending this rule to address consistent questions regarding variance requests to board staff by setting forth the requirements more clearly.

24.121.407 PREMISES AND GENERAL REQUIREMENTS AND PROHIBITIONS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) The premises of all salons, shops, mobile salons or shops, and schools must be kept in clean and safe conditions at all times per the requirements in statute and this chapter.

(2) No services connected with a salon, shop, mobile salon or shop, or school can be conducted in any room used as living or sleeping quarters.

(3) No other business, service, or practice may be conducted or provided in a salon, shop, mobile salon or shop, or school unless separated by a full-length partition, except those:

(a) regulated by the board; or

(b) related to the industries regulated by the board, ~~unless separated by a full-length partition~~.

~~(4) Salons, shops, and schools must provide direct entry into the salon, shop, or school from a public access area.~~

~~(5) Furniture must be kept in clean and safe conditions at all times.~~

~~(6)~~ (4) Animals are permitted on the premises of a salon, ~~or shop~~, or mobile salon or shop only as follows:

(a) through (b)(ii) remain the same.

(iii) posts a legible sign at or near the entrance of the salon, ~~or shop~~, or mobile salon or shop indicating that there is a dog present on the premises.

(c) remains the same.

(d) All other animals are prohibited on the premises of salons, ~~or shops~~, or mobile salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule.

~~(7) Single service disposable drinking cups may be available for clients.~~

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-311, MCA

REASON: The board is relocating the provisions from (4) and (5) to ARM 24.121.1501 as a more appropriate location. It is reasonably necessary to strike (7) as unnecessary as the board does not regulate food or drink specifically as it does not pertain to the practice. Specific safety and sanitation standards are addressed in other board statutes and rules.

24.121.1301 SALONS/BOOTH RENTAL SALON, SHOP, MOBILE SALON OR SHOP LICENSES – GENERAL INFORMATION (1) Applications for a salon, shop, or mobile salon or shop must include a blueprint or detailed scale drawing of the floor plan which includes the locations of the required fixtures described in these rules.

(2) Applicants for licensure of an existing salon, shop, or mobile salon or shop with a change in ownership as defined in ARM 24.121.301 must submit a new application as described in ARM 24.121.403, [NEW RULE II], and this rule.

(3) A temporary operating permit may be granted to an applicant for a salon, shop, or mobile salon or shop prior to initial inspection as described in [NEW RULE I] if all other licensing requirements have been met.

~~(1) Each salon and shop shall be located in a structure that meets all applicable local and state building codes requirements.~~

~~(2) The board shall initially and annually, or when a complaint is received, inspect and approve all salons, shops, and booths. Within ten days of an annual or complaint-driven inspection, the salon or shop owner, booth renter, or manager shall respond to all inspection report violations by submitting a detailed written response, including any corrective action taken, to the board office.~~

~~(3) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan when filing a salon or shop application.~~

~~(4) Minimum requirements for a licensed salon or shop are as follows:~~

~~(a) at least one sink basin, appropriate for the practice, within the confines of the salon or shop. The sink basin must have hot and cold running water and be connected to a sewer or septic system;~~

~~(b) one covered wet sanitizer of suitable size and depth, and appropriate sanitizing and disinfecting agents as defined in ARM 24.121.1513 and 24.121.1514 (uncovered sanitizing agents may be used, provided the sanitizing agent is changed after each use);~~

~~(c) one covered soiled linen container;~~

~~(d) one covered garbage container; and~~

~~(e) one enclosed dust free cabinet for the storage of cleaned towels.~~

~~(5) In addition to the above requirements, electrology salons or shops shall have:~~

~~(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod, or water jar, necessary for electrology treatments);~~

~~(b) needles in assorted sizes;~~

~~(i) only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed salon, unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.~~

~~(c) covered containers for all lotions, soaps, and cotton to be used on clients;~~

~~(d) four fine pointed epilation forceps; and~~

~~(e) six draping sheets or towels.~~

~~(6) All residential salons and shops shall have:~~

~~(a) outside entrances with doors; and~~

~~(b) a separate restroom within the confines of the salon that is not available for the personal use of the residents.~~

~~(7) Salon and shop licenses are not transferable. Upon a change in ownership and/or location, the salon or shop shall submit a new salon or shop application accompanied by the appropriate fees.~~

~~(8) A new salon or shop may be granted a temporary operating permit pending an initial inspection. No prior notice of the inspection is required. A~~

~~temporary operating permit shall terminate and a license shall not be granted without board review, unless the salon or shop provides the board with a response within 30 days of the date of the inspection that indicates all the inspection violations have been corrected to the inspector's satisfaction. If a temporary permit terminates, the salon or shop must cease operation until the application is granted by the board and a license issued. A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.~~

~~(9) Holders of salon or shop licenses shall be responsible for safety and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter taking place in the working area.~~

~~(10) A licensee may not renew a booth renter license, unless, at the time of renewal, the licensee has at least one currently active license to practice.~~

~~(11) It is the responsibility of the salon or shop to ensure that all personnel comply with the board's statutes and rules.~~

~~(12) A practice license is a condition to holding a booth rental license. All alleged violations arising against the booth renter shall be processed against the practice license, and a separate action against the corresponding booth rental license is unnecessary. Any final orders resulting from formal disciplinary action or an administrative suspension of an individual's practice license shall also be reflected against the individual's booth rental license.~~

AUTH: ~~37-1-131, 37-31-203, 37-31-204, MCA~~

IMP: ~~37-1-131, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA~~

REASON: The board is amending this rule to relocate language pertaining to operating standards from (1) through (5) to NEW RULE III as a more appropriate location. For the same reasons, the board is moving provisions on wet sanitizer and linen/garbage containers to ARM 24.121.1507, provisions on unprofessional conduct to ARM 24.121.2301, and inspection provisions to NEW RULE II. Further amendments will eliminate outdated, redundant, and unnecessary provisions.

24.121.1501 PREMISES, FIXTURES, AND GENERAL SANITATION – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS ~~(1) Carpeting is prohibited in the working areas, dispensaries, and restrooms of all salons, shops, and schools licensed on or after November 19, 2004.~~

~~(a) Salons, shops, and schools licensed prior to November 19, 2004, shall use appropriate, nonabsorbent floor covering to cover the existing carpet.~~

~~(b) Upon alteration or remodeling of the salon, shop, or school, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.~~

(1) The following applies to salons, shops, mobile salons or shops, and schools:

(2) (a) Floors floors, walls, ceilings, doors, windows, screens, entrances, and receptacles, including those in the restrooms, must be maintained in clean and safe conditions at all times.;

(b) all areas within the facility must be adequately lighted and light fixtures must be kept clean;

(c) there must be direct entry from a public access area; and
(d) furniture must be kept in clean and safe conditions at all times.
(2) Carpeting is prohibited in the working areas, dispensaries, and restrooms of all salons, shops, mobile salons or shops, and schools licensed on or after November 19, 2004.

(a) Salons, shops, and schools licensed prior to this date must use appropriate, nonabsorbent floor covering to cover the existing carpet.

(b) Upon alteration or remodeling of the salon, shop, or school, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is relocating provisions on entrances, fixtures, and general sanitation from ARM 24.121.407 to this rule as a more appropriate location.

24.121.1505 RESTROOMS (1) At least one restroom with a hand washing basin must be located:

(a) on or near the premises of the a salon or shop; or

(b) within the confines of the mobile salon or shop.

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

(3) Restrooms must contain:

(2) (a) Hand posted hand washing signage must be posted in each restroom;

(b) a soap dispenser containing liquid soap;

(c) single service towels or an air dryer; and

(d) a covered waste container.

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

(4) (5) If restrooms are Restrooms used for chemical storage, a closet or cabinet shall be provided and must be locked if used to store chemicals must contain a locked closet or cabinet to store the chemicals.

(5) Single service towels or an air dryer is required.

(6) A soap dispenser containing liquid soap must be provided.

(7) A covered waste container must be provided.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

24.121.1507 SINKS, SANITIZERS, CONTAINERS, AND CABINETS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS HAND WASHING FACILITIES (1) Every shop, salon, mobile salon or shop, and school must have:

(a) a hand washing facility one sink that is convenient to the work areas, but not located in a restroom.

(a) (i) The hand washing facility sink must have hot and cold running water; and be connected to a sewer or septic system.

(A) The sink in a salon, shop, or school must be connected to a sewer or septic system.

(B) The sink in a mobile salon or shop must be connected to a wastewater holding tank and/or meet any state or local laws pertaining to wastewater.

~~(b) (ii) A soap dispenser containing soap must be provided~~ is required.

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

(b) one covered wet sanitizer of suitable size and depth, and appropriate sanitizing and disinfecting agents as defined in ARM 24.121.1513 and 24.121.1514 (uncovered sanitizing agents may be used, provided the sanitizing agent is changed after each use);

(c) one covered soiled linen container;

(d) one covered garbage container; and

(e) one enclosed dust free cabinet for the storage of cleaned towels.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is moving provisions on wet sanitizer and linen/garbage containers from ARM 24.121.1301 to (1)(b) through (e) as a more appropriate location.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

(1) It is the responsibility of all licensees to ~~Licensees must ensure that the machines, and devices, and implements they are using~~ use fall within their scope(s) of practice.

(2) All machines, devices, implements, shelves, tables, sinks, and other equipment used in connection with the operation of a salon, shop, mobile salon or shop, or school must be:

(a) remains the same.

(b) maintained in sanitary and safe conditions at all times.

(3) Salons, shops, mobile salons or shops, and schools must maintain copies of the manufacturers'/owners' manuals on-site for all equipment in service.

(4) Only For the practice of manicuring, only ~~electric file machines specifically manufactured for use in the nail industry are allowed to be used in nail services permitted.~~ Modified craft or hobby tools are prohibited.

(a) and (b) remain the same.

(5) For the practice of esthetics:

(a) Only only ~~microdermabrasion machines specifically manufactured for use in esthetics services are permitted.~~ Modified or medical machines may not be used.

~~(a) Microdermabrasion machines for use in esthetics services must be:~~

(i) remains the same.

(ii) kept maintained in sanitary and safe conditions at all times, including but not limited to changing filters in accordance with OSHA and manufacturer requirements; and

(iii) used only in accordance with specific manufacturer directions;.

(b) ~~Solid~~ solid or liquid abrasives used in microdermabrasion machines are for single-use purpose only and shall be discarded after each use in accordance with federal, state, and local disposal regulations;

(c) ~~The~~ the use of abrasive tips are allowed if used and sterilized in accordance with specific manufacturer directions; and

(d) ~~Single-use~~ single-use plastic tips are allowed ~~to be used in microdermabrasion machines~~ and must be disposed of after each use.

(e) ~~Microdermabrasion machines must be maintained and filters changed in accordance with OSHA and manufacturer requirements.~~

(6) ~~Any and all implements, equipment, and instruments used to perform dermaplane and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond freezes are prohibited. This does not include single-use lancets used during noninvasive procedures.~~

(7) ~~The use of laser energy, as prescribed in ARM 24.156.501 as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation" constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.~~

(8) ~~The use of roller or roll-on waxing systems is prohibited.~~

(9) ~~The use of any teeth whitening products is prohibited.~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-203, 37-31-204, 37-31-312, MCA

REASON: It is reasonably necessary to relocate unprofessional conduct provisions in (6) through (9) to ARM 24.121.2301 as a more appropriate location.

24.121.1511 SANITIZING AND DISINFECTING IMPLEMENTS AND EQUIPMENT – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

(1) All implements, equipment, and electrical instruments must be thoroughly cleaned and subjected to an approved sanitizing and disinfecting ~~process before being reused~~ processes as described in this rule and ARM 24.121.1513 and 24.121.1514.

(2) through (4) remain the same.

(5) Electrical equipment, whether professional or consumer designed, which provides circulating, whirlpool, or vacuum effects shall be:

(a) cleaned and disinfected after each use; and

(b) ~~Such equipment shall also be~~ flushed, cleaned, and disinfected on a regular basis. A record of such cleaning shall be kept on forms provided by the board and available upon client request or any salon inspection. The licensee must maintain cleaning records which document the following:

(i) licensee name;

(ii) client name;

(iii) date;

(iv) cleaning service start and end times;

(v) whether the item was cleaned; and

(vi) whether the item was disinfected.

(6) In addition to the ~~above~~ requirements in (1) through (5), the following ~~rules apply~~ applies to the practice of electrology:

- (a) through (b)(i) remain the same.
- (ii) sterilizing packets with dry heat lab oven, 340°F for 60 minutes;
- (c) remains the same.
- (d) ~~each month a monthly log must be maintained~~ licensees must maintain records consisting of date and sterile packet strip; and
- (e) outside biological monitors shall be used to ensure proper mechanical function of sterilizers on no less than a quarterly basis. ~~Results shall be maintained in a log.~~ The licensee must maintain records of the results.
- (7) through (12) remain the same.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA

IMP: ~~37-1-131~~, 37-31-204, ~~37-31-312~~, MCA

REASON: The board determined it is reasonably necessary to set forth the electrical equipment recordkeeping requirements in rule as opposed to a department-generated form for consistency, clarity, and ease of use for licensees. This rule already describes the recordkeeping requirements with regard to electrology in (6). The board concluded that these amendments will provide greater clarity for department staff, licensees, and the public and increase staff efficiencies by not requiring the department to create and maintain a specific form.

24.121.1517 SALON PREPARATION STORAGE, AND HANDLING, AND PROHIBITED ITEMS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) All salon, shop, mobile salon or shop, and school preparations must be:

- (a) and (b) remain the same.
- (2) Safety Data Sheets (SDS) relative to product ingredients, proper use, storage, disposal, and hazards for products in use at salons, shops, mobile salons or shops, and schools; shall be kept on the premises and available upon need or request by the public, the board, or the board-designated inspector.
- ~~(3)~~ (7) Possession or use of the following items by a licensee and/or on the premises of a salon, shop, or mobile salon or shop, or school is prohibited:
 - (a) through (c) remain the same.
 - (d) methyl methacrylate monomers for artificial nails; ~~and~~
 - (e) through (e)(iii) remain the same.
 - (iv) Jessner's solution; and
- ~~(4)~~ (f) ~~No salon, shop, or school shall have on the premises~~ cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products.
- (5) through (8) remain the same but are renumbered (3) through (6).
- ~~(9) Board inspectors may take a sample of a product used or sold in a salon, shop, or school for the purpose of examining or testing the sample on-site to determine whether this subchapter has been violated.~~
- ~~(10)~~ (8) If the board inspector obtains evidence that a product or item prohibited by this rule is being used in a salon, shop, mobile salon or shop, or

school, the inspector may seize the product or item and remove it from the facility immediately. If a prohibited product or item is seized by an inspector, the licensee will be responsible for the costs of disposing of the product or item. The licensee will be mailed a notice that sets forth the disposal costs incurred by the board in relation to the product or item, and the licensee shall pay such costs within 30 days of the date the notice is mailed to the licensee.

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, ~~37-31-312~~, MCA

REASON: The board is striking the provisions of (9) to align with standardized department inspection and investigation procedures and protocols as they apply to all DLI licensing boards and programs.

24.121.1522 BLOOD SPILLS (1) remains the same.

(2) The blood spill procedure described in this rule must be posted in all salons, shops, mobile salons or shops, and schools. ~~A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

AUTH: ~~37-1-131~~, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is removing obsolete language from (2).

24.121.2101 CONTINUING EDUCATION – INSTRUCTORS (1) ~~Active instructors shall~~ Instructors are required to complete 30 hours of board-approved continuing education (CE) per renewal period to maintain active status licensure, of which eight Eight of the 30 hours must be in teaching methodology pursuant to ARM 24.121.1105.

(2) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.

(3) CE 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 licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the licensee's scope of practice as defined in board statute or rule;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in the profession; or

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

(5) CE hours will not be granted to a licensee teaching a course.

(6) Board meetings are approved as CE.

(a) A licensee must attend at least half of a meeting to obtain credit.

(b) A board meeting is worth two hours of CE credit.

(7) The department may randomly audit up to 50 percent of renewed licensees.

(8) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon 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.

(9) 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.

(10) Any CE hours required by disciplinary order do not apply toward the 30 hours that are required per renewal period under this rule.

~~(2) Continuing education courses must be germane to the practice or business of barbering, cosmetology, electrology, esthetics, manicuring, and teacher training.~~

~~(3) Requests for approval of CE courses must be made on forms approved by the department or its designee.~~

~~(4) CE courses must be completed prior to applying for renewal of an active instructor license.~~

~~(5) Licensees shall maintain records of their CE hours for a minimum of three years.~~

~~(6) Credit will be granted only for the actual hours attended. Attendance will be recorded in half-hour increments.~~

~~(7) Continuing education hours will not be granted to an instructor teaching the course.~~

~~(8) The course provider must supply each licensee with a course completion certificate and must verify attendance of each licensee.~~

~~(9) Course approval will be for three years. All courses will expire March 1 of the third year.~~

~~(10) Course approval may be revoked for cause.~~

~~(11) An instructor may receive credit for attending meetings of the board.~~

AUTH: 37-1-131, 37-1-319, ~~37-31-203~~, MCA

IMP: 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use for the reader. As a part of the standardization, the board is placing the responsibility on instructor licensees to select quality CE programs that contribute to their professional knowledge and competence. Following amendment, the board will no longer approve sponsors or courses as the licensees must choose CE that meets the education objectives described in this rule.

Following a recommendation by department legal staff, the board is adding (2) and striking (4) 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.

It is reasonably necessary to specify in (6)(b) that board meeting attendance is worth two CE hours regardless of the meeting's length. Since the length of a board meeting and the amount of time someone attends both vary, the board has determined it is necessary to set a minimum amount of attendance and standard number of CE hours to provide consistency for both licensees and department audit staff. Based on average meeting length, there are generally two hours of business relating directly to the ongoing regulatory education.

The board is adding (7) to allow flexibility in conducting random CE audits. This amendment will allow the department 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 (9) 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.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) maintaining an unsanitary or unsafe salon, shop, mobile salon or shop, booth, or school, or practicing under unsanitary or unsafe conditions;

(p) performing services or using machines and devices outside of the licensee's area of training, expertise, competence, or scope of practice or licensure, unless such services are not licensed or inspected by the state of Montana; This includes, but is not limited to:

(i) use of implements, equipment and instruments for performing dermaplaning and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond fizzes. This does not include single-use lancets used during noninvasive procedures;

(ii) "surgery," as defined in ARM 24.156.501 as surgery constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter;

(iii) the use of roller or roll-on waxing systems; and

(iv) use of any teeth whitening products;

(q) remains the same.

(r) failure of a salon, shop, mobile salon or shop to ensure that all personnel comply with the board's statutes and rules, including safety and sanitation rules, except when safety violations are committed at a booth by the booth renter;

(r) remains the same but is renumbered (s).

~~(s)~~ (t) damaging, destroying, or attempting to destroy property or equipment of a licensee or a member of the public in a salon, shop, mobile salon or shop, booth, or school;

(t) through (aa) remain the same but are renumbered (u) through (ab).

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA
IMP: 37-1-136, 37-1-137, ~~37-1-144~~, 37-1-316, 37-1-319, 37-31-301, 37-31-331, MCA

REASON: The board is amending this rule to relocate unprofessional conduct provisions previously in ARM 24.121.1301 and 24.121.1509 as a more appropriate location.

5. The proposed new rules are as follows:

NEW RULE I INSPECTIONS – SALONS, SHOPS, AND MOBILE SALONS OR SHOPS (1) A board-designated inspector will conduct annual on-site inspections of all licensed salons, shops, booths, and mobile salons or shops.

(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 licensee must submit a written response 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.

(2) The following inspection process applies to applicants for licensure as a salon, shop, and mobile salon or shop.

(a) Applicants who meet all license requirements with the exception of having passed an initial inspection may be issued a temporary operating permit per 37-31-312, MCA.

(b) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.

(c) Results of the inspection will be provided to the applicant or licensee.

(d) If there are any items of noncompliance, the applicant or licensee must submit a written response which addresses those items of noncompliance. The response must be received by the department within 30 days of receiving notification of noncompliance.

(e) If issues of noncompliance are not corrected within 30 days of the date of notice of noncompliance the temporary operating permit shall terminate and a license shall not be granted without board review.

(i) When a temporary permit terminates, the salon, shop, or mobile salon or shop must cease operation unless a license is issued by the board.

(ii) A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-101, 37-31-203, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: The board is adopting NEW RULE I to consolidate all inspection provisions and standard procedures relating to salons, shops, and mobile salons or shops in one location for consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Inspection provisions pertaining to these license types are being relocated from ARM 24.121.1301 to this rule along with language clarifying initial versus annual inspections.

NEW RULE II NAME CHANGE, CLOSURE, OR CHANGE OF OWNERSHIP

(1) Using forms provided by the department, salons, shops, mobile salons or shops, and schools must notify the board within ten days of any of the following occurring:

- (a) change of business name;
- (b) closure; and
- (c) change of ownership as defined in these rules.

(2) When there is a change in ownership the license issued to the previous owner is void. The new owner must apply for a license per the applicable requirements in this chapter.

AUTH: 37-31-203, MCA

IMP: 37-31-203, MCA

REASON: The board is adopting NEW RULE II to standardize the process for board notification of business name change, closure, or sale. The board concluded these changes will ensure the board receives adequate data and increase department efficiencies.

NEW RULE III SALON, SHOP, BOOTH RENTAL, AND MOBILE SALON OR SHOP OPERATION STANDARDS

(1) A salon, shop, or mobile salon or shop:

- (a) cannot operate unless a license or temporary permit has been issued to the owner;

- (b) must meet the sanitary and operation standards described in ARM Title 24, chapter 121, subchapter 15; and

- (c) must contain a restroom per the requirements in ARM 24.121.1501 and 24.121.1505.

(2) In addition to the requirements in (1):

- (a) a salon or shop must be located in a structure that meets all applicable local and state building codes requirements unless it is a mobile salon or shop as defined in ARM 24.121.301;

- (b) a salon or shop located in a residence must have outside entrances with doors separate from the entrances to the residence; and

- (c) a salon or shop where electrology is practiced must:

- (i) be located in a structure that meets all applicable local and state building codes requirements unless it is a mobile salon or shop as defined in ARM 24.121.301;

(ii) have a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod, or water jar, necessary for electrolysis treatments);

(iii) have needles as defined in ARM 24.121.301. Only presterilized, disposable needles as defined in ARM 24.121.301 may be used for electrolysis services on any individual in a licensed salon, shop, or mobile salon or shop unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.

(iv) have covered containers for all lotions, soaps, and cotton to be used on clients;

(v) have fine-pointed epilation forceps; and

(vi) have draping sheets or towels.

(3) In addition to the requirements in (1) and (2), a mobile salon or shop must:

(a) meet all applicable local and state laws for mobile businesses, including but not limited to operating permits;

(b) provide and maintain a physical address and mailing address for the owner(s) of the mobile salon or shop. The applicant or licensee must notify the board of any change of address of the responsible person(s) within ten days of the change of address.

(4) A booth as defined by 37-31-101, MCA, is part of a salon, shop, or mobile salon or shop, and a booth rental license is subject to the sanitary operating standards for salons and shops as defined in these statutes and rules.

AUTH: 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: The board is adopting this rule to consolidate operating requirements for salons, shops, and mobile salons or shops for better consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Current operating provisions in ARM 24.121.407 and 24.121.1301 are being relocated to this rule so that all operating standards are in one location.

In addition to existing requirements for fixed-location salons and shops, the board is establishing specific operating standards for mobile salons and shops. For example, mobile shop/salon licensees must maintain physical and mailing addresses so department staff, including inspectors, can contact and locate them. The board also determined it is reasonably necessary to require mobile salons and shops to comply with applicable state and local laws for mobile businesses in addition to board regulations. These requirements are consistent with the standards and general regulatory model for mobile salons and shops in other jurisdictions to ensure protection of public health and safety.

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

24.121.1503 LIGHTING

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to repeal this unnecessary rule as adequate salon and shop lighting is now required in ARM 24.121.1501.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

8. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/barber-and-cosmetologists/> (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.

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

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

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.403, 24.121.405, 24.121.407, 24.121.1301, 24.121.1501, 24.121.1505, 24.121.1507, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, 24.121.2101, and 24.121.2301 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 24.121.1503 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O.

Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdcos@mt.gov.

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

BOARD OF BARBERS AND
COSMETOLOGISTS
ANGELA PRINTZ, PRESIDENT

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

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

Certified to the Secretary of State June 29, 2021.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.207.203 incorporation by	)	PROPOSED AMENDMENT
reference of the Real Property)	
Appraiser Qualification Criteria)	

TO: All Concerned Persons

1. On August 4, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/88072528120>
Meeting ID: 880 7252 8120, Passcode: 262879
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 880 7252 8120, Passcode: 262879

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on July 28, 2021, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsirea@mt.gov (board's e-mail).

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

24.207.203 INCORPORATION BY REFERENCE OF THE REAL
PROPERTY APPRAISER QUALIFICATION CRITERIA (1) Except as stated in (3)
and ARM 24.207.508 regarding ad valorem appraisal experience, the board adopts
and incorporates by reference the Real Property Appraiser Qualification Criteria
effective ~~May 1, 2018~~ January 1, 2021, in its entirety, inclusive of the criteria,
interpretations, guide notes, and Q&A, and Policy Statements, ~~effective March 2018,~~
published by the Appraiser Qualifications Board of the Appraisal Foundation. The
Real Property Appraiser Qualification Criteria are commonly referred to as the "AQB
criteria." A copy of the criteria and policy statements are available from the

Appraisal Foundation at www.appraisalfoundation.org, or 1155 15th Street NW, Suite 1111, Washington, DC 20005.

(2) and (3) remain the same.

(a) "Criteria Specific to Continuing Education," Part ~~II~~ III F, paragraph 11 is amended with the addition of the following: "The board has a two-year continuing education cycle."

(b) remains the same.

(c) "Background Checks," Part ~~VI~~ VII, paragraph C, is amended with the addition of the following: "As provided by Title 37, chapter 1, part 2, MCA, the board may not base a denial of a license solely on a previous criminal conviction unless it finds, after investigation, the applicant has not been sufficiently rehabilitated as to warrant the public trust."

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-1-203, 37-1-321, 37-54-105, MCA

REASON: The Appraiser Qualifications Board (AQB) published a new version of the Real Property Appraiser Qualification Criteria effective January 1, 2021. The change in the criteria is the adoption by the AQB of the Practical Applications of Real Estate Appraisal (PAREA) effective January 1, 2021. These new minimum criteria provide another pathway for aspiring appraisers to fulfill their experience requirements by taking advantage of innovative technology. PAREA is designed to offer practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. The board determined it is reasonably necessary to amend (1) to incorporate this new version of the criteria. The board is also amending (3)(a) and (c) to reflect the new numbering of the January 1, 2021, criteria.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsrea@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

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

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.207.203 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdua@mt.gov.

9. Sharon Peterson, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
PETER FONTANA
CERTIFIED RESIDENTIAL APPRAISER
PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 29, 2021.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.210.401 fee schedule,	)	PROPOSED AMENDMENT AND
24.210.426 trust account requirements,	)	ADOPTION
24.210.801 fee schedule, 24.210.828)	
unprofessional conduct for property)	
management licensees, and the)	
adoption of New Rules I reasonable)	
supervision and II high level of)	
supervision)	

TO: All Concerned Persons

1. On July 30, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83371415506>

Meeting ID: 833 7141 5506, Passcode: 883306

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 833 7141 5506, Passcode: 883306

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., on July 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Dan Ritter, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrre@mt.gov (board's e-mail).

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

24.210.401 FEE SCHEDULE (1) through (15) remain the same.

~~(16) Original recovery account assessment~~ 35

(17) and (18) remain the same but are renumbered (16) and (17).

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-207, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-308, 37-51-309, 37-51-311, ~~37-51-502~~, MCA

REASON: The 2019 Montana Legislature enacted Chapter 354, Laws of 2019 (House Bill 376), an act repealing the real estate recovery account and providing deadlines for the transfer of remaining money (February 1, 2021) and claims to the account (January 31, 2021). The board determined it is reasonably necessary to now amend this rule and ARM 24.210.426, 24.210.801, and 24.210.828 to align with the repeal of the recovery account.

The board is striking the \$35 recovery account assessment fee paid by licensees at the time of initial licensure from this rule and from ARM 24.210.801. The fees were deposited into the real estate recovery account and used to pay claims based on unsatisfied judgments against licensees. Because these fees were never a part of the board's special revenue account for operating expenses, eliminating the fees will have no impact to annual revenue.

Implementation citations are also being amended to remove citations of now-repealed statutes.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (4) remain the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-319, 37-51-313, 37-51-321, 37-51-324, ~~37-51-503~~,
MCA

24.210.801 FEE SCHEDULE (1) through (9) remain the same.

~~(10) Original recovery account assessment~~ 35

(11) through (13) remain the same but are renumbered (10) through (12).

AUTH: 37-1-134, 37-51-203, MCA

IMP: 37-1-134, 37-1-141, 37-51-207, MCA

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY
MANAGEMENT LICENSEES (1) through (3)(u) remain the same.

~~(v) failing as a licensee to repay the recovery account for any amounts paid from the account, based on an unsatisfied judgment against the licensee;~~

(w) through (ac) remain the same but are renumbered (v) through (ab).

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-316, 37-1-319, ~~37-51-508~~, ~~37-51-512~~, 37-51-607, MCA

4. The proposed new rules are as follows:

NEW RULE I REASONABLE SUPERVISION (1) Supervising brokers shall provide reasonable supervision for licensed salespersons with two or more years of experience that shall include, but not be limited to, compliance with the following:

(a) maintaining a written office policy describing the duties and responsibilities of licensees affiliated with the broker. A copy of the written policy shall:

- (i) be given to, read, and signed by each licensee; and
- (ii) be available for inspection, upon request, by any authorized representative of the board;
- (b) auditing all transaction files to ensure compliance with all applicable laws and regulations;
- (c) consulting with and/or assisting throughout the transaction;
- (d) communicating directly in person or by electronic communication on a regular basis;
- (e) providing regular training on applicable real estate law, contracts, and current business practices; and
- (f) overseeing all advertising, in any media, of any service for which a license is required.

(2) Nothing in this rule shall prohibit a supervising broker from delegating supervisory authority to other experienced licensees or staff. The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-319, 37-51-302, MCA

REASON: A 2015 legislative audit of the board revealed a need to strengthen supervision requirements for supervising brokers. While very general supervision guidance exists in ARM 24.210.601(8) and (9), the board, staff, and stakeholders drafted the new rules as a preferred alternative to statutory remedies. To ensure proper supervision of licensees by supervising brokers and in response to the audit recommendations, the board is adopting NEW RULES I and II.

NEW RULE II HIGH LEVEL OF SUPERVISION (1) In addition to the requirements of [NEW RULE I], a supervising broker shall provide a high level of supervision for licensed salespersons with less than two years of experience and/or have less than ten transaction sides in a calendar year as follows:

- (a) provide specific training in office policies and procedures;
 - (b) review and provide assistance in preparing contracts;
 - (c) monitor transactions from contract to closing; and
 - (d) review documents in preparation for closing.
- (2) Nothing in this rule shall prohibit a supervising broker from delegating supervisory authority to other experienced licensees. The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-319, 37-51-302, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

6. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/realty-regulation/> (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.

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

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.401, 24.210.426, 24.210.801, and 24.210.828 will not significantly and directly impact small businesses.

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

Documentation of the board's above-stated determinations is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; facsimile (406) 841-2305; or to dlibsdrre@mt.gov.

10. Dan Ritter, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
RIC SMITH
PRESIDING OFFICER

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

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

Certified to the Secretary of State June 29, 2021.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING AND
ARM 37.85.104, 37.85.105, and	)	EXTENSION OF COMMENT
37.85.106 pertaining to updating	)	PERIOD ON PROPOSED
Medicaid and non-Medicaid provider	)	AMENDMENT
rates, fee schedules, and effective)	
dates)	

TO: All Concerned Persons

1. On June 11, 2021, the Department of Public Health and Human Services (department) published MAR Notice No. 37-944 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 687 of the 2021 Montana Administrative Register, Issue Number 11. The department held a public hearing on July 1, 2021, and the initial comment period was scheduled to end on July 9, 2021.

2. On July 15, 2021, at 9:00 a.m., the Department of Public Health and Human Services will hold a second public hearing via remote conferencing to consider the revised proposed amendment of ARM 37.85.105. This second hearing will supplement the hearing held July 1, 2021. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84665865189>; meeting ID: 846 6586 5189; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 846 6586 5189. Find your local number: <https://mt-gov.zoom.us/j/kcZEKlx6a0>.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 13, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

4. The department has supplemented the proposal notice to ensure that the proposed rule changes comply with 53-6-127, MCA, which provides that a policy adjuster may not be less than 1 (or 100%). Thus, the proposed policy adjuster for evaluation and management must be removed from the notice. Additionally, because the evaluation and management policy adjuster is removed, the department must decrease the proposed provider rate of reimbursement for optometrists from the proposed 115.69% to 114.79% to ensure the optical service provider rate increase meets the provider rate increase approved by the Montana Legislature.

5. ARM 37.85.105 as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~84 Federal Register 221, page 62568 (November 12, 2019) effective January 1, 2020~~ 85 Federal Register 248, page 84472 (December 28, 2020) effective January 1, 2021, which is adopted and incorporated by reference. Procedure codes created after January 1, 2021 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2021~~ July 1, 2021. The conversion factor for physician services is ~~\$39.54~~ \$41.88. The conversion factor for allied services is ~~\$24.66~~ \$24.75. The conversion factor for mental health services is ~~\$23.40~~ \$21.44. The conversion factor for anesthesia services is \$30.57.

(c) Policy adjusters are effective ~~July 1, 2016~~ July 1, 2021. The maternity policy adjuster is ~~112%~~ 100%. The family planning policy adjuster is 105%. The psychological testing for youth policy adjuster is 145%. The psychological testing policy adjuster applies only to psychologists.

(d) The BCBA/BCBA-D services policy adjuster is ~~105%~~ 115.8% effective ~~July 1, 2020~~ July 1, 2021.

(e) The payment-to-charge ratio is effective ~~July 1, 2020~~ July 1, 2021 and is ~~45.2%~~ 44.4% of the provider's usual and customary charges.

(f) through (h) remain the same.

(i) Optometric services receive a ~~117.50%~~ 114.79% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective July 1, 2021.

(j) and (k) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) remains the same.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in ~~Federal Register Volume 84, Issue 218, page 61142 (November 12, 2019)~~ Federal Register Volume 85, Issue 249, page 85866 (December 29, 2020), effective ~~January 1, 2020~~ January 1, 2021, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

(ii) remains the same.

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is 48% 41.06%; and

(iv) the bundled composite rate of ~~\$255.47~~ \$258.02 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2020~~ July 1, 2021.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2021~~ July 1, 2021.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2020~~ 2021 resulting in a dental conversion factor of ~~\$34.71~~ \$35.06 and fee schedule is effective ~~January 1, 2021~~ July 1, 2021.

(e) remains the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~July 1, 2020~~ July 1, 2021:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$15.42~~ \$15.57;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$13.36~~ \$13.49; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$11.30~~ \$11.41.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be \$21.32 for the first vaccine and ~~\$14.34~~ \$15.50 for each additional administered vaccine, effective ~~January 1, 2021~~ July 1, 2021.

(i) remains the same.

(j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2020~~ July 1, 2021.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2021~~ July 1, 2021, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2021~~ July 1, 2021. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2021~~ July 1, 2021.

(l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(m) remains the same.

(n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2020~~ July 1, 2021.

(p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2020~~ July 1, 2021.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2021~~ July 1, 2021.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2020~~ July 1, 2021.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2020~~ July 1, 2021.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2021~~ July 1, 2021.

(u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2020~~ July 1, 2021.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2021~~ July 1, 2021.

(w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2020~~ July 1, 2021.

(x) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2020~~ July 1, 2021.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2021~~ July 1, 2021.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2021~~ July 1, 2021.

(aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~October 1, 2020~~ July 1, 2021.

(b) The home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2020~~ July 1, 2021.

(c) The personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2020~~ July 1, 2021.

(d) The self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2020~~ July 1, 2021.

(e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2020~~ July 1, 2021.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2020~~ July 1, 2021.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2020~~ July 1, 2021.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~July 1, 2020~~ July 1, 2021.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~January 1, 2021~~ July 1, 2021.

AUTH: 53-2-201, 53-6-113, MCA, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

6. The department has amended the following paragraphs of the statement of reasonable necessity, but with the following changes from the original proposal, new matter underlined, deleted matter interlined. All other portions of the statement of reasonable necessity remain as proposed.

(2)(c) Policy Adjustors

Montana Medicaid utilizes payment policy adjustors to modify reimbursement. Effective July 1, 2021, Montana Medicaid is proposing to decrease the maternity policy adjustor to 1.0 and ~~is proposing a new policy adjustor of 0.8367 for Evaluation and Management codes (CPT 99202-99499).~~ These proposed changes are This proposed change is necessary to offset the Medicare increases in RVUs ~~and to maintain budget neutral expenditures for physicians. Physicians were excluded from the provider rate increase approved in HB2 by the Montana Legislature.~~

(2)(i) Optometric Services Provider Rate of Reimbursement

The optometric services provider rate of reimbursement changed from 117.50% to ~~115.69%~~ 114.79% due to changes in relative values and an increase in the allied health conversion factor. This will ensure the optical service provider rate increase meets the provider rate increase approved by the Montana Legislature.

7. The department has amended the following paragraphs of the fiscal impact, but with the following changes from the original, new matter underlined, deleted matter interlined. All other portions of the fiscal impact remain as proposed.

Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, effective dates, conversion factors, and rates for services for SFY 2022 based on the proposed amendments.

Provider Type	SFY 2022 Budget Impact (Federal Funds)	SFY 2022 Budget Impact (State Funds)	SFY 2022 Budget Impact (Total Funds)	Active Provider Count
Mid-Level Practitioner	\$0 <u>\$4,680,756</u>	\$0 <u>\$1,305,777</u>	\$0 <u>\$5,986,533</u>	5,547
Physician	\$0 <u>\$13,745,186</u>	\$0 <u>\$3,940,836</u>	\$0 <u>\$17,686,022</u>	13,068
Podiatrist	\$0 <u>\$236,476</u>	\$0 <u>\$61,122</u>	\$0 <u>\$297,598</u>	80

Psychiatrist	\$0 <u>\$499,654</u>	\$0 <u>\$162,694</u>	\$0 <u>\$662,348</u>	192
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The fiscal impact for optometrists and all other provider types remains as proposed.

The department intends for the proposed amendments to be effective retroactive to July 1, 2021.

8. 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: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 23, 2021.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Erica Johnston for Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 29, 2021.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to marijuana testing) PROPOSED ADOPTION
laboratory licensure)

TO: All Concerned Persons

1. On July 29, 2021, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85402298459>, meeting ID: 854 0229 8459; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 854 0229 8459. Find your local number: <https://mt-gov.zoom.us/u/kjLSGAcoH>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Applicant" means a person applying for a testing laboratory license.

(2) "Batch" means:

(a) a quantity of usable marijuana from a harvest lot; or

(b) a quantity of cannabinoid concentrate or extract or cannabinoid product from a process lot.

(3) "CBD" means cannabidiol.

(4) "CBDA" means cannabidiolic acid.

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

(6) "Harvest lot" has the meaning provided for under ARM 42.39.102.

(7) "ISO" means International Organization for Standardization.

(8) "Licensee" means any person licensed by the department to operate a testing laboratory.

(9) "Limited access area" means a building, room, or other contiguous area upon the registered premises where marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under the control of the licensee.

(10) "Marijuana items" means:

- (a) marijuana;
- (b) usable marijuana;
- (c) dried leaves and flowers of the marijuana plant;
- (d) marijuana derivatives, concentrates, extracts, resins, infused products, edible products, ointments, tinctures, suppositories, topicals; and
- (e) other marijuana-related products.

(11) "Process lot" has the meaning provided for under ARM 42.39.102.

(12) "Property owner permission form" means a completed, signed, and notarized form which gives an applicant, or licensee renting or leasing the property, permission from the property owner to operate the testing laboratory on the property.

(13) "Test batch" means a portion of a harvest or process lot that has been submitted for quality assurance testing.

(14) "THC" means tetrahydrocannabinol.

(15) "THCA" means tetrahydrocannabinolic acid.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to adopt New Rule I to define terms commonly used within the marijuana testing laboratory administrative rules under ARM Title 37, chapter 107, subchapter 3.

The terms defined within this proposed rule were previously defined under ARM 37.107.110. As the result of passage and implementation of House Bill 701 during the 2021 Legislative Session, ARM 37.107.110 has been transferred to the Department of Revenue. See MAR Notice No. 42-1030. Due to this transfer, the rule is no longer applicable to the department's marijuana testing laboratory rules.

New Rule I is necessary to ensure terms commonly used within the marijuana testing laboratory rules continue to be defined. The rule guides readers in terms used within the marijuana testing laboratory rules that are undefined within statute.

In proposing this rule, the approach taken by the department was to adopt in substance the same definitions that applied to marijuana testing laboratories under ARM 37.107.110. Many of the same terms and definitions from ARM 37.107.110 are used within this proposed new rule. Terms within ARM 37.107.110 having no application to marijuana testing laboratories are not included within this new rule.

Fiscal Impact

There is no anticipated fiscal impact associated with the proposed rule adoption.

The department intends the proposed rule to be effective on the date of adoption.

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: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 29, 2021.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.70.305, 37.70.401,) PROPOSED AMENDMENT
37.70.402, 37.70.406, 37.70.408,)
37.70.601, and 37.70.607, pertaining)
to low income energy assistance)
program (LIEAP))

TO: All Concerned Persons

1. On July 29, 2021, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85961897354>, meeting ID: 859 6189 7354; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 859 6189 7354. Find your local number: <https://mt-gov.zoom.us/j/85961897354>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.305 APPLICATION (1) through (3) remain the same.

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2024~~ 2021-2022 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually.

Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) through (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) through (24) remain the same.

(25) "Modified LIEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2024~~ 2021-2022 heating season or a minimum payment of \$25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(26) through (42) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) through (6) remain the same.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2024~~ 2021-2022 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) and (9) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through eight members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with nine or more members are eligible for LIEAP benefits on the basis of income only if the

household's annual gross income is at or below 150 percent of the ~~2020~~ 2021 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, or TANF-funded cash assistance.

(2) The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, ~~2020-2024~~ 2021-2022 heating season. The LIEAP table of income standards, ~~2020-2024~~ 2021-2022 heating season, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the ~~2020-2024~~ 2021-2022 heating season. The LIEAP table of resource standards is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(5) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the ~~2020-2024~~ 2021-2022 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the LIEAP Benefit Award Matrix for the ~~2020-2024~~ 2021-2022 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the LIEAP Benefit Award Matrix for the ~~2020-2024~~ 2021-2022 heating season.

(3) remains the same.

(4) Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2021~~ 2021-2022 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2021~~ 2021-2022 heating season or a minimum payment of \$25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor will be paid a benefit in the amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2021~~ 2021-2022 heating season and will be paid as follows:

(a) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2020-2021~~ 2021-2022 heating season. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20.

(3) and (4) remain the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of 37.70.305, 37.70.401, 37.70.402, 37.70.406, 37.70.408, 37.70.601, and 37.70.607 pertaining to the Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP.

ARM 37.70.305, 37.70.401, 37.70.402, 37.70.601 and 37.70.607

The department is proposing to amend these rules by providing that an updated LIEAP Benefit Award Matrix will be used for the 2021-2022 heating season. ARM 37.70.601 provides that, in most cases, an eligible household's benefit is computed by multiplying the applicable amount in the table of base benefits found in the LIEAP Benefit Award Matrix by the applicable multiplier from the table of income/climatic adjustment multipliers also found in the LIEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIEAP Benefit Award Matrix for 2020-2021 are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2021-2022 heating season, the estimated number of households that will apply and be found eligible for LIEAP for the 2021-2022 season, and fuel cost projections for the 2021-2022 heating season. If the amounts in the benefit tables were not updated for the 2021-2022 heating season, the amount of benefits paid out for the season might exceed available funding or a large amount of funds that could have helped low income households heat their homes might go unspent.

In addition to the table of base benefits, the LIEAP Benefit Award Matrix also contains a table of income/climatic adjustment multipliers. These multipliers are based on a household's income as a percentage of the federal poverty guidelines and on what part of the state the household lives in. The state is divided into ten regions with different multipliers to consider the climatic differences from one part of the state to another, which have an impact on residential heating costs. It is not necessary to revise the multipliers annually because the factors on which they are based do not vary significantly from year to year. The department is not proposing any changes to the table of income/climatic adjustment multipliers in the LIEAP Benefit Award Matrix for 2021-2022 for this reason.

ARM 37.70.406

The department proposes to amend this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2021-2022, rather than the federal poverty guidelines for 2020-2021, in the table of income standards used to determine eligibility for LIEAP for the 2021-2022 heating season. This change is necessary to consider increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

ARM 37.70.408

The department is proposing to amend this rule by updating the date of the LIEAP Table of Nonbusiness Resource Limits used to determine LIEAP eligibility based on resources. This is necessary because (5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or 3 percent, whichever is less. The increase in the CPI for 2020 was 1.4%; therefore, the dollar amounts in the LIEAP Table of Nonbusiness Resource Limits for the 2021-2022 heating season will increase by 1.4%. If the resource limits were not revised annually to adjust for inflation, some households might be ineligible for LIEAP because their resources exceed the resource limit although the buying power of their resources was less than in previous years due to inflation.

Fiscal Impact

LIEAP is 100% federally funded. Congress has not yet appropriated funds for the LIEAP 2021-2022 heating season but based upon the information available at this time the department estimates that Montana will receive comparable funding to last heating season. Benefit levels for households using all types of heating fuel and for all dwelling types are expected to be comparable to the 2020-2021 heating season. It is estimated that 18,000 households will qualify for LIEAP benefits this year which is comparable to last year. As in past years, if LIEAP funds for the 2021-2022 season are appropriated at a higher level, the additional funding will allow subsequent payments to be issued to each LIEAP recipient.

The department intends for these proposed amendments to be effective October 1, 2021.

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: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Ann Hefenieder

Ann Hefenieder
Rule Reviewer

/s/ Adam Meier

Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 29, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 42.13.701 pertaining to	)	AMENDMENT
Production Increments Used in the)	
Calculation of Taxes on Beer	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5:00 p.m. on July 16, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.13.701 PRODUCTION THRESHOLD INCREMENTS USED IN THE CALCULATION OF TAXES ON BEER (1) Section 16-1-406, MCA, requires each barrel of beer sold in Montana to be taxed. This tax is based upon the total number of barrels of beer produced by a brewer in a year. For purposes of this tax, "year" means the department's fiscal year which begins on July 1 of each calendar year and ends on June 30 of the following calendar year. "Annual" or "annually" are synonymous with the department's "year."

(2) The brewer production increments and graduated per barrel tax rates provided in 16-1-406, MCA, correspond to a brewer's reported annual production regardless of whether the beer is produced nationally or internationally.

(a) For the purposes of production reporting and calculating taxes owed, a brewer who has produced 10,000 barrels of beer or less in the preceding year will begin the next year at the \$1.30 per barrel tax rate. The month after the brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. For example, if the 5,001st barrel is produced on May 20, the tax rate will be \$1.30 for all of the month of May. The per barrel tax rate will increase to \$2.30 beginning with the month of June and will continue at that rate for the remainder of the year or until the month after the next production increment is exceeded.

(b) For the purposes of production reporting and calculating taxes owed, a brewer who has produced 10,001 barrels of beer or more in the preceding year will begin the next year at the \$4.30 per barrel tax rate.

(c) For the purposes of production reporting and calculating taxes owed, a new brewer will begin the year at the \$1.30 per barrel tax rate. The month after the new brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. If a new brewer produces more than 10,000 barrels in the first month of the year, all its production will be taxed at the \$4.30 per barrel tax rate for the year.

(3) A brewer must notify both the department and its wholesalers, in writing, by the end of the month when a production increment is exceeded, resulting in the brewer moving to the next production increment.

~~(1) The month after a brewer exceeds a production threshold, the tax rate will increase to the next incremental tax rate. For example, if the 5,001st barrel is produced on May 20, the tax rate will be \$1.30 for all of the month of May. It will increase to \$2.30 beginning with the month of June's production and will continue at that rate until the month the next threshold is exceeded, if applicable. Each brewer will notify both the department and its wholesalers, in writing, by the end of the month in which it exceeds a production threshold.~~

~~(2) In situations where a brewer produces over 10,000 barrels nationally and internationally in the first month of the fiscal year, all of its production will be taxed at \$4.30 for the year.~~

~~(3) The number of barrels of beer produced by a brewer in a year is the total of all barrels produced nationally and internationally.~~

~~(4) For purposes of this tax, a year is the state's fiscal year, July 1 through June 30.~~

AUTH: 16-1-303, MCA

IMP: 16-1-406, 16-1-409, MCA

REASONABLE NECESSITY: Based on an inquiry from industry and the department's subsequent review of ARM 42.13.701, the department finds it necessary to propose amendments to the rule regarding the department's administration of beer production reporting and tax provisions contained in 16-1-406, MCA.

Specifically, the current version of the rule does not provide adequate procedural guidance when production for one year transitions into the next and does not provide adequate substantive guidance for graduated production and tax methodology for brewers whose production falls within either of the two tiers under 10,000 barrels of beer versus that for brewers whose production exceeds 10,001 barrels. The department proposes the addition of new (1) and (2) to lend this necessary support and give greater deference, without repetition, to the system established under 16-1-406, MCA.

In addition to the amendments clarifying processes and tax administration, the department proposes to relocate and restate rule sections for improved organization and increased clarity. New (3) is a restatement and relocation of the reporting requirement at the end of current (1); and current (3) and (4) have been restated and relocated to proposed (1) and (2), respectively, for improved consistency.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action, in writing, 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 August 10, 2021.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person named in #4 no later than 5:00 p.m., August 10, 2021.

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. The number of hearing requests necessary for the department to conduct a public hearing is 12, which is approximately 10 percent of the number of domestic breweries and beer wholesalers who are impacted by these rule changes.

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 different mailing preference is noted in the request. Such written request may be mailed or emailed to the contact person in #4.

8. An electronic copy of this notice is available through the Secretary of State's web site at sosmt.gov/arm/register.

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

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart
David R. Stewart
Authorized Signor
for the Department of Revenue

Certified to the Secretary of State June 29, 2021.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 8.94.3817 pertaining to the)	
administration of the Montana Coal)	
Endowment Program (MCEP) –)	
Planning Grants)	

TO: All Concerned Persons

1. On May 28, 2021, the Department of Commerce published MAR Notice No. 8-94-187 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 591 of the 2021 Montana Administrative Register, Issue Number 10.

2. No comments or testimony were received.

3. The department has amended the above-stated rule as proposed.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Adam Schafer
Adam Schafer
Deputy Director
Department of Commerce

Certified to the Secretary of State June 29, 2021.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an) NOTICE OF ADOPTION OF AN
emergency rule closing Cooney) EMERGENCY RULE
Reservoir in Carbon County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing Cooney Reservoir in Carbon County:

- (a) The Robertson Draw Fire is burning south of Red Lodge, Montana.
- (b) Fire suppression efforts include several aircraft scooping and bucketing water from Cooney Reservoir.
- (c) The closure is necessary so aircraft crews can safely operate and maneuver without potential collisions with recreationists on the lake. The closure is also necessary so recreationists, including those with limited maneuverability, are not subject to potential collision with large, heavy water buckets suspended from helicopters.
- (d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 13 of the 2021 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective June 18, 2021, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE 1 COONEY RESERVOIR TEMPORARY EMERGENCY CLOSURE

- (1) Cooney Reservoir is located in Carbon County.
- (2) Cooney Reservoir is closed to all public occupation and recreation including, but not limited to, floating, swimming, wading, and boating.
- (3) Cooney State Park will remain open.

(4) This rule is effective as long as the lake is needed as a source of water for fire suppression efforts.

(5) This rule will expire as soon as the department determines Cooney Reservoir is again safe for occupation and recreation. Signs restricting use of the Cooney Reservoir will be removed when the rule is no longer effective.

AUTH: 2-4-303, 23-1-106, MCA

IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the temporary emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; or e-mail jesssnyder@mt.gov. Any comments must be received no later than August 6, 2021.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Hank Worsech
Hank Worsech
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 18, 2021.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.8.1502, 18.8.1503, and)
18.8.1505, pertaining to Motor Carrier)
Services Safety Requirements)

TO: All Concerned Persons

1. On April 30, 2021, the Department of Transportation published MAR Notice No. 18-184 pertaining to the proposed amendment of the above-stated rules at page 450 of the 2021 Montana Administrative Register, Issue Number 8.

2. The department has amended the following rules as proposed: ARM 18.8.1503 and 18.8.1505.

3. The department has amended ARM 18.8.1502 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375, 49 CFR parts 377 through 379, 49 CFR part 382, 49 CFR part 383, 49 CFR part 385, 49 CFR part 386 subpart F – Injunctions and Imminent Hazards, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through April 8, 2021. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at www.gpo.gov.

(2) remains as proposed.

AUTH: 61-10-155, MCA
IMP: 61-10-141, 61-10-154, 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: MDT received one comment asking what changes or effects adding 49 CFR part 386 to the list of safety rules adopted under 61-10-154, MCA, would have on Montana carriers.

RESPONSE: MDT is adopting 49 CFR part 386 to provide the department with a uniform process and procedures to address carriers who demonstrate noncompliance with the safety regulations. MDT has amended the proposed rule language on inclusion of 49 CFR part 386, as shown above, to specify that only Subpart F – Injunctions and Imminent Hazards is being adopted. The adoption of 49 CFR part 386 subpart F – Injunctions and Imminent Hazards will have no effect on compliant carriers.

COMMENT #2: MDT received one comment stating that the adoption of 49 CFR part 393.11(b) Conspicuity Markings does not directly affect safety on Montana's highways and that it be excluded from this adoption.

RESPONSE: MDT is obligated under federal law to adopt safety regulations for interstate commercial motor vehicles operating in the state of Montana. Omitting this requirement under the regulation for intrastate commercial vehicles would create confusion for inspecting officers and the operators of commercial motor vehicles, and lead to administrative problems wherein a Montana motor carrier could receive a clean inspection while operating in Montana but receive a violation during an inspection in another state.

COMMENT #3: MDT received one comment stating that the adoption of 49 CFR part 393.11 Table 1 #11 – License Plate Lights does not directly affect safety on Montana's highways and stating that it should be excluded from this adoption.

RESPONSE: See response to Comment #2 above.

COMMENT #4: MDT received one comment stating that the adoption of 49 CFR part 393.11 Table 1 #14 – Backup Lights does not directly affect safety on Montana's highways and stating that it should be excluded from this adoption.

RESPONSE: See response to Comment #2 above.

COMMENT #5: MDT received one comment stating that the adoption of 49 CFR part 393.60(c)(2), Windshield Condition does not directly affect safety on Montana's highways and stating that it should be excluded from this adoption.

RESPONSE: See response to Comment #2 above.

COMMENT #6: MDT received one comment stating that the adoption of 49 CFR part 393.76(e), Bedding In Sleeper does not directly affect safety on Montana's highways and stating that it should be excluded from this adoption.

RESPONSE: See response to Comment #2 above.

COMMENT #7: MDT received one comment stating solo drivers and day use should be exempt from the adoption of 49 CFR part 393.76(h), Sleeper Occupant Restraint.

RESPONSE: See response to Comment #2 above.

COMMENT #8: MDT received one comment stating that log trucks used to be required to flag the longest log on their load, but this has changed and now two flags are required on the back of a log truck. The commenter asked whether this was a CFR safety requirement under these rules being adopted, and if so, requested consideration of just requiring one flag.

RESPONSE: MDT assumes the flag reference is to 49 CFR 393.87, the addition of two flags on projecting loads wider than two feet. The rule change to two flags was adopted by MDT on July 27, 2018, and is outside the scope of the current rulemaking notice.

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

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

Certified to the Secretary of State June 29, 2021.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2021. This table includes notices in which those rules adopted during the period January 15, 2021, through June 25, 2021, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 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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