

MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 17
SEPTEMBER 10, 2021
PAGES 1092-1163



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-65-620 (Burial Preservation Board) Notice of Proposed Amendment - Permits for Scientific Analysis. No Public Hearing Contemplated.	1092-1094
--	-----------

ENVIRONMENTAL QUALITY, Department of, Title 17

17-416 (Petroleum Tank Release Compensation Board) Notice of Public Hearing on Proposed Amendment - Eligibility Determination for Petroleum Storage Tank Cleanup.	1095-1097
---	-----------

LABOR AND INDUSTRY, Department of, Title 24

24-21-378 Notice of Public Hearing on Proposed Amendment and Adoption - Montana's Registered Apprenticeship Program - Recognition of Pre-Apprenticeship Programs.	1098-1104
---	-----------

24-26-377 (Board of Personnel Appeals) Notice of Public Hearing on Proposed Amendment and Repeal - Practices, Procedures, and Grievances Before the Board of Personnel Appeals.	1105-1108
---	-----------

LABOR AND INDUSTRY, Continued

24-35-376 Notice of Public Hearing on Proposed Amendment and Adoption - Independent Contractors.	1109-1112
24-122-2 Notice of Public Hearing on Proposed Amendment - Creation of a Limited Low-Pressure Boiler Operating Engineer's License - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees.	1113-1116
24-142-3 Notice of Public Hearing on Proposed Amendment and Repeal - Elevator Licensing Program - Fee Schedule - Continuing Education Credits Required - Continuing Education Sponsors and Courses.	1117-1119

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-949 Amended Notice of Public Hearing on Proposed Amendment - Developmental Disabilities Program Provider Rates Update.	1120-1123
37-958 Notice of Public Hearing on Proposed Amendment - Severe and Disabling Mental Illness.	1124-1126

REVENUE, Department of, Title 42

42-1032 Amended Notice of Proposed Adoption and Amendment - Marijuana Provider Canopy Tier Size Increases - Limitations on Advertising.	1127-1131
42-1037 Notice of Public Hearing on Proposed Amendment - Temporary Operating Authority for Alcoholic Beverage License Applicants.	1132-1134

SECRETARY OF STATE, Office of, Title 44

44-2-244 Notice of Public Hearing on Proposed Amendment - Scheduled Dates for the 2022 Montana Administrative Register.	1135-1137
---	-----------

RULE ADOPTION SECTION

EDUCATION, Title 10

10-102-2101 (Montana State Library) Notice of Adoption, Amendment, and Repeal - Essential Standards - Library Board, Governance, and Working With the Director - Serving the Community - Personnel - Standard Notification, Final Arbiter, and Appeal Process - Deferrals.	1138
--	------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-948 Notice of Amendment - Nursing Facility Reimbursement. 1139-1140

37-960 Notice of Adoption of a Temporary Emergency Rule -
Allowing Students and/or Their Parents or Guardians the Ability to
Opt-Out of School Health-Related Mandates for Health, Religious,
Moral, or Other Fundamental Rights Reasons. 1141-1146

REVENUE, Department of, Title 42

42-1031 Notice of Amendment and Repeal - Montana Medical
Marijuana Program (MMP). 1147-1151

42-1035 Notice of Amendment - Elimination of Competitive Bid
Application Processing Fees. 1152

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1153-1154

How to Use ARM and MAR. 1155

Recent Rulemaking by Agency. 1156-1163

BEFORE THE BURIAL PRESERVATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.65.306 pertaining to permits for) AMENDMENT
scientific analysis)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 23, 2021, the Burial Preservation Board (board) of the state of Montana proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on Tuesday, September 27, to advise us of the nature of the accommodation that you need. Please contact Lauren Berka, Department of Administration, 125 Roberts St., Helena, Montana, 59601; telephone (406) 444-3308; Montana Relay Service 711; or e-mail lauren.berka@mt.gov.

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

2.65.306 PERMITS FOR SCIENTIFIC ANALYSIS (1) All petitions for scientific analysis shall include a nonrefundable application fee of ~~\$150~~ \$50, scientific justification for the study, qualifications of the person requesting the study, methodology and the time frame necessary to complete the study.

(2) through (7) remain the same.

AUTH: 22-3-804, MCA

IMP: 22-3-804, 22-3-806, MCA

STATEMENT OF REASONABLE NECESSITY: Section 22-3-804, MCA, which governs the composition, rights, and responsibilities of the Burial Preservation Board, became law in 1991. The statute has always provided that the nonrefundable application fee for a permit for scientific analysis was not to exceed \$50. When ARM 2.65.306 was initially adopted in 1998, the rule erroneously provided that the application fee for a permit for scientific analysis was \$150. This rulemaking aims to correct this mistake and aligns the fee with statute. Given that no persons have filed a petition under this rule within the last ten years, the board anticipates no persons will be affected annually by this decrease and there will be no significant impact on revenue.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Lauren Berka, Department of

Administration, 125 N. Roberts St., Helena, Montana, 59601; telephone (406) 444-3308; or e-mail lauren.berka@mt.gov, and must be received no later than 5:00 p.m., October 8, 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 Lauren Berka no later than 5:00 p.m., September 22, 2021.

6. If the board receives requests for a public hearing on the proposed action from either 10% 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 requests necessary for the board to conduct a public hearing is 25, because it is less than 10% of Montana property owners, residents, and other citizens who may potentially be affected by this proposal.

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

8. An electronic copy of this proposal notice is available through the Department of Administration's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

10. The board has determined that under 2-4-111, MCA, the proposed amendment will not significantly and directly affect small businesses.

By: /s/ William Big Day
William Big Day, Chair
Burial Preservation Board

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 31, 2021.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.58.311, 17.58.313, and 17.58.325)
pertaining to eligibility determination for)
petroleum storage tank cleanup)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 5, 2021, at 1:00 p.m., the Petroleum Tank Release Compensation Board will hold a public hearing in the Bitterroot Room of the Cedar Street building, 1225 Cedar Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., September 28, 2021, to advise us of the nature of the accommodation that you need. Please contact Garnet Pirre, Program Specialist, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091; e-mail gpirre@mt.gov.

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

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) through (24) remain the same.

(25) "Release discovery date" means the earliest of:

(a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.56.502(1), provided that a release is confirmed in any manner provided in ARM 17.56.504 or 17.56.506 after the condition is discovered and has been identified and assigned a unique identification number, as provided in ARM 17.56.508;

(b) through (31) remain the same.

AUTH: 75-11-318, MCA

IMP: 75-11-318, MCA

REASON: The amended rules will confirm the board's reliance on the department's assignment of a unique identification number to each petroleum release. ARM 17.56.508 Numbering Petroleum Releases was adopted in December 2007. Even prior to that rule and since its adoption, the board's determination of the number of releases that can be considered for eligibility is controlled by the number

of releases the department assigns to a site with a unique identification number. It is reasonably necessary to add this reference to ARM 17.56.508 to clarify that the board relies entirely on the department's release identification rule when determining eligibility for each release and the board does not have the authority or administrative means to make this determination.

17.58.313 APPLICABLE COPAYMENTS FOR COMMINGLED PETROLEUM STORAGE TANK RELEASES (1) and (2) remain the same.

(3) A person who seeks reimbursement from the fund at a rate different than that provided in 75-11-307(4)(b)(i)(ii), MCA, must prove that it is more likely than not that no leaking petroleum storage tank at the site is eligible under that section.

AUTH: 75-11-318, MCA

IMP: 75-11-307, MCA

REASON: The board desires to correct the reference, which was a result from a change in statutory language.

17.58.325 ELIGIBILITY DETERMINATION (1) remains the same.

(2) The board may only determine eligibility for reimbursement of costs associated with a release that has been assigned a unique identification number by the department pursuant to ARM 17.56.508.

AUTH: 75-11-318, MCA

IMP: 75-11-309, MCA

REASON: The amended rules will confirm the board's reliance on the department's assignment of a unique identification number to each petroleum release. ARM 17.56.508 Numbering Petroleum Releases was adopted in December 2007. Even prior to that rule and since its adoption, the board's determination of the number of releases that can be considered for eligibility is controlled by the number of releases the department assigns to a site with a unique identification number. It is reasonably necessary to add this reference to ARM 17.56.508 to clarify that the board relies entirely on the department's release identification rule when determining eligibility for each release and the board does not have the authority or administrative means to make this determination.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Garnet Pirre, Program Specialist, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091; e-mail gpirre@mt.gov, no later than October 12, 2021. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. 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 and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to Garnet Pirre, Program Specialist, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091; e-mail gpirre@mt.gov or may be made by completing a request form at any rules hearing held by the board.

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

7. The 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 rules will not significantly and directly impact small businesses.

Reviewed by:

PETROLEUM TANK RELEASE
COMPENSATION BOARD

/s/ Julia Swingley

Julia Swingley
Rule Reviewer

BY: /s/ Keith Schnider

Keith Schnider
Presiding Officer

Certified to the Secretary of State August 31, 2021.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.21.102 and 24.21.1003 and	)	PROPOSED AMENDMENT AND
the adoption of New Rules I through IV	)	ADOPTION
pertaining to Montana's registered)	
apprenticeship program and)	
recognition of pre-apprenticeship)	
programs)	

TO: All Concerned Persons

1. On October 12, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing 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/81731846491>, Meeting ID: 817 3184 6491; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 817 3184 6491.

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 will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Jay Reardon, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3556; facsimile (406) 444-3037; Montana TTD (406) 444-5549; or e-mail james.reardon@mt.gov.

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

24.21.102 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same.

(2) "Apprenticeship articulation agreement" means an agreement between a pre-apprenticeship program and a registered apprenticeship program that defines the steps required for a pre-apprenticeship program participant to enter a registered apprenticeship program.

(3) "Apprentice-to-journey worker occupations" means inside wiremen and residential electricians subject to the license requirements in ARM Title 24, chapter 141; plumbers subject to the license requirements in ARM Title 24, chapter 180; sprinkler fitters subject to the license requirements in ARM Title 24, chapter 144; and elevator constructors subject to the license requirements in ARM Title 24, chapter 142.

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

(5) "Pre-apprenticeship" means a department-recognized workforce training program endorsed by one or more registered apprenticeship sponsors that focuses on educating and training program participants to achieve at least minimum qualifications for entry into registered apprenticeship programs upon completion.

(3) through (5) remain the same but are renumbered (6) through (8).

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-105, MCA

REASON: There is a reasonable necessity to amend this rule to define the necessary terms for the standardization of pre-apprenticeship programs in the state. There is also a reasonable necessity to adopt a definition for "apprentice-to-journey worker occupations" due to the different requirements for apprenticeships in these specific occupations versus all other occupations.

24.21.1003 APPRENTICE-TO-JOURNEYMAN RATIO (1) For apprentice-to-journey worker occupations, as defined in ARM 24.21.102(3), the apprentice-to-journeyman ratio may not exceed the following criteria:

~~(a) The first One~~ journeyman employed by a sponsor may supervise one apprentice.

~~(b) Two additional journeymen employed by the sponsor are required to supervise each additional apprentice.~~

(2) For all other occupations, the apprentice-to-journeyman ratio shall be one-to-one, unless industry standards determine a different ratio for that occupation.

~~(2) (3)~~ An apprentice that has completed ~~60~~ 70 percent or more of the on-the-job training hours and ~~60~~ 70 percent or more of the related instruction in an apprenticeship program is not counted for purposes of the apprentice-to-journeyman ratio provided for in (1).

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

~~(4) (5)~~ In order to prevent abuse of the apprentice-to-journeyman ratio, the department will monitor the progress toward completion of all apprentices who have reached the ~~60~~ 70 percent completion criteria provided for in ~~(2) (3)~~.

(a) and (b) remain the same.

(c) As a general practice, the apprentice-to-journeyman ratio may not ordinarily be more than one apprentice to one journeyman, notwithstanding the provisions of ~~(2) (3)~~. A ratio of more than one-to-one may be allowed in the special case of a shop with a single working master with no journeyman employees, or in the event of a separation from employment by a journeyman employee that temporarily creates a more than one-to-one ratio.

(d) remains the same.

AUTH: 39-6-101, MCA
IMP: 39-6-102, 39-6-106, MCA

REASON: The department operates Montana's state apprenticeship agency and state office for apprenticeship pursuant to 29 CFR § 29, subpart A. Federal rules do not define the numeric ratio of journey workers to apprentices under 29 CFR § 29.5(a)(7), and the department is required to establish this ratio pursuant to 39-6-106(1)(i), MCA.

There is a reasonable necessity to amend this rule to allow for more individuals to enter registered apprenticeship programs while acknowledging that Montana currently has a lack of journey workers across many occupations. This apprenticeship-to-journeyman ratio will continue to ensure safety and quality training.

There is a reasonable necessity to amend the percentage of completion of the apprenticeship program required by an individual apprentice for that individual apprentice not to count in the apprenticeship-to-journeyman ratio to ensure safe and quality apprenticeship training. The amendment also makes ARM 24.21.1003 consistent with the language of ARM 24.21.1002(4), which states that "[a]n apprentice who has completed no less than 70 percent of the apprentice's required term and is completely current with related instruction may work with limited supervision. The apprentice's work must be physically examined on a daily basis by a journeyworker or master for correctness."

4. The proposed new rules are as follows:

NEW RULE I PRE-APPRENTICESHIP PROGRAM RECOGNITION

APPLICATION (1) A workforce training program may submit written materials to the department for recognition as a pre-apprenticeship program. Materials may be mailed to the Montana Registered Apprenticeship Program, P.O. Box 1728, Helena, Montana 59624; or e-mailed to Apprenticeship@mt.gov. The materials must include:

(a) a completed application available from the department's web site at apprenticeship.mt.gov;

(b) details of the workforce training program, including required classes, training, hour and/or credit requirements, and estimated time required to complete the program;

(c) a description of the workforce training program's coordination with an existing registered apprenticeship program(s); and

(d) a description of how the workforce training program will prepare participants to enter an existing registered apprenticeship program.

(2) The department shall evaluate completed requests for recognition as they are received.

AUTH: 39-6-101, MCA
IMP: 39-6-101, 39-6-103, 39-6-106, MCA

REASON: There is a reasonable necessity to adopt this new rule to acknowledge and standardize the requirements of a pre-apprenticeship program. The department is Montana's state apprenticeship agency and state office for apprenticeship pursuant to 29 CFR part 29, subpart A.

Federal rules do not define "pre-apprenticeship" programs; however, the federal government provides criteria to develop quality pre-apprenticeship programs. <https://www.apprenticeship.gov/employers/explore-pre-apprenticeship>. Case studies show that participation in pre-apprenticeship programs can increase diversity of applicants, increase program efficiency, and raise retention rates for participants. Jobs for the Future, *Pre-Apprenticeship Partnerships at CVS Health: An Employer's Perspective*, 2017, www.apprenticeship.gov/case-studies/cvs-health. After reviewing programs administered by other state apprenticeship agencies, the department determined that Washington state's pre-apprenticeship program was an appropriate model that could be adapted to serve Montana's registered apprenticeship program, employee sponsors, and workforce training programs.

The new rule clarifies what is required for a pre-apprenticeship program to gain recognition by the department. The rule ensures that pre-apprenticeship programs are working in coordination with existing registered apprenticeships to provide training program participants with applicable knowledge and skills to help training program participants become successful apprentices.

NEW RULE II PRE-APPRENTICESHIP PROGRAM APPLICATION

EVALUATION (1) The department shall evaluate each workforce training program on a case-by-case basis due to the wide variety of occupations involved in the department's registered apprenticeship program. The department may consider any relevant information when reviewing the program's recognition application.

(2) In addition to the application requirements in [NEW RULE I], the department may consider the following, as appropriate, when evaluating a workforce training program for recognition:

- (a) the incorporation of safety training in all aspects of the program;
- (b) the incorporation of interpersonal or "soft skills";
- (c) the incorporation of traditional education concepts, such as reading, writing, and basic math, as those skills apply to the apprenticeship program; and
- (d) the participant engagement strategy, specifically including how the program will work to recruit and retain participants from underrepresented populations including, but not limited to, women, minorities, veterans, justice-connected individuals, at-risk youth, and individuals with disabilities.

(3) The department shall provide the workforce training program with written notice if they are approved for recognition.

(4) If a program is not approved for recognition, the department shall provide a written explanation to the program explaining why the program was not approved for recognition. The program may reapply for recognition three months after the department serves the written explanation of why the program was not approved for recognition.

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-103, 39-6-106, MCA

REASON: The new rule provides for sufficient flexibility in the education programs due to the wide variety of occupations that are part of the registered apprenticeship program. Specific requirements for different occupations can be elaborated in department policy and/or addressed on a case-by-case basis.

NEW RULE III PROGRAM RECOGNITION AND APPRENTICESHIP

ARTICULATION AGREEMENT (1) When a workforce training program is approved for recognition by the department, the program may enter into an apprenticeship articulation agreement with a department-approved registered apprenticeship.

(a) The apprenticeship articulation agreement must include the following:

(i) be signed by representatives of both the workforce training program and the registered apprenticeship's sponsor employer;

(ii) clearly define the requirements for the pre-apprenticeship program; and

(iii) clearly define the effective dates of the agreement, not to exceed three years; and

(b) An apprenticeship articulation agreement may allow, but is not required to allow, participants who successfully complete the pre-apprenticeship program to have direct-entry options or application preference into the corresponding registered apprenticeship.

(2) A copy of the signed apprenticeship articulation agreement must be filed with the department. When a completed apprenticeship articulation agreement is filed with the department:

(a) the department shall list recognized pre-apprenticeship programs on the department's registered apprenticeship web site;

(b) parties to an apprenticeship articulation agreement shall submit a participant progress report on an annual basis on forms provided by the department; and

(c) the sponsor employer may employ one pre-apprentice, who shall not be counted towards the traditional apprentice ratio under ARM 24.21.1003, for a period of not more than 100 days from January 1 through December 31 of a single calendar year. A sponsor employer may ask the department for an extension of employment of the pre-apprentice of no more than 30 days without having the pre-apprentice count under ARM 24.21.1003.

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-103, 39-6-106, MCA

REASON: The new rule provides for sufficient flexibility in the recognition applications for workforce training programs due to the wide variety of training programs and corresponding occupations in the registered apprenticeship program. The criteria in (2) are not required for a program to apply for or be granted recognition by the department because the criteria may not be appropriate for all workforce training programs. Specific requirements for different workforce training programs for corresponding occupations can be elaborated in department policy and/or addressed on a case-by-case basis.

NEW RULE IV REAPPLICATION AND DISCONTINUING RECOGNITION

(1) A workforce training program that is approved for recognition may reapply for continued recognition at the end of the term of the apprenticeship articulation agreement on forms provided by the department. The reapplication shall include the number of participants who have completed the program, the number of participants currently enrolled in the program, any updates to the program, and curriculum.

(2) The department reserves the right to discontinue recognition under this rule of any workforce training program upon request of the program, or if the department determines that the program is not operating in a manner consistent with the program's application or any applicable law. The department shall consider evidence of a program not complying with the application or applicable law to be a dispute pursuant to ARM 24.21.416(1), and the department shall follow the procedure of ARM 24.21.416 and the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-103, 39-6-106, MCA

REASON: The new rule clarifies how a workforce training program can reapply for recognition and how a program can request to cease recognition. The rule outlines how the department may initiate a dispute to cease recognizing a program if the program does not comply with the application or applicable law. The rule recognizes the existing rule for addressing disputes within the registered apprenticeship program, ARM 24.21.416, and the application of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, 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 Jay Reardon, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-3037; or e-mail DLIRatioComments@mt.gov, and must be received no later than 5:00 p.m., October 12, 2021.

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, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above.

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

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses. The department has determined that the proposed amendment to the apprentice-to-journeyman ratio will have a positive impact on small-business

employers that sponsor registered apprentices because a greater number of individuals will be able to enter apprenticeships.

The amendment to the apprentice-to-journey worker ratio is significant for small businesses because the majority of sponsor employers are small-business employers with fewer than five apprentices. The department currently has 565 registered employer sponsors in the five licensed occupations of inside wiremen, residential electricians, plumbers, sprinkler fitters, and elevator constructors. The current total number of active apprentices across these five occupations is 1,188, or 61%, of the 1,985 current total active registered apprentices. Of the 565 registered employer sponsors, 525, or 93%, are small employers with fewer than five apprentices. Many of these small employers operate in rural areas of the state where it is difficult to recruit journey workers to supervise apprentices.

The amendments will allow employers to directly hire a greater number of apprentices, without hiring more journeymen, while still maintaining effective and safe training and supervision. The current ratio of one apprentice to one journey worker and an additional two journey workers required to add an additional apprentice has made it difficult for smaller employers to employ a second apprentice. Small employers, particularly in rural areas, struggle to recruit the required journey workers to meet the current ratio requirement. For example, many small employers employ two licensed workers. Under the current rules, employers with two licensed workers can only employ one apprentice because many small employers struggle to recruit and hire a third journey worker to meet the current ratio requirement. Changing the current ratio to a 1:1 ratio will allow these small employers to hire a second apprentice.

The 1:1 ratio will ensure new apprentices will continue to get the safe and quality training needed in these five licensed occupations. The five licensed occupations of inside wiremen, residential electricians, plumbers, sprinkler fitters, and elevator constructors provide essential services to all Montana communities. The new ratio will also ensure a balance between the number of journey-worker mentors employed and required to supervise additional apprentices. As more individuals enter and successfully complete registered apprenticeship programs, Montana will eventually have a greater number of journey workers to meet the changing and growing demands of Montana's economy and communities.

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

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 31, 2021.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.26.254 and 24.26.1002, and	)	PROPOSED AMENDMENT AND
the repeal of ARM 24.26.301,	)	REPEAL
24.26.302, 24.26.303, 24.26.304,)	
24.26.401, 24.26.402, 24.26.403, and)	
24.26.404 pertaining to the practices,)	
procedures, and grievances before)	
the Board of Personnel Appeals)	

TO: All Concerned Persons

1. On October 5, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81954694002>, Meeting ID: 819 5469 4002; or
- b. Dial by Telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 819 5469 4002

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 board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Personnel Appeals no later than September 28, 2021, at 5:00 p.m., to advise us of the nature of the accommodation that you need. Please contact Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTY (406) 444-0532; facsimile (406) 444-4140; or dliedbopa@mt.gov.

3. The board proposes the amendment of the following rules, new matter underlined, deleted matter interlined:

24.26.254 BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER (1) through (6) remain the same.

(7) The board shall review the recommended order to determine if the recommended order's findings of fact are supported by a preponderance of the competent substantial evidence and whether the conclusions of law are correct.

(8) and (9) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA

REASON: The rule is amended to comply with the statutory requirements of the Montana Administrative Procedure Act that governs an agency (or board) review of a contested case proceeding. The agency or board "may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence[.]" 2-4-621(3), MCA.

24.26.1002 REQUIREMENTS FOR PROOF OF INTEREST

AUTHORIZATION DOCUMENTS – CONFIDENTIALITY (1) remains the same.

(2) The proof of interest submitted with any petition shall not be furnished to any of the parties. The board agent shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The rule amendment is to clarify that a board agent, and not the full board, shall consider the adequacy of the showing of interest in proceedings before the board. The amendment clarifies board procedure and emphasizes the importance of the confidentiality of the authorization cards by limiting the review to only a board agent.

4. GENERAL STATEMENT OF REASONABLE NECESSITY FOR

REPEALS: There is a reasonable necessity to repeal the rules related to the grievance procedures for the employees of the Montana Department of Transportation (MDT) and the Montana Department of Fish, Wildlife and Parks (FWP) to comply with Chapter 56, Laws of 2021 (Senate Bill 56) signed into law on March 8, 2021. The bill makes the grievance procedures for MDT and FWP employees consistent with all other state employees by removing the grievance process from the board and placing the grievance process within the respective state agencies.

5. The board proposes to repeal the following rules:

24.26.301 PURPOSE, AUTH: 2-18-1011, MCA; IMP: 2-18-1002, MCA

REASON: The proposed repeal of ARM Title 24, chapter 26, subchapter 3, Department of Transportation Grievances (ARM 24.26.301 through 24.26.304) is to comply with the requirements of Senate Bill 56. The removal of the grievance process from the board to an internal MDT process will make the grievance process for MDT employees consistent with all other state employees.

24.26.302 DEFINITIONS, AUTH: 2-18-1001, MCA; IMP: 2-18-1002, MCA

24.26.303 GRIEVANCE PROCEDURE, AUTH: 2-18-1001, MCA; IMP: 2-18-1002, MCA

24.26.304 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION, AUTH: 2-18-1001, MCA; IMP: 2-18-1001(2), MCA

24.26.401 PURPOSE, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

REASON: The proposed repeal of ARM Title 24, chapter 26, subchapter 4, Department of Fish, Wildlife and Parks Grievances (ARM 24.26.401 through 24.26.404) is to comply with the requirements of Senate Bill 56. The removal of the grievance process from the board to an internal FWP process will make the grievance process for FWP employees consistent with all other state employees.

24.26.402 DEFINITIONS, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

24.26.403 GRIEVANCE PROCEDURE, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

24.26.404 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; facsimile (406) 444-4140; or dlirdbopa@mt.gov, and must be received no later than 5:00 p.m., October 12, 2021.

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, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be 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, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 6, 2021.

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

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

/s/ BRIAN HOPKINS
BOARD OF PERSONNEL APPEALS
BRIAN HOPKINS
PRESIDING OFFICER

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

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

Certified to the Secretary of State August 31, 2021.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.11.2407 and 24.35.203 and) PROPOSED AMENDMENT AND
the adoption of New Rule I pertaining) ADOPTION
to independent contractors)

TO: All Concerned Persons

1. On October 8, 2021, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing 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/82935651559>, Meeting ID: 829 3565 1559, Passcode: 473585; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 829 3565 1559, Passcode: 473585.

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 will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 1, 2021, to advise us of the nature of the accommodation that you need. Please contact Tracy Gonzalez, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-9585; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail tgonzalez2@mt.gov.

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

24.11.2407 DETERMINATION OF INDEPENDENT CONTACTORS –
DEPARTMENT PROCEDURES (1) ~~As provided in 39-51-204, MCA, an individual found to be an independent contractor pursuant to 39-71-417, MCA, is considered to be an independent contractor for the purposes of unemployment insurance. If an individual is not required to obtain an independent contractor exemption certificate because the individual regularly and customarily performs services at his or her own fixed business location, or if an individual is exempt from 39-71-417, MCA, by other sections of the workers' compensation act, the department shall apply the guidance set out in ARM Title 24, chapter 35, subchapters 2 and 3 and use the following two-part test to determine whether an individual is an independent contractor or an employee:~~

~~(a) whether an individual is and shall continue to be free from control or direction over the performance of the services, both under contract and in fact; and
(b) whether an individual is engaged in an independently established trade, occupation, profession, or business.~~

~~(2) When evaluating the status of an individual who possesses an independent contractor exemption certificate, the department shall apply the two-part test in (1)(a) and (b). The department may recommend the suspension of an individual's independent contractor exemption certificate for a specific business relationship when the department determines that an employing unit exerts or retains a right of control to the degree that the certificate holder fails to qualify for independent contractor designation. The department may recommend certificate revocation when the department determines the certificate holder has violated the provisions of 39-71-418, MCA.~~

~~(3) To determine whether a hiring agent exerts control over an individual, the department shall evaluate:~~

- ~~(a) direct evidence of right or exercise of control;~~
- ~~(b) method of payment;~~
- ~~(c) furnishing of equipment; and~~
- ~~(d) right to fire.~~

~~(4) For purposes of this rule, "individual" means a worker who renders service in the course of a trade, occupation, profession, or business, and "employing unit" means the individual or other legal entity as described in the definition of "employing unit" in 39-51-201, MCA, that hired one or more individuals.~~

(1) The department applies the requirements set out in ARM Title 24, chapter 35, to make initial determinations regarding employment status.

(5) through (7) remain the same but are renumbered (2) through (4).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, 39-51-204, 39-51-1109, 39-51-2402, 39-71-418, MCA

REASON: Reasonable necessity exists to amend this rule for brevity and clarity, and to eliminate duplicative language between this rule and those of the ICCU.

24.35.203 DETERMINATIONS WHERE EXEMPTION CERTIFICATE

MANDATORY (1) Except as provided in [New Rule I], ~~When when~~ a worker is required by 39-71-417, MCA, to have an independent contractor exemption certificate and does not, the worker is conclusively determined to be an employee for purposes of wage and hour, unemployment insurance, workers' compensation, and income tax.

(2) through (4) remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

IMP: 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

REASON: Reasonable necessity exists to amend this rule to recognize the new requirements set forth in New Rule I.

4. The proposed new rule is as follows:

NEW RULE I MISREPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS (1) For purposes of this rule and the implementation of 39-51-203(4) and 39-71-419(1)(e), MCA, and requirements in certain instances not to determine status based "solely" on the lack of an ICEC, the ICCU will evaluate a worker's status pursuant to ARM 24.35.202 if:

(a) the worker applied to the department for an ICEC prior to filing the present claim for workers' compensation or unemployment insurance benefits or prior to the present audit or investigation by the department and the application for ICEC is pending determination by the department;

(b) the worker provided the hiring agent a forged ICEC;

(c) the hiring agent took affirmative steps to verify the worker's independent contractor status, verified the worker to be an independent contractor, and has documentation of the same; or

(d) the ICEC expires during the working relationship which is at issue in the present claim for workers' compensation or unemployment insurance benefits or audit or investigation by the department.

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: 39-51-201, 39-51-203, 39-71-419, MCA

REASON: There is reasonable necessity to adopt this rule to clarify the requirements of Senate Bill 367 from the 2021 legislative session. The bill potentially impacts the holdings in *McCone Cnty. v. ICCU*, 2021 MTWCC 19, and *Reule v. UEF*, 2017 MTWCC 3. Senate Bill 367 does not change the conclusive presumption of independent contractor status for a worker holding and working under an ICEC, as required by 39-71-417, MCA. Instead, it creates questions for those who do not have an ICEC, though statutorily required to do so to be an independent contractor. This rule, therefore, clarifies the instances in which a worker's status is determined pursuant to the AB test, rather than the conclusive presumption based on ICEC status. In all disputes regarding worker status which do not fall within one of the four instances of this rule and when an ICEC is required, worker status will continue to be determined based on ICEC status. Through consideration of these four options for application of the AB test, worker status is not determined "solely" through lack of ICEC.

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 Tracy Gonzalez, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; facsimile (406) 444-4140; or e-mail tgonzalez2@mt.gov, and must be received no later than 5:00 p.m., October 8, 2021.

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, which includes the name

and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 27, 2021, by electronic mail.

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

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

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

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

Certified to the Secretary of State August 31, 2021.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.122.405, 24.122.505,	)	PROPOSED AMENDMENT
24.301.710, and 24.301.714)	
pertaining to creation of a limited low-)	
pressure boiler operating engineer's)	
license, incorporation by reference of)	
Boiler and Pressure Vessel Code, and)	
fees)	

TO: All Concerned Persons

1. On October 4, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment 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/84743047767>, Meeting ID: 847 4304 7767; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 847 4304 7767.

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

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on Monday, September 27, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Business Standards Division, P.O. Box 200513, Helena, Montana 59620-0513; or telephone (406) 841-2004; facsimile (406) 841-2305; Montana TTD (406) 444-5549; or e-mail cbaker@mt.gov.

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

24.122.405 APPROVAL OF TRAINING COURSES (1) through (2)(a) remain the same.

(b) For limited low-pressure boiler operating engineer training courses, a minimum of 6 hours, including classroom instruction and field or shop time, is required.

(3) through (5) remain the same.

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

REASON: There is a reasonable necessity to amend this rule to comply with the amendments to 50-74-304, MCA, by Chapter 440, Laws of 2021 (Senate Bill 396), creating limited low-pressure engineers, a new classification of boiler operating engineers.

24.122.505 APPLICATION FOR LICENSURE (1) and (2) remain the same.

(3) Applicants for ~~other than a first- or second-class~~ a limited low-pressure, low-pressure, or third-class boiler operating engineer's license may provide documentation in lieu of the requisite experience and qualification requirements. ~~An applicant for other than a first- or second-class boiler operating engineer's license may furnish documentation which provides:~~

(a) remains the same.

(b) verification acceptable to the department from a boiler operating engineer with a license at least equal to the class of license sought by the applicant, that the applicant has worked with the type of boiler for which the license is sought under the engineer's supervision for a minimum of:

(i) ~~40 hours, and that the applicant is competent to operate the boiler of the class for which the license is being sought~~ for a low-pressure or third-class boiler operating engineer's license; or

(ii) 8 hours for a limited low-pressure boiler operating engineer's license.

(4) remains the same.

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, 50-74-318, MCA

REASON: There is a reasonable necessity to amend this rule to comply with Senate Bill 396 creating limited low-pressure engineers, a new classification of boiler operating engineers. Reasonable necessity exists to add a citation to the implementation statutes to reflect the new license type created.

24.301.710 INCORPORATION BY REFERENCE OF BOILER AND PRESSURE VESSEL CODE (1) The Department of Labor and Industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference the following sections of the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, ~~2004~~ 2021 edition, referred to as Boiler and Pressure Vessel Code, unless another edition is specifically stated:

(a) Section I, Rules for Construction of Power Boilers;

(b) remains the same.

(c) Section IV, Rules for Construction of Heating Boilers, Except Part HLW, Lined Water Heaters;

(d) and (e) remain the same.

(f) Section VII, Recommended Guidelines for the Care of Power Boilers; ~~and~~

(g) Section IX, Welding and Brazing Qualifications; and

(h) Section XIII, Rules for Overpressure Protection.

(2) The department adopts and incorporates by reference the American Society of Mechanical Engineers publication CSD-1, Controls and Safety Devices for Automatically Fired Boilers, ~~2002~~ 2018 edition, referred to as CSD-1, unless another edition is specifically stated.

(3) The Boiler and Pressure Vessel Code and CSD-1 are nationally recognized codes setting forth minimum standards and requirements for the construction, operation, and safety of boilers. A copy of the Boiler and Pressure Vessel Code and CSD-1 may be obtained from the American Society of Mechanical Engineers, ~~345 East 47th Street, New York, NY 10017~~ ASME Headquarters, Two Park Avenue, New York, NY 10016-5990; or <https://www.asme.org>.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-101, MCA

REASON: There is a reasonable necessity to amend this rule to adopt the most current versions of the codes provided by the American Society of Mechanical Engineers. The amendments reflect changes in the structure of the code and advances in boiler and pressure vessel technology.

24.301.714 FEES (1) remains the same.

(a) operating certificate	\$34 <u>36</u>
(b) internal inspection	75 <u>80</u>
(c) external inspection:	
(i) hot water heating and supply	35 <u>40</u>
(ii) steam heating	50 <u>55</u>
(iii) power boiler	70 <u>75</u>
(d) through (5) remain the same.	

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, ~~50-74-219,~~ 50-74-318, MCA

REASON: There is a reasonable necessity to amend this rule to increase inspection fees to keep them commensurate with services. The fees under ARM 24.301.714 have not been increased since 2005, and a small increase in the fees is necessary to account for the increased cost of performing inspections. The department estimates the fee increases will affect 21,536 applicants for operating certificates and boiler inspections and will increase annual revenue by approximately \$107,680. The revenue raised by the fee increase will go towards administering the program. In addition to general inflation since 2005, program costs such as travel, lodging, and general program administration have increased since 2005, and this fee increase will address those necessary program costs.

There is reasonable necessity to amend the implementation statutes because Senate Bill 396 repealed 50-74-219, MCA, and adopted 50-74-318, MCA.

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 Carrie Baker, Business Standards Division, P.O. Box 200513, Helena, Montana 59620-0513; facsimile (406) 841-2305; or e-mail cbaker@mt.gov, and must be received no later than 5:00 p.m., October 12, 2021.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be sent to the department staff listed above.

6. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 26, 2021, by telephone, e-mail, and regular mail.

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

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

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 31, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.142.402 fee schedule,	)	PROPOSED AMENDMENT AND
24.142.2103 continuing education	)	REPEAL
credits required, and the repeal of)	
24.142.2102 continuing education)	
sponsors and courses, all pertaining)	
to the Elevator Licensing Program)	

TO: All Concerned Persons

1. On October 14, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment 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/84424322833>
Meeting ID: 844 2432 2833, Passcode: 766699
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 844 2432 2833, Passcode: 766699

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 Elevator Licensing Program no later than 5:00 p.m., on October 7, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or e-mail cbaker@mt.gov.

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

24.142.402 FEE SCHEDULE (1) through (9) remain the same.
~~(10) Continuing education course curriculum approval~~ 200
(11) remains the same but is renumbered (10).

AUTH: 37-1-101, 37-73-102, 37-73-201, 37-73-204, MCA
IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

REASON: See REASON for repeal of ARM 24.142.2102. The department estimates the fee elimination will affect three applicants for continuing education (CE) course approval and result in a \$600 reduction in annual revenue. Authority citations are being amended to accurately reflect the statutory sources of the department's rulemaking authority for this program.

24.142.2103 CONTINUING EDUCATION CREDITS REQUIRED (1) Each holder of an elevator mechanic license, a limited elevator mechanic license, or an elevator inspector license must complete at least eight hours of ~~approved~~ continuing education during the year immediately preceding the annual renewal. Continuing education must be related to installing, altering, repairing, or testing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of 50-60-704, MCA.

(2) remains the same.

~~(3) The department may conduct a random audit of 15 percent of all licensees annually for compliance with the continuing education requirement. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.~~

AUTH: 37-73-102, 37-73-220, MCA

IMP: ~~37-1-131~~, 37-73-102, 37-73-220, MCA

REASON: See REASON for repeal of ARM 24.142.2102. Further, the department is striking (3) because it unnecessarily repeats statutory language of 37-1-420, MCA. Implementation citations are being amended to accurately reflect the statutes implemented through the rule.

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

24.142.2102 CONTINUING EDUCATION SPONSORS AND COURSES

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

REASON: The department has determined it is reasonably necessary to repeal this rule and no longer pre-approve CE courses and sponsors. The department concluded that this process unnecessarily burdens licensees who must obtain CE credits for continued licensure. Historically, very few CE providers actually apply for approval, and often with very little time for licensees to attend the courses prior to the end of the renewal cycle.

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 Carrie Baker, Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., October 14, 2021.

6. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/elevator-contractors/> (department's web site). Although the department strives to keep its web site accessible at all times, concerned persons should be aware that web site 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 program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@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 department has determined that the amendment of ARM 24.142.402 and 24.142.2103 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the department has determined that the repeal of ARM 24.142.2102 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to the Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

10. Carrie Baker, Program Manager, has been designated to preside over and conduct this hearing.

/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 August 31, 2021.

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

In the matter of the amendment of	)	AMENDED NOTICE OF PUBLIC
ARM 37.34.3005 and 37.86.3607	)	HEARING ON PROPOSED
pertaining to developmental	)	AMENDMENT
disabilities program provider rates)	
update)	

TO: All Concerned Persons

1. On June 25, 2021, the Department of Public Health and Human Services (department) published MAR Notice No. 37-949 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 748 of the 2021 Montana Administrative Register, Issue Number 12. The department held a public hearing on July 15, 2021, and the initial comment period ended July 23, 2021.

2. On September 30, 2021, at 10:00 a.m., the department will hold a second public hearing via remote conferencing to consider the revised statement of reasonable necessity and the proposed revisions to program provider rates. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84701818024>; meeting ID: 847 0181 8024; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 847 0181 8024. Find your local number: <https://mt-gov.zoom.us/u/kdpdJaN7JP>.

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 of Public Health and Human Services no later than 5:00 p.m. on September 16, 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 is amending the notice to update provider rates after receiving feedback from the Children and Families Interim Legislative Committee on the allocation of funding for rate increases in the Developmental Disabilities Waiver. The department is including additional funds into Developmental Disabilities Waiver provider rates for recruitment and retention of direct care workers who serve populations in the Developmental Disabilities Waiver.

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 and 37.86.3607 pertaining to reimbursement rates in the Montana Developmental Disabilities Program Services Manual and the Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over.

The rule amendments would adopt and incorporate the updated versions of the manuals, dated July 1, 2021, to include changes in billing and reimbursement of services provided to persons who are recipients of developmental disabilities services through the Medicaid programs.

Based on legislative appropriations in the 2021 legislative session, the Developmental Disabilities Program proposes to implement a 1.9% average provider rate increase to provider rates, and through increased rates apply money appropriated by the 2021 legislative session for workers who provide direct care to people with developmental disabilities. These rate adjustments are reflected in the proposed manuals, dated July 1, 2021.

ARM 37.34.3005

The proposed amendment would give an approximate 1.9% increase to Medicaid Waiver services and distribute an additional \$1,004,294 to waiver services through rate setting for recruitment and retention of direct care workers, with an effective date of July 1, 2021. The combined weighted average increase for waiver services is estimated at 2.7%.

The proposed amendment would apply both increases to all waiver services except:

- Individual Goods and Services
- Remote Monitoring Equipment
- Specialized Medical Equipment and Supplies
- Environmental Modifications
- Personal Emergency Response System
- Community Transition Services

The following Extended State Plan services will receive updates per their established Medicaid State Plan rate methodologies:

- Private Duty Nursing (Medicaid State Plan) LPN
- Private Duty Nursing (Medicaid State Plan) RN
- Psychological Services
- Physical Therapy (Medicaid State Plan)
- Occupational Therapy (Medicaid State Plan)
- Speech Therapy (Medicaid State Plan)
- Nutritionist Services (Medicaid State Plan)

In addition, the proposed manual has a rate comparison reference chart added to the end.

The proposed Montana Developmental Disabilities Program Services Manual dated July 1, 2021, can be found at <https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf>.

ARM 37.86.3607

The proposed amendment would give an approximate 1.9% rate increase to the following service:

Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, with an effective date of July 1, 2021, can be found at <https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf>.

In addition, the manual update includes minor grammatical edits.

Fiscal Impact

Waiver Rate Increases

The provider rate increases are projected to have the following fiscal impact:

1.9% Provider rate increase:

\$860,977	General Fund increase
\$1,599,659	Federal Fund increase
\$2,460,636	Total Funds increase

Direct Care recruitment and retention increases are projected to have the following fiscal impact:

\$351,402	General Fund increase
\$652,892	Federal Fund increase
\$1,004,294	Total Funds increase

Targeted Case Management Increase

The 1.9% provider rate increase for targeted case management is projected to have the following fiscal impact:

\$25,840	General Fund increase
\$48,010	Federal Fund increase
\$73,850	Total Funds increase

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Heidi Clark, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on October 8, 2021. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

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

Certified to the Secretary of State August 31, 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 37.90.409 pertaining to severe) PROPOSED AMENDMENT
and disabling mental illness)

TO: All Concerned Persons

1. On September 30, 2021, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88018392733>; meeting ID: 880 1839 2733; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 880 1839 2733. Find your local number: <https://mt-gov.zoom.us/j/kpKion8nc>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 16, 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 amended provides as follows, new matter underlined, deleted matter interlined:

37.90.409 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SEVERE AND DISABLING MENTAL ILLNESS CRITERIA (1) ~~A member has a severe and disabling mental illness if the member~~ To qualify for the SDMI HCBS waiver program, a member must:

(a) be 18 years of age or older;

(b) have a minimum of three areas of high-level impairment indicated by a score of three or higher on the Severe and Disabling Mental Illness, Home and Community-Based Waiver, Evaluation and Level of Impairment form; and

(c) have experienced one of the following in the previous 12 months:

(a) (i) has been involuntarily committed because of a mental disorder to the Montana State Hospital or the Montana Mental Health Nursing Care Center for at least 30 consecutive days in the previous 12 months; or

(ii) diagnosed with one of the diagnoses in (2), excluding mild or not otherwise specified.

- ~~(b) is 18 years of age or older and:~~
- ~~(i) has a minimum of two areas of high-level impairment as measured by a score of three or higher on the Severe and Disabling Mental Illness, Home and Community Based Waiver, Evaluation and Level of Impairment form; and~~
- ~~(ii) is diagnosed with one of the following diagnoses, excluding mild or not otherwise specified:~~
- ~~(2) The following qualify as a severe and disabling mental illness diagnosis:~~
- ~~(A) through (Q) remain the same but are renumbered (a) through (q).~~
- ~~(r) Bipolar II disorder;~~
- ~~(R) through (Y) remain the same but are renumbered (s) through (z).~~
- ~~(Z) Panic disorder with agoraphobia;~~
- ~~(AA) Panic disorder without agoraphobia;~~
- ~~(aa) Generalized anxiety disorder; and~~
- ~~(AB) (ab) Borderline personality disorder;.~~
- ~~(AC) Dissociative amnesia disorder;~~
- ~~(AD) Dissociative fugue disorder;~~
- ~~(AE) Dissociative stupor disorder; and~~
- ~~(AF) Dissociative identity disorder.~~

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The department is proposing to amend the qualification criteria and the diagnosis list for the SDMI HCBS waiver program. The department proposes to amend the qualification criteria for the waiver program by requiring three areas of high-level impairment instead of two to reflect the waiver program's purpose of serving individuals needing a higher level of care than individuals served under the Medicaid state plan. Changes to the diagnosis list for the SDMI HCBS waiver program are necessary to make the administrative rule consistent with the approved SDMI, 1915(c) Home and Community Based waiver.

Fiscal Impact

There is no fiscal impact associated with the proposed rule amendments.

The department intends for this proposed rule amendment to be effective retroactive to October 9, 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., October 8, 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 rule will not significantly and directly impact small businesses.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Adam Meier

Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State August 31, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	AMENDED NOTICE OF PUBLIC
Rules I and II pertaining to marijuana	)	HEARING ON PROPOSED
provider canopy tier size increases	)	ADOPTION AND AMENDMENT
and the amendment of ARM)	
42.39.123 pertaining to limitations on)	
advertising)	

TO: All Concerned Persons

1. On July 23, 2021, the Department of Revenue (department) published MAR Notice No. 42-1032 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 908 of the 2021 Montana Administrative Register, Issue Number 14. The department held the required public hearing on August 13, 2021, to consider the proposed adoption and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 17, 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. Upon review of the comments and testimony provided in writing or at the August 13, 2021 administrative rules hearing, the department proposes changes to the amendments proposed to ARM 42.39.123 described in paragraph 4.

The adoption of New Rules I and II contained in the original MAR notice remains as proposed.

4. ARM 42.39.123 is being amended from the original proposal notice, new matter underlined, deleted matter interlined:

42.39.123 ADVERTISING (1) A licensee may promote its business and market its brand but may not advertise marijuana or marijuana products except in electronic advertising.

(2) "Advertise or advertising" means the publication, dissemination, solicitation, or circulation of visual, oral, or written communication to directly induce any person to purchase or consume marijuana or marijuana products. Advertising does not include branding, marketing, or packaging and labeling of marijuana and marijuana products.

(3) "Billboard" means a sign that directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing elsewhere than upon the same premises where such sign is displayed.

(1) remains as proposed but is renumbered (4).

~~(2) (5) A licensee's advertising, including any outdoor signage, may not use colloquial terms for marijuana or marijuana products (e.g., pot, reefer, ganja, weed) or contain depictions, either in whole or in part, of marijuana plants, marijuana products, or marijuana paraphernalia. For purposes of this rule, "depiction" means:~~

~~(a) for marijuana plants: except as otherwise provided in (4), an image or visual representation of a cannabis leaf, plant, or the likeness thereof, that explicitly suggests or represents a cannabis leaf or plant.~~

~~(b) for marijuana products: and may not use an image or visual representation of useable marijuana, marijuana-infused products, marijuana concentrates, marijuana paraphernalia, or an image that indicates the presence of a product such as smoke, edibles, etc.~~

~~(3) All advertising must be in black font with white background and include in a type size at least ten percent of the largest type used in the advertisement:~~

~~(a) the phrase: "Licensed by the DOR Cannabis Control Division."~~

~~(b) text that states marijuana or marijuana products may be purchased or possessed only by persons 21 years of age or older.~~

~~(c) the following warnings:~~

~~(i) "This product has intoxicating effects and may become habit forming.";~~

~~(ii) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";~~

~~(iii) "There may be health risks associated with consumption of this product.";~~
and

~~(iv) "For use only by adults 21 years of age and older. Keep out of the reach of children."~~

~~(4) A licensee may use the department provided image of a green cross, denoting a medical marijuana provider, in its advertising. The department will make the image available to licensees via its website.~~

~~(5) A marijuana business may display outdoor signage, not to exceed more than two separate signs for the licensed premises. A marijuana business' signage may only be located on the grounds of the licensed premises. Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign provided the sign is contained in, or affixed to, a single structure.~~

~~(a) Outdoor signage:~~

~~(i) may only identify the retail outlet by the licensee's business name or trade name;~~

~~(ii) must be affixed to a building or permanent structure and each sign is limited to 1,600 square inches in size;~~

~~(iii) must include the warning language provided for in (3)(c);~~

~~(iv) may state the business's website address, hours of operation, or phone number; and~~

~~(v) may not advertise discounts or sale items.~~

~~(6) A sign affixed to the licensed premises or in the window of a licensed premises may indicate whether the licensee is open for business, closed for~~

business, the hours of operation, that the licensed premises has an ATM inside. Other informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this rule.

~~(7) Advertising placed on outward-facing windows within the licensed premises must meet the requirements for outdoor advertising provided in this rule and does not count against the two-sign allowance.~~

(6) A licensee's outdoor signage must comply with any applicable local jurisdiction sign ordinances and regulations.

~~(8) (7) A marijuana business that advertises via~~ maintains a webpage must utilize appropriate measures to verify that individuals visiting the webpage are over 21 years of age or older.

(8) Marijuana business social media accounts that advertise marijuana or marijuana products must be private and must contain a clearly visible notice on the main page stating that only persons 21 years of age or older may follow the account.

(9) A marijuana business may not:

(a) and (b) remain as proposed

~~(c) engage in advertising on social media platforms such as Facebook, Twitter, Instagram, YouTube, TikTok, or Snapchat;~~

(d) remains as proposed but is renumbered (c).

~~(e) (d) engage in advertising or utilize signage that asserts its products are safe because they are tested by a licensed testing laboratory;~~

(e) utilize a billboard;

~~(f) sponsor a charitable, sports, or similar event;~~

~~(g) offer promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise;~~

~~(h) place or maintain, or cause to be placed or maintained, any sign or other advertisement or flyer for a marijuana business or marijuana product in a publicly accessible bathroom or on or in a private vehicle, public transit vehicle, public transit shelter, bus stop, taxi stand, transportation waiting area, airport, or any similar transit-related location;~~

~~(i) except as provided in (5), deploy outdoor signage, including billboards, flags, or banners;~~

(j) and (k) remain as proposed but are renumbered (f) and (g).

(10) The prohibition in (9)(c) does not prohibit the use of informational pamphlets for dissemination at marijuana trade conferences or the use or distribution of business cards.

(11) The prohibition in (9)(d) does not prohibit a marijuana business from asserting that its products have been tested by a licensed marijuana testing laboratory.

(10) remains as proposed but is renumbered (12).

AUTH: Section 3, Ch. 505, L. 2021; 50-46-341, 50-46-344, MCA
IMP: 50-46-341, MCA

5. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.123 which is necessary for the department to implement the provisions of House Bill 249 (2021)(HB 249) and its amendments to 50-46-341, MCA.

As an initial point, the existing rule implements advertising prohibitions found in 50-46-341, MCA, which apply to the Montana Medical Marijuana Act (Act). Prior to the passage of HB 249, the Act and this rule do not adequately address those activities that constitute prohibited advertising. For instance, HB 249 now allows medical marijuana businesses to engage in some electronic advertising activity which was previously prohibited. ~~HB 249 also confirms the legislature's desire to severely curtail forms of advertising pertaining to the sale, cultivation, or manufacture of marijuana.~~

Because the department is now responsible for administering the entirety of Montana's marijuana regulatory framework for both medical and recreational use, as passed under the provisions of Initiative No. 190 (Nov. 3, 2020), House Bill 701 (2021), HB 249, and other relevant legislation, it is necessary for the department to strike the content in current (1) and (2) and propose medical marijuana advertising requirements which are consistent with the intent of the legislature and the Act, as amended.

Section 50-46-341(4), MCA, instructs the department to adopt rules to "clearly identify the activities that constitute advertising that are prohibited..." To implement these directives, the department proposes (1); through (4) (2), and (3) to list the specific criteria that all medical marijuana businesses must follow when engaging in the types of electronic or outdoor advertising that is allowed. ~~The department believes the proposed restrictions address many of the areas authorized under HB 249. Section (3) specifically addresses circumstances in licensee advertising where required billboard or signage phrasing has been intentionally obscured through font and background color combinations.~~

Proposed (4) through (7) (5) and (6) identify the outdoor signage requirements and allowances that will be permitted. The department believes these proposed advertising guidelines, ~~including the use of the department approved image,~~ are necessary and fall within the department's authority and discretion delegated to it by the legislature under HB 249 and 50-46-341, MCA.

Proposed ~~(8)~~ (7) and (8) requires a business that utilizes a website or social media accounts to verify that a person under the age of 21 does not access its contents, which is necessary and consistent with the other age-appropriate restrictions expressed throughout the Act. The department proposes (9)(a) ~~through (e)~~ and (b) to identify and specify the types of electronic advertising restrictions that remain in place, and (9)(d) ~~(c)~~ through (k) ~~(g)~~ to identify and specify the types of advertising activities that are prohibited. The department also proposes (10) and (11) to add exemptions to the advertising prohibitions in (9)(c) and (d) for necessary clarity of purpose.

Finally, the department proposes to include a provision in ~~(10)~~ (12) that all marijuana businesses must be in compliance with the requirements of the rule by January 1, 2022. The department contends this accommodation is necessary and is advisable because it allows a reasonable period of transition for the industry to modify or terminate non-compliant advertising or wind down contractual advertising obligations with third-party advertising sources.

6. No additional public hearing will be held to consider this amended proposal notice.

7. The department is extending the comment period for this proposed rulemaking in accordance with 2-4-305, MCA, as described in paragraph 8.

8. Concerned persons may submit their data, views, or arguments 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 5:00 p.m., September 20, 2021.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 31, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.12.208 pertaining to) PROPOSED AMENDMENT
temporary operating authority for)
alcoholic beverage license applicants)

TO: All Concerned Persons

1. On October 4, 2021, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 17, 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:

42.12.208 TEMPORARY OPERATING AUTHORITY (1) ~~An applicant may be granted temporary operating authority if the premises were licensed within the last 12 months, the premises were not altered from the last floor plan, and the applicant has submitted an application meeting the requirements of ARM 42.12.101.~~ The department may grant an applicant temporary operating authority, as provided in 16-4-404, MCA, only for the transfer of ownership of a license. The applicant must submit an application meeting the requirements of ARM 42.12.101 and intend to operate the licensed business pending final approval. The department may not grant temporary operating authority on an application for an original license or when there is a proposed change of location.

(2) and (3) remain the same.

(4) ~~In the event liens, attachments, or judgments have attached to the license prior to September 1, 1990, the department will not grant an extension beyond the initial 45 days. Beginning September 1, 1990, new liens, new attachments, or new judgments that have attached to a license do not affect the issuance of temporary operating authority.~~ The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary operating authority has expired and cannot be extended.

(5) and (6) remain the same.

AUTH: 16-1-303, MCA
IMP: 16-4-404, MCA

REASONABLE NECESSITY: The department conducted a periodic legal review of ARM 42.12.208 in connection with an Alcoholic Beverage Control Division analysis of license transactions that involve the issuance of temporary operating authority for the purchaser of an alcoholic beverages license. Based on these reviews, the department finds ARM 42.12.208(1) does not conform with the rule's authorizing statute, 16-4-404, MCA, and the department proposes to amend (1) to resolve this substantial, yet unintended, disparity. The last sentence in 16-4-404(6), MCA, clearly restricts temporary operating authority to those license transactions involving an ongoing business where there has not been a change in location:

"The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department."

16-4-404, MCA (emphasis added).

The department proposes to strike the current first sentence of (1) and replace it with a restatement of the pre-2014 rule text. While the department understands this rule change may be met with disagreement, Montana law does not permit the department to maintain this rule without correction. Should the Montana Legislature deem changes to 16-4-404, MCA, and temporary operating authority advisable, the department will directly implement the enacted legislation.

The department has ceased the issuance of temporary operating authority for original license and transfer of location applications.

Lastly, the department proposes to remove the first two sentences of (4) because the provisions are obsolete. When the amendments to (4) were originally adopted in 1990 (June 28, 1990), banks and other valid lienholders did not have any statutory security interest provisions and the department was amenable to addressing security interest issues involving alcoholic beverages licenses. Since that time, 16-4-801, MCA, was enacted (in 1999, last amended in 2017) and rule provisions like those found in ARM 42.12.208(4) only confuse applicants, licensees, and secured parties, and its removal is necessary and advisable.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., October 12, 2021.

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

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses. However, the potential impact to small businesses (i.e., the discontinuance of temporary operating authority for certain applicants) is fact-dependent to each license transaction and is not determinable as a whole.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 31, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 1.2.419 pertaining to the) PROPOSED AMENDMENT
scheduled dates for the 2022)
Montana Administrative Register)

TO: All Concerned Persons

1. On September 30, 2021, at 9:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., September 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Ray Dagnall, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-9009; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail RDagnall@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2021 Register Publication Schedule		
Issue	Filing (due by noon)	Publication
1	January 5	January 15
2	January 19	January 29
3	February 2	February 12
4	February 16	February 26
5	March 2	March 12
6	March 16	March 26
7	April 6	April 16
8	April 20	April 30
9	May 4	May 14
10	May 18	May 28
11	June 1	June 11
12	June 15	June 25

13	June 29	July 9
14	July 13	July 23
15	July 27	August 6
16	August 17	August 27
17	August 31	September 10
18	September 14	September 24
19	September 28	October 8
20	October 12	October 22
21	October 26	November 5
22	November 9	November 19
23	November 30	December 10
24	December 14	December 23

2022 Register Publication Schedule

<u>Issue</u>	<u>Filing (due by noon)</u>	<u>Publication</u>
<u>1</u>	<u>January 4</u>	<u>January 14</u>
<u>2</u>	<u>January 18</u>	<u>January 28</u>
<u>3</u>	<u>February 1</u>	<u>February 11</u>
<u>4</u>	<u>February 15</u>	<u>February 25</u>
<u>5</u>	<u>March 1</u>	<u>March 11</u>
<u>6</u>	<u>March 15</u>	<u>March 25</u>
<u>7</u>	<u>April 5</u>	<u>April 15</u>
<u>8</u>	<u>April 19</u>	<u>April 29</u>
<u>9</u>	<u>May 3</u>	<u>May 13</u>
<u>10</u>	<u>May 17</u>	<u>May 27</u>
<u>11</u>	<u>May 31</u>	<u>June 10</u>
<u>12</u>	<u>June 14</u>	<u>June 24</u>
<u>13</u>	<u>June 28</u>	<u>July 8</u>
<u>14</u>	<u>July 12</u>	<u>July 22</u>
<u>15</u>	<u>July 26</u>	<u>August 5</u>
<u>16</u>	<u>August 16</u>	<u>August 26</u>
<u>17</u>	<u>August 30</u>	<u>September 9</u>
<u>18</u>	<u>September 13</u>	<u>September 23</u>
<u>19</u>	<u>September 27</u>	<u>October 7</u>
<u>20</u>	<u>October 11</u>	<u>October 21</u>
<u>21</u>	<u>October 25</u>	<u>November 4</u>
<u>22</u>	<u>November 8</u>	<u>November 18</u>
<u>23</u>	<u>November 29</u>	<u>December 9</u>
<u>24</u>	<u>December 13</u>	<u>December 23</u>

(2) remains the same.

AUTH: 2-15-401, MCA

IMP: 2-4-312, MCA

REASONABLE NECESSITY: ARM 1.2.419 is proposed to be amended to set dates pertinent to the twice-monthly publication of the Montana Administrative Register during 2022. The schedule is being proposed at this time in order that it may be adopted in a timely manner to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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: Ray Dagnall, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing RDagnall@mt.gov, and must be received no later than 5:00 p.m., October 8, 2021.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to the office at sosarm@mt.gov.

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 Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES

Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN

Christi Jacobsen
Secretary of State

Dated this 31st day of August, 2021.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULE I library board, governance,	)	AMENDMENT, AND REPEAL
and working with the director, NEW)	
RULE II serving the community, NEW)	
RULE III personnel, NEW RULE IV)	
standard notification, final arbiter, and)	
appeal process, and NEW RULE V)	
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 July 9, 2021, the Montana State Library published MAR Notice No. 10-102-2101 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 818 of the 2021 Montana Administrative Register, Issue Number 13.

2. The library has amended and repealed the above-stated rules as proposed.

3. The library has adopted the above-stated rules as proposed: NEW RULE I (10.102.1158), NEW RULE II (10.102.1159), NEW RULE III (10.102.1160), NEW RULE IV (10.102.1161), and NEW RULE V (10.102.1162).

4. No comments or testimony were received.

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

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Kenning Arlitsch
Kenning Arlitsch
Chair
Montana State Library Commission

Certified to the Secretary of State August 31, 2021.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.307 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On June 11, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-948 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 711 of the 2021 Montana Administrative Register, Issue Number 11.

2. The statement of reasonable necessity for MAR Notice No. 37-948 contains a clerical error. The notice correctly sets forth the dollar amount of the proposed nursing facility reimbursement rate and the cost associated with the proposed increase. However, the notice incorrectly states the percentage rate of increase. Specifically, the third sentence of the fiscal impact statement indicates the provider rate increase for nursing facility reimbursement will include an increase of 0.03%. The provider rate of increase should have been stated as three tenths of one percent (0.3%). Pursuant to 2-4-305(8)(b), MCA, the department is using this adoption notice to correct the clerical error and to amend the third sentence of the fiscal impact statement in MAR Notice No. 37-948 to read: "Nursing facility reimbursement will include an increase of three tenths of one percent (0.3%) in provider rates."

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

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: Comments were made that the 0.3% increase in rates is woefully inadequate and does not meet costs of operating nursing facilities or the increased costs due to COVID-19.

RESPONSE #1: As set forth in the statement of reasonable necessity, the rate increase reflects the availability of appropriated funds resulting from the Montana 67th Legislative Session.

The annual rate to cost analysis that is performed by the department for the rate setting process indicates for state fiscal year (SFY) 2019 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (IGT and direct care wages) was \$220.37 compared to the Medicaid inflated cost of \$244.93, or that on average Medicaid is covering approximately 93.66% of cost through the

various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities. For SFY 2020 (SFY ending June 30, 2020), the average total rate that includes all supplemental payments is \$238.34 compared to the Medicaid inflated cost of \$249.92, or that on average Medicaid is covering approximately 99.51% of cost through the various forms of reimbursement to nursing facility providers.

COMMENT #2: A comment was made in appreciation of the COVID-19 supplemental payments.

RESPONSE #2: The department thanks the commenter for support of the COVID-19 supplemental payments.

5. The department intends to apply these rule amendments retroactively to July 1, 2021. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Adam Meier

Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State August 31, 2021.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rule I to allow	)	TEMPORARY EMERGENCY RULE
students and/or their parents or)	
guardians the ability to opt-out of)	
school health-related mandates for)	
health, religious, moral, or other)	
fundamental rights reasons)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is adopting the following temporary emergency rule as part of the State's response to the current COVID-19 global pandemic. The current COVID-19 global pandemic has placed great burdens on the State, and some of the responses to the pandemic, including mask mandates, have also imposed additional burdens on citizens, including on their health and well-being. While the department encourages citizens to receive the COVID-19 vaccine in consultation with their health care provider, this choice, which could mitigate not only the need to wear a mask, but also, potentially, the need for school-based mask mandates, is not yet available to the majority of students because of their age. The rule directs that, if schools or school districts impose a health-related mandate on students, such as a mask mandate, they should consider, and be able to demonstrate they considered, parental concerns in adopting the mandate, and should provide the ability for students, and/or parents or guardians on behalf of their children, to choose to opt-out based on physical, mental, emotional, or psychosocial health concerns, as well as on the basis of religious belief, moral conviction, or other fundamental right, the impairment of which may negatively impact such students' physical, mental, emotional, or psychosocial health.

2. The Centers for Disease Control and Prevention (CDC) recognizes categories of people as exempt from the requirement to wear a mask, including children under age two; persons with disabilities who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability; and persons for whom wearing a mask would create a risk to workplace health, safety, or job duties (see "Guidance for Wearing Masks", "Who should or should not wear a mask" at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>, last updated April 19, 2021). Similarly, mask wearing can interfere with the learning and general well-being of school-aged children, related to their age and development; their disabilities, and physical and mental health attributes; and classroom health, safety, and productivity. As those best suited and entitled to assess individual needs for the physical, mental, and developmental well-being of their minor children, parents or guardians, in consultation with their children's health care provider as appropriate, should be afforded the ability to opt-out of mask requirements on behalf of their children.

3. The department is charged with providing consultation on conditions and issues of public health importance for schools, to school and local public health personnel, and to the superintendent of public instruction (50-1-202(1)(I), MCA). The department is also charged with adopting and enforcing rules regarding public health requirements for schools, including any matters pertinent to the health and physical well-being of pupils, teachers, and others (50-1-202(1)(p)(v), 50-1-206, MCA). To this end, for example, the department recommends students be evaluated by a health care provider periodically and as necessary to identify health problems with the potential for interfering with learning, including assessment of students' health and developmental status, vision, hearing, and mental health (ARM 37.111.825(7)). In furtherance of this obligation, and for the reasons set forth herein, the department has determined that schools and school districts that impose such health-related mandates as mandatory mask wearing should provide the ability for students through their parents or guardians to choose to opt-out of mandated mask wear in school.

4. The scientific literature is not conclusive on the extent of the impact of masking on reducing the spread of viral infections. The department understands that randomized control trials have not clearly demonstrated mask efficacy against respiratory viruses, and observational studies are inconclusive on whether mask use predicts lower infection rates, especially with respect to children.¹ The department understands, however, that there is a body of literature, scientific as well as survey/anecdotal, on the negative health consequences that some individuals, especially some children, experience as a result of prolonged mask wearing.²

¹ See, e.g., Guerra, D. and Guerra, D., *Mask mandate and use efficacy for COVID-19 containment in US States*, MedRX, Aug. 7, 2021, <https://www.medrxiv.org/content/10.1101/2021.05.18.21257385v2> ("Randomized control trials have not clearly demonstrated mask efficacy against respiratory viruses, and observational studies conflict on whether mask use predicts lower infection rates."). Compare CDC, *Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, last updated May 7, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>, last visited Aug. 30, 2021 (mask wearing reduces new infections, citing studies) with David Zweig, *The Science of Masking Kids at School Remains Uncertain*, New York Magazine, Aug. 20, 2021, <https://nymag.com/intelligencer/2021/08/the-science-of-masking-kids-at-school-remains-uncertain.html> (author reviewed the 17 studies cited in CDC's K-12 guidance of evidence that masks on students are effective, noting that none looked at student mask use in isolation from other mitigation measures or against a control, with some studies demonstrating that lack of masking correlated with low transmission and noting issue with presentation of one study published in CDC's MMWR). See also Xiao, J., Shiu, E., Gao, H., Wong, J. Y., Fong, M. W., Ryu, S., Cowling, B. J. (2020). *Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures*. CDC, Emerging Infectious Diseases, 26(5), 967-975, <https://doi.org/10.3201/eid2605.190994> (meta-analysis found that although mechanistic studies support potential effect of hand hygiene or face masks, evidence from 14 randomized controlled trials of such measures did not support a substantial effect on transmission of laboratory-confirmed influenza); Guerra, D. and Guerra, D. (not observing "association between mask mandates or use and reduced COVID-19 spread in US states").

² See, e.g., Kisielinski, K. et al., *Is a Mask That Covers the Mouth and Nose Free From Undesirable Side Effects in Everyday Use and Free of Potential Hazards?*, Int. J. Environ. Res. Public Health 2021, 18, 4344, <https://doi.org/10.3390/ijerph18084344> (scientific review of multiple studies revealed relevant adverse events over more than ten medical disciplines, including internal medicine,

5. Similarly, there is also substantial literature that persons who are forced to act contrary to their religious beliefs or moral convictions may experience moral distress, and psychological and emotional harm.³ This moral distress and the associated impact on an individual's psychological and emotional health could also arise when a person is forced to act contrary to his or her views of his or her fundamental rights.⁴

6. Mask wearing has been shown to cause some children to suffer mental and emotional distress and issues.⁵ Mask wearing can also cause or aggravate physical conditions in some children, including interference with breathing related to asthma or other respiratory conditions or infections, or interference with the ability to see classroom boards, screens, papers and desk surfaces, and surrounding safety conditions, especially for students wearing glasses. The scientific literature has identified, with respect to pediatrics, diseases, or predispositions where masking may present significant risks, including respiratory diseases, cardiopulmonary diseases (asthma, bronchitis, cystic fibrosis, congenital heart disease, emphysema), neuromuscular diseases, and epilepsy.⁶ In addition, mask wearing can cause

psychology, psychiatry, and pediatrics, finding statistically significant correlation in the quantitative analysis between the negative effects of blood-oxygen depletion and fatigue in mask wearers, and identifying what the authors called Mask-Induced Exhaustion Syndrome with symptoms including feeling of fatigue or exhaustion, decreased ability to concentrate, and decreased ability to think). *But see* CDC, Science Brief ("[r]esearch supports that mask wearing has no significant adverse health effects for wearers," citing studies mainly conducted with healthy research subjects).

³ See, e.g., Christy A. Rentmeester, *Moral Damage to Health Care Professionals and Trainees: Legalism and Other Consequences for Patients and Colleagues*, *Journal of Medicine and Philosophy*, 33: 27-43, 2008, p.37 ("moral distress is a sense of complicity in doing wrong. This sense of complicity does not come from uncertainty about what is right but from the experience that one's power to resist participation in doing wrong is severely restricted by one's work environment and from the experience that resisting participation in doing wrong exposes one to harm."); Borhani et al., *The relationship between moral distress, professional stress, and intent to stay in the nursing profession*, *J. Med. Ethics Hist. Med.* 2014; 7:3.

⁴ Cf. Kisielinski, K. et al. (masks impair the wearer's field of vision and inhibit other habitual actions, which can be perceived "as a permanent disturbance, obstruction, and restriction"; "[w]earing masks, thus, entails a feeling of deprivation of freedom and loss of autonomy and self-determination, which can lead to suppressed anger and subconscious constant distraction, especially as the wearing of masks is mostly dictated and ordered by others").

⁵ *Id.* (noting a survey which showed masks can cause anxiety and stress reactions in children, an increase in psychosomatic and stress-related illnesses and depressive self-experience, reduced participation, social withdrawal, and lowered health-related selfcare); see also Carla Peeters, September 9, 2020, *Rapid response: Psychological, biological, and immunological risks for children and pupils makes long-term wearing of mouth masks difficult to maintain*, *BMJ*, <https://www.bmj.com/content/370/bmj.m3021/rr-6>.

⁶ Kisielinski, K. et al. These conditions tend to be ones with respect to which individuals would be excluded from research studies. See, e.g., Lubrano, R., Bloise, S., Testa, A., et al. *Assessment of Respiratory Function in Infants and Young Children Wearing Face Masks During the COVID-19 Pandemic*. *JAMA Netw Open*. Mar 2 2021;4(3):e210414. doi:10.1001/jamanetworkopen.2021.0414, (cited in CDC, Science Brief at note 64) (noting the exclusion from study of infants and young children with lung or cardiac disease, neuromuscular disorders and those with medications that could be associated with changes in the parameters examined).

decreased ability to think and to concentrate in some children, with potential implications for their cognitive development.⁷

7. Accordingly, personal choice in the form of an exemption from or exception to a mask mandate policy can serve to protect and further the physical, mental, and emotional health of students who may be negatively impacted by a masking requirement. Safety recommendations and choices in response to the COVID-19 global pandemic are invaluable, but mandates can place more detrimental stress or have other adverse health impacts on some students and families, unless they have the ability to opt-out as necessary. This is especially the case where the scientific evidence supporting the original public health intervention is inconclusive. With respect to the documentation necessary to support such exception or exemption from a mandatory health measure such as mandatory mask wearing, the department suggests that the type and quantum of documentation outlined in House Bill 334, with respect to exemptions from school vaccination requirements, may serve as an appropriate model.

8. For the foregoing reasons, the department adopts this emergency rule. Certain Montana schools and school districts have adopted and, with the beginning of the school year, will be enforcing mask mandates on the basis of public health, without considering the negative implications that such measures could have on the physical, mental, emotional, or psychosocial health of some students. Promulgation of this emergency rule is necessary because no other administrative act can be taken to avert this imminent peril to the public health, safety, and well-being of Montana youth, who are now returning or beginning to return to the classroom for the new school year. This rule will remain in effect no longer than 120 days after the date of adoption.

9. EMERGENCY RULE I is necessary to provide essential health, well-being, fundamental rights, and a safe and effective learning environment for Montana youth. Emergency Rule I protects Montana students returning to school who may experience adverse effects from mandatory mask wear by directing schools and school districts that they should consider, and be able to demonstrate consideration of, parental concerns when adopting a mask mandate, and should provide those students, or their parents or guardians, on their behalf, with the ability to opt-out of wearing a mask, as necessary.

10. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Heidi Clark at the 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.

⁷ See, e.g., Kisielinski, K. et al.; see also Guerra, D. and Guerra, D. (noting some risks of mask wearing, including that by obscuring nonverbal communication, masks interfere with social learning in children, and research that masks decrease cognitive precision).

11. The emergency rule is effective immediately, August 31, 2021.

12. The text of the emergency rule provides as follows:

EMERGENCY RULE I ABILITY TO OPT-OUT OF SCHOOL HEALTH-RELATED MANDATES (1) In order to provide for the health, well-being, rights, and educational needs of students, schools and school districts should consider, and be able to demonstrate consideration of, parental concerns when adopting a mask mandate, and should provide students and/or their parents or guardians, on their behalf, with the ability to opt-out of health-related mandates, to include wearing a mask or face covering, for reasons including:

- (a) physical health;
- (b) mental health;
- (c) emotional health;
- (d) psychosocial health;
- (e) developmental needs; or
- (f) religious belief, moral conviction, or other fundamental right the impairment of which could negatively impact the physical, mental, emotional, or psychosocial health of students.

AUTH: 2-4-303, 50-1-202, 50-1-206, MCA

IMP: 50-1-202, 50-1-206, MCA

13. The rationale for the temporary emergency rule is set forth in paragraphs 1 through 9.

14. It is presently unknown whether a standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule. The necessity and efficacy of this emergency rule will be continuously evaluated as the effort to combat the COVID-19 global pandemic in Montana continues and develops.

15. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices, and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 10 or may be made by completing a request form at any rules hearing held by the department.

16. The bill sponsor contact requirements of 2-4-302, MCA, do not apply to this rulemaking. Special notice, pursuant to 2-4-303, MCA, was made to each member of the Children, Families, Health, and Human Services; and Education Interim Committees and to each member of the committees' staff, using electronic mail on August 31, 2021.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State August 31, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 42.2.613, 42.2.621, 42.39.102,) REPEAL
42.39.106, 42.39.108, 42.39.117,)
42.39.119, 42.39.310 and the repeal)
of ARM 42.39.101 pertaining to the)
Montana Medical Marijuana Program)
(MMP))

TO: All Concerned Persons

1. On July 23, 2021, the Department of Revenue published MAR Notice No. 42-1031 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 899 of the 2021 Montana Administrative Register, Issue Number 14.

2. On August 13, 2021, a public hearing was held to consider the proposed amendment and repeal. The following commenters appeared and provided oral testimony: Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Antonette Lininger, Sacred Sun Farms; Josh Gosney, Infinity Wellness; Joanna Barney, Sacred Sun Farms; Pepper Peterson, Montana Cannabis Guild; and Katrina Farnum, Garden Mother. The department also received written comments submitted by other interested persons.

3. The department has amended ARM 42.2.613, 42.2.621, 42.39.102, 42.39.108, 42.39.117, 42.39.310 and repealed ARM 42.39.101 as proposed.

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

42.39.106 REGISTERED CARDHOLDER APPLICATION PROCESS

(1) through (7) remain as proposed.

~~(8) An applicant must designate either a licensed provider or licensed marijuana infused products provider, unless the registered cardholder intends to cultivate or manufacture marijuana for their own use under 50-46-303, MCA. If the registered cardholder intends to cultivate or manufacture marijuana for their own use, a property owner permission form must also be submitted, if applicable.~~

AUTH: 50-46-344, MCA

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

42.39.119 DENIAL OR REVOCATION OF APPLICATION, LICENSE, OR ENDORSEMENT (1) The department, after written notice to the applicant or licensee, may deny or revoke an application, license, or endorsement if:

(a) through (l) remain as proposed.

~~(m) the provider or a provider's employee sells, or attempts to sell, marijuana or marijuana items in excess of the allowable purchase limits provided in 50-46-319, MCA,~~

~~(n) (m) the provider or a provider's employee sells, or attempts to sell, marijuana or marijuana items to a person who does not possess a valid registry identification card at the time of sale; or~~

(o) remains as proposed but is renumbered (n).

(2) and (3) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-329, 50-46-330, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Several comments were received regarding the department's proposed amendments to ARM 42.39.119(1)(m) and (n).

Ms. Cholewa commented that the department's amendments are extending liability to licensed licensees beyond the point of sale. The tracking system will tell them how much has been purchased that day, or how much is left on a monthly allowance, and that information enables the licensee to make, or not make, a legal sale within those parameters. How would a licensee know whether that cardholder was abusing purchase amounts or limits based on that information or if somebody was reselling their cannabis?

Ms. Lininger echoed Ms. Cholewa's comments on licensee liability and setting up licensees for revoking licenses/business livelihood.

Mr. Gosney commented that the amendments to 42.39.119(1)(m) and (n) need clarification.

Mr. Peterson commented on the proposed changes and asked whether there would be a 30-day window to cure after a violation. There is no mention of due process and opportunity to cure a violation. Mr. Peterson believes (1)(m) needs to be clear on what is a revocable offense because revocation of licenses is severe. Mr. Peterson also asked the department for clarification of what is "possession of valid registry card?" Is a physical card necessary? Is a digital form acceptable? What if a registered cardholder possessed online registration information from Compla? Mr. Peterson believes this additional guidance should be in rule.

Ms. Farnum echoed comments that aspects of revocable offense conduct in rules need to be very clear. Mistakes do happen at the point of sale and responsibility for system or employee errors should not be on licensee and the potential for license revocation.

Some commenters asked the department to clarify what the term "attempts to sell" means in ARM 42.39.119(1)(n).

RESPONSE 1: The department thanks all commenters for their comments. The department disagrees that the proposed amendments in ARM 42.39.119(1)(m)

and (n) extend liability to licensees beyond the point of sale or that the proposed regulations are being implemented to "set up" the revocation of licenses. House Bill 701 (HB 701) includes this enforcement authority which will be implemented by the department. But based on an additional review of HB 701 and the comments provided, the department has amended ARM 42.39.119 upon adoption to remove (1)(m). The department will present these license compliance considerations under future rulemaking to implement HB 701.

As to Ms. Farnum's comment about employee mistakes, the department agrees that tracking system failures which are not the licensee's fault are generally not a basis for adverse license action, but the department cannot speculate on what constitutes a "mistake." Licensees may hold responsibility and potential liability for circumstances such as mistakes by untrained employees or negligence by the licensee or their employee in the sale of marijuana or marijuana-infused products to persons not lawfully permitted to possess such products. Whether the department pursues revocation of any license is a fact-dependent decision based on underlying allegations substantiated after an investigation by the department, all of which is subject to due process and contested case proceedings under the Montana Administrative Procedure Act. This is also the department's response to Mr. Peterson regarding licensee due process and granting an opportunity to cure minor violations. The department is preparing more detailed procedural guidelines of this nature which are not a part of this rulemaking and will be presented under a separate rulemaking notice to implement HB 701.

As to the comments regarding ARM 42.39.119(1)(n), the department has removed the phrase "or attempts to sell" from the subsection to improve clarity of the requirement of an actual sale.

The department also responds to Mr. Peterson that statute - and now the administrative rule - are clear that possession of a valid registry identification card at the time of sale means that the purchaser must possess and present their actual valid registry identification card or temporary registry card at the time of sale. Other information or documentation such as electronic documents, pictures, and Complaia system printouts are not acceptable substitutes.

COMMENT 2: Several commenters commented on sale to seed tracking system and point of sale (POS) system reliability issues as they may be relied upon for the sales violations discussed in Comment and Response 1.

Mr. Gosney says that the METRC system is often shut down or has other technical glitches that cause POS information to not be available or to present invalid information. Based on these complications, the proposed violations seem unlawful. If purchase amount data does not work, he has to shut his business down; this happened in May of this year.

Ms. Barney also shared Mr. Gosney's concerns regarding METRC and shared her observation that on August 12, between 12:45 and 1:38 p.m., the METRC server was down and they were unable to process sale or record purchase amounts for daily sales.

Mr. Peterson comments that daily allotment information in POS systems are relied upon, and are complex systems that involve a lot of math (i.e., calculations). System glitches are present and advice from software vendors is often to push sales

through because of the glitches. Would this be an "attempt to sell" in ARM 42.39.119(1)(n)?

RESPONSE 2: The department appreciates the comments and directs the commenters to Response 1, which the department believes adequately responds to the comments. Notwithstanding, the department agrees that system outages or other technical difficulties may impact operations and may not process sales data as accurately as is necessary. The department pledges to continue to work with system developers, and for stakeholders, with the goal of having a very reliable and accurate industry platform. The department encourages and appreciates any constructive input.

COMMENT 3: Several commenters commented via telephone, email, and at the August 13 hearing regarding amendments proposed as ARM 42.39.106(8), which historically provided for the concept of provider and registered cardholder "tethering." Most commented that the tethering requirement, which restricted patients' access to medicine, was obsolete because Senate Bill 265 (2019) (SB 265) eliminated it.

RESPONSE 3: The tethering provision in ARM 42.39.106 was already in the rule because ARM 37.107.111 was transferred to the department from the Department of Public Health and Human Services, effective July 2, 2021, and the rule had not yet implemented SB 265.

The department agrees with the commenters and has removed the proposed section in response to these comments and to implement SB 265.

COMMENT 4: Mr. Gosney commented that self-growers will grow to whatever canopy area they have set up and will not limit themselves to plant number. Mr. Gosney recommends the department adopt canopy sizes for self-growers.

RESPONSE 4: The department is unsure of the relevancy of Mr. Gosney's comment to this rulemaking. However, in an attempt to answer, the department responds that statute clearly provides that personal use limits are based on the number of plants and seedlings, not on canopy size. Any change of this requirement would require an act of the legislature.

COMMENT 5: At the August 13 rules hearing, Mr. Peterson commented that the department's Office of Dispute Resolution (ODR), which is the quasi-judicial venue for contested marijuana matters, is a part of the department's Alcoholic Beverage Control Division (ABCD), and he speculated how marijuana matters would be handled there.

RESPONSE 5: The department thanks Mr. Peterson for the comments and would like to formally clarify that the ODR is defined in ARM 42.2.613(15), but that provision of the rule was not amended in this rulemaking notice and remains the same. ODR is not a part of the ABCD; it is a statutorily mandated office under 15-1-

211, MCA, to resolve disputes between the department and persons or other entities. The authority for ODR to hear marijuana matters and issue final agency decisions regarding the same is proposed - and now adopted - in the department's proposals for ARM 42.2.613 and 42.2.621 under this rulemaking.

COMMENT 6: Ms. Lininger and Mr. Peterson both commented their respective opinions that steps appear to have been taken - through additional administrative rules - to slim down the medical marijuana program.

RESPONSE 6: These comments fall outside the scope of this rulemaking and are so speculative in nature that the department cannot accurately respond. The department implements legislation enacted by the Montana Legislature and any rulemaking supports the programs or public policy direction provided to the department through such legislation. Any rulemaking to the contrary would exceed the department's rulemaking authority.

COMMENT 7: The department also received written comments from interested persons which the department can best describe as additional suggestions for the MMP rules located in ARM Title 42, chapter 39, which were not included as a part of the department's proposals under MAR Notice No. 42-1031.

RESPONSE 7: While the department appreciates the comments and suggestions, it is unable to add those suggestions during the course of this specific rulemaking because of procedural constraints within the Montana Administrative Procedure Act. The department will consider all suggestions for inclusion in future rulemaking for the chapter.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 31, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.12.111, 42.12.502,)
42.12.503, and 42.12.504 pertaining)
to the Elimination of Competitive Bid)
Application Processing Fees)

TO: All Concerned Persons

1. On July 23, 2021, the Department of Revenue published MAR Notice No. 42-1035 pertaining to the proposed amendment of the above-stated rules at page 915 of the 2021 Montana Administrative Register, Issue Number 14.
2. No requests for a public hearing were received. The department did not receive any written comments in support or opposition to the proposed amendments.
3. The department has amended the above-stated rules as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 31, 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 June 30, 2021. This table includes notices in which those rules adopted during the period March 12, 2021, through August 27, 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 June 30, 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.

ADMINISTRATION, Department of, Title 2

2-11-614	Adoption of a State Plan of Operation for Federal Surplus Property, p. 378, 990
2-59-607	Activities of Loan Production Offices - Assessments - Dividends - Conversion Applications - Merger Applications - Examination Fees for Trust Companies, p. 152, 328
2-59-610	Application for Organizing a New Credit Union - Annual Reports, p. 97, 275
2-59-613	Examination Fees - Revocation and Suspension of Mortgage Licenses - Consumer Complaints - Confidentiality Agreements - Sharing Arrangements - Reinstatement of Expired or Suspended Licenses - Mortgage Loan Origination Disclosure Form - Bona Fide Not-For-Profit Certification - Applications for Initial Licenses Near Year End, p. 381, 715
2-59-617	Semiannual Assessments - Supervisory Fees for Banks and Credit Unions, p. 1004
2-59-618	Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Loan Originators, p. 1007

(Public Employees' Retirement Board)

2-43-611 Investment Policy Statements for the Defined Contribution Retirement Plan, the Montana Fixed Fund, and the 457(b) Deferred Compensation Plan, p. 201, 465

AGRICULTURE, Department of, Title 4

4-21-272 Plant Health Quarantines, p. 100, 552

4-21-273 Certified Noxious Weed Free Materials, p. 804, 1048

STATE AUDITOR, Office of, Title 6

6-261 Surety Insurance Producers Who Sell, Solicit, or Negotiate Commercial Bail Bonds, p. 739, 1860, 410

6-264 Suitability in Annuity Transactions Act, p. 971

(Classification Review Committee)

6-263 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, p. 447, 919

COMMERCE, Department of, Title 8

8-94-186 Administration of the Federal Community Development Block Grant (CDBG) Program—Planning Grants, p. 288, 554

8-94-187 Administration of the Montana Coal Endowment Program (MCEP)—Planning Grants, p. 591, 872

8-94-189 Administration of the Community Development Block Grant Cares Act (CDBG-CV) Program, p. 813, 1049

8-94-190 Administration of the CDBG Program, p. 976

8-111-188 Cash Advances, p. 815, 1053

(Board of Investments)

8-97-100 Board of Investments Rules, p. 205, 466

EDUCATION, Title 10

(Montana State Library)

10-102-2101 Essential Standards - Library Board, Governance, and Working With the Director - Serving the Community - Personnel - Standard Notification, Final Arbiter, and Appeal Process - Deferrals, p. 818

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-544 Closing the Springdale Bridge Fishing Access Site in Park County, p. 434

- 12-548 Closing the Selway Park Fishing Access Site in Beaverhead County, p. 756
- 12-549 Closing Cooney Reservoir in Carbon County, p. 873
- 12-550 Closing Holter Lake From the Point of Log Gulch Campground to Holter Dam in Lewis and Clark County, p. 1054

(Fish and Wildlife Commission)

- 12-534 Closing the Boulder River to All Motorized Watercraft, p. 1953, 430
- 12-535 Use of Remote-Controlled Devices and Drones While Fishing, p. 1956, 431
- 12-537 Limiting Tepee Lake to Manually Operated Watercraft, p. 2226, 432
- 12-541 Policy Regarding the Management of Black Bear, p. 389, 920
- 12-545 Use of Deer or Elk Urine to Mask Human Odor, p. 391, 921
- 12-546 Implementation of the Commercial Use Cap on the Madison River, p. 395, 923

ENVIRONMENTAL QUALITY, Department of, Title 17

TRANSPORTATION, Department of, Title 18

- 18-184 Motor Carrier Services Safety Requirements, p. 450, 875

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

- 23-12-261 Tracking Sexual Assault Evidence Kits Through a Statewide Sexual Assault Kit Tracking System, p. 727, 1056
- 23-18-262 Certificates of Public Advantage, p. 453, 758

(Public Safety Officers Standards and Training Council)

- 23-13-260 Certification of Public Safety Officers, p. 4, 616

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-2-373 Commissioner's Active Supervision of the Board of Dentistry Regarding Designation of Public Health Facilities for Limited Access Permits, p. 731
- 24-11-372 COVID Unemployment Insurance Benefits, p. 534, 759
- 24-11-375 Disqualification for Unemployment Insurance Benefits Due to Failure or Refusal of a Drug Test - Requalification, p. 1011
- 24-29-367 Medical Fee Schedules for Workers' Compensation Purposes, p. 397, 716

- 24-29-370 Use of Signatures When Documents Are Being Electronically Transmitted, p. 11, 276
- 24-29-371 Medical Utilization and Treatment Guidelines for Workers' Compensation Purposes, p. 536, 761
- 24-29-374 Workers' Compensation Petitions for Reopening, p. 978
- 24-101-310 Nonroutine Applications and Criminal Convictions, p. 290, 556
- 24-122-1 Boiler Operator Licensing - Fee Schedule for Boiler Operating Engineers - Approval of Training Courses - Examinations - Renewals, p. 20, 468
- 24-131-1 Construction Blaster Licensing - Fees - Training Programs - Variances - Requirements, p. 24, 469
- 24-135-3 License Requirements for Crane and Hoisting Operating Engineers - Fees - Incorporation by Reference of American National Standards Institute B30.5, p. 29, 470
- 24-142-2 Elevator Licensing - Fee Schedule - Licensee Responsibilities - Elevator Mechanic and Limited Mechanic Licensure Qualifications - Examinations - Licensure by Reciprocity or Endorsement - Apprentice Registration, p. 34, 475
- 24-144-2 Fire Protection License Program - Definitions - Duty to Report Changes - Proof of Insurance - Fees - Who Must Obtain an Endorsement - Endorsement Examinations - Fireworks Wholesaler Permit Applications - Continuing Education - Duplicate License or Endorsement - Apprenticeship Programs - Application Procedure - Fireworks Wholesale Permits - Renewals, p. 39, 565
- 24-301-353 Modifications to the International Building Code Applicable to Both the Department's and Local Government Code Enforcement Programs, p. 596

(Board of Architects and Landscape Architects)

- 24-114-39 Fee Schedule, p. 733

(Board of Athletic Trainers)

- 24-118-6 Definitions - Unprofessional Conduct - Applications - Supervision - Renewals, p. 14, 564

(Board of Barbers and Cosmetologists)

- 24-121-17 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, and 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 - Lighting, p. 826

(Board of Chiropractors)

24-126-38 Impairment Evaluator Standards - Participation in Disaster and Emergency Care—Liability of Chiropractor - Applications, p. 736

(Board of Dentistry)

24-138-80 Denturist Committee - Fees - Dental Hygienist Functions - License Display - Licensure and Certification of Dentists, Dental Hygienists, and Denturists - Continuing Education Requirements - Dentist and Denturist Unprofessional Conduct - Screening Panel - Dental Hygienist Unprofessional Conduct - Justifiable Criticism and Expert Testimony - Infectious Waste - Public Service and Quality of Care - Patient Selection - Patient Records - Emergency Service - Consultation and Referral - Rebate and Split Fees - Volunteer Licensee Scope - Dental and Dental Hygiene Schools - Dentist Specialist License - Licensure After Denial or Revocation - Grounds for Denial - Severability - Multiple-Specialty Announcements, p. 213, 473

(Board of Medical Examiners)

24-156-90 ECP Scope of Practice, p. 1866, 277

24-156-91 Audit and Continuing Education Reporting Requirements - Continuing Education Audit, p. 456, 1057

(Board of Nursing)

24-159-89 Definitions - Fees - Qualifications for Executive Director of the Board - Nurse Licensure Compact Rules - Program Standards - Program Annual Report - Establishment of a New Program - Program Director - Program Faculty - Waiver of Faculty Qualifications - General Requirements for Licensure as Medication Aide I and II - Prohibited Intravenous (IV) Therapies - Temporary Practice Permit - LPN and RN Licensure by Examination for Internationally Educated Applicants - Licensure by Endorsement - Renewals - Application for Prescriptive Authority - Prescribing Practices - APRN Competence Development - Purpose - Criteria for Delegation of Nursing Tasks - General Nursing Functions and Tasks That May Not Be Delegated - Conduct of Nurses - Grounds for Denial of a License, p. 673, 991

(Board of Occupational Therapy Practice)

24-165-25 Definitions - Deep Modality Endorsement, p. 593

(Board of Outfitters)

24-171-41 Fees - Outfitter Records - Outfitter's Assistants - Safety and First Aid Provisions - Application for Outfitter License - Outfitter Qualifications - Fishing Outfitter Operations Plan - Insurance for Outfitters - Outfitter Acting as Guide - Operations Plans and Amendments - NCHU Categories, Transfers, and Records - Renewals - Unprofessional

Conduct and Misconduct - Web Site Posting of License Discipline, p. 1014

(Board of Pharmacy)

24-174-74 Definitions - Collaborative Practice Agreement Requirements - Transfer of Prescriptions - Drug Distribution and Control in an Institutional or Correctional Facility - Use of Drug Kits in Certain Institutional Facilities - Additions, Deletions, and Rescheduling of Dangerous Drugs - Registered Pharmacist Continuing Education—Approved Programs - Use of Contingency Kits in Certain Institutional Facilities, p. 1026

(Board of Plumbers)

24-180-50 Fee Schedule - Temporary Exceptions - Renewal of Endorsement - Continuing Education Requirements, p. 102, 329

(Board of Professional Engineers and Professional Land Surveyors)

24-183-44 Definitions - Teaching of Land Surveying Subjects - Continuing Professional Competency—Continuing Education, p. 401

(Board of Psychologists)

24-189-42 Fee Schedule - Required Supervised Experience - Continuing Education Requirements - Continuing Education Implementation - Representation of Self and Services - Psychologist Application Procedures - Licensure as a Psychologist by Experience (Senior), p. 740, 1058

(Board of Real Estate Appraisers)

24-207-44 Approval of Qualifying and Continuing Education Courses, p. 108, 436
24-207-45 Incorporation by Reference of the Real Property Appraiser Qualification Criteria, p. 845

(Board of Realty Regulation)

24-210-46 Fee Schedule - Unprofessional Conduct - Citations and Fines - Prelicensing Education—Salespersons and Brokers - Continuing Real Estate Education - Continuing Property Management Education - New Licensee Mandatory Continuing Education—Salespersons, p. 2296, 619
24-210-47 Fee Schedule - Trust Account Requirements - Unprofessional Conduct for Property Management Licensees - Reasonable Supervision - High Level of Supervision, p. 848

LIVESTOCK, Department of, Title 32

32-21-317 Diagnostic Laboratory Fees, p. 599, 925

(Board of Milk Control)

- 32-21-316 Definitions - Regulation of Unfair Trade Practices - Reports and Records - Payments to Pool Producers and Adjustment of Accounts, p. 539, 763

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-200 Oil and Gas Leases on State Lands, p. 459, 993
36-22-210 Rangeland Management, p. 2107, 330
36-22-212 Categorical Exclusion of the State Revolving Fund Grant Issuance Under the Montana Environmental Policy Act, p. 889

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-940 Licensed Marriage and Family Therapists - Policy Changes for Medication Assisted Treatment, p. 52, 164, 331
37-941 Update of Effective Dates and Inclusion of Medicaid Manual Changes, p. 168, 334
37-942 Low Income Weatherization Assistance Program, p. 405, 621
37-943 Hospice Fee Schedule, p. 462, 764
37-944 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 687, 853
37-945 Fees for Copies of Birth Certificates - Amendment of Birth Certificate Gender Designations - Issuance of a Replacement Certificate, p. 608, 926
37-946 Youth Care Facility Requirements, p. 700
37-948 Nursing Facility Reimbursement, p. 711
37-949 Developmental Disabilities Program Provider Rates Update, p. 748
37-950 Marijuana Testing Laboratory Licensure, p. 859, 1059
37-951 Low Income Energy Assistance Program (LIEAP), p. 862, 1060
37-952 Licensed Marriage and Family Therapist, p. 981
37-953 Youth Foster Homes, p. 893
37-955 Allowing for COVID-19-Related Regulatory Discretion Beyond the Expiration of the Governor-Declared State of Emergency, p. 932
37-956 School Immunization Requirements, p. 984

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-2-247 Investigation and Discovery, p. 2320, 568
38-2-248 Commission Procedural Rules, p. 545, 937
38-3-249 Montana's Motor Carrier Act, p. 1037
38-5-246 Pipeline Safety, p. 2232, 580
38-5-248 Advanced Metering Opt-Out, p. 111, 896

REVENUE, Department of, Title 42

- 42-1030 Montana Medical Marijuana Program, p. 765
42-1031 Montana Medical Marijuana Program (MMP), p. 899

- 42-1032 Marijuana Provider Canopy Tier Size Increases - Limitations on Advertising, p. 908
- 42-1034 Production Increments Used in the Calculation of Taxes on Beer, p. 869, 1061
- 42-1035 Elimination of Competitive Bid Application Processing Fees, p. 915
- 42-1036 Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) Property Tax Assistance Program, p. 1044

SECRETARY OF STATE, Office of, Title 44

- 44-2-242 Clarification of Business Services Division Filings and Fees, p. 550, 767
- 44-2-243 Records and Information Management Fees, p. 613, 878

MONTANA ADMINISTRATIVE
REGISTER

2021 ISSUE NO. 17
SEPTEMBER 10, 2021
PAGES 1092-1163

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620