

MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 20
OCTOBER 22, 2021
PAGES 1352-1440



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

STATE AUDITOR, Office of, Title 6

6-265 (Commissioner of Securities and Insurance) Notice of Public Hearing on Proposed Adoption - Pharmacy Benefit Manager Definitions and Network Adequacy.	1352-1356
---	-----------

COMMERCE, Department of, Title 8

8-94-191 Notice of Public Hearing on Proposed Amendment - Administration of the Montana Historic Preservation Grant (MHPG) Program.	1357-1359
---	-----------

TRANSPORTATION, Department of, Title 18

18-185 Notice of Proposed Amendment - Utility Relocation Costs. No Public Hearing Contemplated.	1360-1363
---	-----------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-966 Notice of Public Hearing on Proposed Amendment - Optometric Services Rates.	1364-1368
--	-----------

REVENUE, Department of, Title 42

42-1033 Notice of Public Hearing on Proposed Adoption and Amendment - Implementation of the Montana Marijuana Regulation and Taxation Act.	1369-1398
42-1039 Notice of Public Hearing on Proposed Amendment - Debtor Appeals of Department Collections.	1399-1403

RULE ADOPTION SECTION

LABOR AND INDUSTRY, Department of, Title 24

24-11-375 Notice of Amendment - Disqualification for Unemployment Insurance Benefits Due to Failure or Refusal of a Drug Test - Requalification.	1404-1405
24-114-39 (Board of Architects and Landscape Architects) Notice of Amendment - Fee Schedule.	1406
24-171-41 (Board of Outfitters) Notice of Amendment - 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.	1407-1408

REVENUE, Department of, Title 42

42-1036 Notice of Amendment - Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) Property Tax Assistance Program. No Public Hearing Contemplated.	1409
--	------

SECRETARY OF STATE, Office of, Title 44

44-2-244 Notice of Amendment - Scheduled Dates for the 2022 Montana Administrative Register.	1410-1411
--	-----------

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1412-1413
How to Use ARM and MAR.	1414

	<u>Page Number</u>
Recent Rulemaking by Agency.	1415-1423
Executive Branch Appointees.	1424-1434
Executive Branch Vacancies.	1435-1440

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to Pharmacy Benefit)	PROPOSED ADOPTION
Manager Definitions and New Rule II)	
pertaining to Pharmacy Benefit)	
Manager Network Adequacy)	

TO: All Concerned Persons

1. On November 12, 2021, at 10:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) will hold a public hearing in the basement conference room of the commissioner's office at 840 Helena Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rules. Details for remote participation in the hearing via Zoom are available at www.csimt.gov/events.

2. CSI 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 CSI no later than 5:00 p.m. on November 5, 2021, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

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

NEW RULE I DEFINITIONS (1) The following definitions apply to this subchapter:

(a) "Mail-order pharmacy" means a pharmacy that provides pharmacist services and primarily dispenses and delivers covered drugs via common carrier.

(b) "Pharmacy network" means a group of pharmacies contracted with a PBM to provide pharmacist services at negotiated prices to an enrollee or an injured worker of workers' compensation insurance carriers.

(c) "Preferred pharmacy network" means a subset, group, or tier of pharmacies within a pharmacy network that agree to charge an enrollee or an injured worker of workers' compensation insurance carriers a reduced copay or coinsurance for pharmacist services or to accept a lower reimbursement rate than other pharmacies in the pharmacy network.

(d) "Retail pharmacy" means any pharmacy that actively provides pharmacist services to the walk-in general public from which an enrollee or an injured worker of workers' compensation insurance carriers could purchase a covered drug without being required to receive medical services from a provider or institution affiliated with that pharmacy.

AUTH: 33-1-313, 33-2-2409, MCA

IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

NEW RULE II NETWORK ADEQUACY (1) A PBM must establish and maintain pharmacy networks that include at least 90% of the retail pharmacies actively providing pharmacist services in this state.

(2) A PBM's pharmacy network must include a sufficient and adequate number of retail pharmacies to ensure that all pharmacist services are accessible without unreasonable delay, within a reasonable proximity, and with sufficient provider choice.

(a) A PBM must submit the following reports and information for each pharmacy network and preferred pharmacy network as part of its license or license renewal application to demonstrate to the commissioner a sufficient and adequate pharmacy network:

(i) a report in a form and in a manner prescribed by the commissioner that designates the number and location of all retail pharmacies, mail-order pharmacies, and specialty pharmacies, if any, in each PBM pharmacy network and preferred pharmacy network; and

(ii) a network accessibility report that includes:

(A) the access standard or standards the PBM establishes to determine network adequacy based on the number of miles between the enrollees or injured workers of workers' compensation insurance carriers and nearest retail pharmacy in the pharmacy network;

(B) the number of enrollees or injured workers of workers' compensation insurance carriers with access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;

(C) the average number of miles between the enrollees and injured workers of workers' compensation insurance carriers identified in (B) and the nearest retail pharmacy in the pharmacy network;

(D) the number of enrollees and injured workers of workers' compensation insurance carriers without access to a retail pharmacy in the pharmacy network using the access standard established by the PBM;

(E) the average number of miles between the enrollees and injured workers of workers' compensation insurance carriers identified in (D) and the nearest retail pharmacy in the pharmacy network; and

(F) the ratios of retail pharmacies in the pharmacy network to an enrollee or an injured worker of workers' compensation insurance carriers;

(iii) the PBM's process for monitoring and ensuring on an ongoing basis a sufficient and adequate pharmacy network to meet the pharmacist services needs of enrollees and injured workers of workers' compensation insurance carriers; and

(iv) the specific, measurable criteria used by the PBM to build its pharmacy network, including:

(A) a description of the criteria the PBM used to build its pharmacy network, including the criteria used to select pharmacies for participation in the network;

(B) if applicable, a description of the criteria the PBM used to build its preferred pharmacy network, including the criteria used to place pharmacies in subsets, groups, or tiers; and

(C) if applicable, a description of the criteria used by the PBM to select pharmacies to dispense specialty drugs in its pharmacy network.

(b) A PBM may identify, and must report to the commissioner, other reasonable criteria or standards it uses to establish the sufficiency and adequacy of its pharmacy networks, including the willingness of retail pharmacies in the service area to contract with the PBM under reasonable and relevant standard terms and conditions specific to the pharmacy's business practice and delivery model. The commissioner may require the PBM to submit credible evidence documenting a retail pharmacy's refusal to contract based upon reasonable and relevant standard terms and conditions specific to the pharmacy's business practice and delivery model.

(c) The commissioner may consider other reasonable criteria or standards to determine the sufficiency and adequacy of each PBM pharmacy network; and

(d) A PBM must file and update the report required in (a)(i) with the commissioner if the number of pharmacies in the pharmacy network decreases by more than 5% during the year.

(3) If a PBM does not have a sufficient and adequate pharmacy network, regardless of whether adequacy was determined by a threshold percentage of retail pharmacies in (1), the PBM must ensure that the enrollee or the injured worker of workers' compensation insurance carriers obtains pharmacist services from a retail pharmacy within reasonable proximity of the enrollee or the injured worker of workers' compensation insurance carriers at no greater level of cost sharing to the enrollees or the injured workers of workers' compensation insurance carriers than if the service were obtained from a pharmacy in the pharmacy network with the most favorable cost sharing to the enrollees the injured workers of workers' compensation insurance carriers. The cost sharing paid by the enrollees or injured workers of workers' compensation insurance carriers must accumulate toward the enrollee's plan's deductibles and maximum out-of-pocket amounts.

(4) A PBM must monitor, on an ongoing basis, the ability and capacity of its pharmacy network to furnish pharmacist services to the enrollee or the injured worker of workers' compensation insurance carriers.

(5) A PBM may not use mail-order pharmacies to meet network adequacy requirements for its pharmacy network.

(6) A PBM may not require an enrollee or an injured worker of workers' compensation insurance carriers to use any pharmacy, including a mail-order pharmacy, in which the PBM has an ownership interest, either directly or indirectly through an affiliate, holding company, or subsidiary, for prescriptions, refills, or specialty drugs regardless of day supply.

(7) A PBM may decline to select a pharmacy to be in the pharmacy network if the pharmacy fails to meet legitimate and reasonable selection criteria of the PBM.

(8) A PBM must post electronically a current, accurate, and searchable directory of pharmacies for each of its pharmacy networks.

(a) In making the directory available electronically, the PBM must ensure that the general public is able to view all pharmacies included in its pharmacy network and preferred pharmacy network through a clearly identifiable link or tab, without creating an account or entering a policy or contract number.

(b) A PBM must clearly identify in its electronic directories the pharmacies that are in each of its pharmacy networks.

(c) A PBM must include in its electronic directory a customer service email address and telephone number or electronic link that enrollees, injured workers of workers' compensation insurance carriers, or the general public may use to notify the PBM of inaccurate directory information.

(9) A PBM may use a restricted pharmacy network as long as the PBM otherwise meets the network adequacy requirements set forth in these rules. A PBM may place legitimate and reasonable requirements on pharmacies with whom it contracts.

AUTH: 33-1-313, 33-2-2409, MCA

IMP: 33-2-2402, 33-2-2403, 33-2-2409, MCA

REASON: The commissioner proposes to adopt the network adequacy rules to comply with the requirements of Senate Bill 395 (2021). The proposed rules are intended to ensure adequate and sufficient access to pharmacies and pharmacist services and to provide transparency for consumers to make fully informed decisions.

The proposed rules are in addition to any other network adequacy requirements that may apply to the provision of pharmacist services, including ARM 6.6.5902.

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: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., November 19, 2021.

5. Robert Stutz, legal counsel for CSI, has been designated to preside over and conduct this hearing.

6. CSI 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 must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by CSI.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Greg Hertz, was contacted by e-mail on October 12, 2021.

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

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State October 12, 2021.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3101 and 8.94.3102) PROPOSED AMENDMENT
pertaining to the administration of the)
Montana Historic Preservation Grant)
(MHPG) Program)

TO: All Concerned Persons

1. On November 15, 2021, at 10:00 a.m., the Department of Commerce will hold a public hearing via Zoom to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

<https://mt-gov.zoom.us/j/89612235643?pwd=YjNBWDVXYzhLcHdacUQ2WmorSmM4dz09>

Meeting ID: 896 1223 5643

Password: 513655

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

Meeting ID: 896 1223 5643

Password: 513655

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., November 12, 2021, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

8.94.3101 INCORPORATION BY REFERENCE OF RULES FOR THE SUBMISSION AND REVIEW OF APPLICATIONS FOR THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program ~~2020~~ 2022 Application and Guidelines for the ~~2023~~ 2025 Biennium.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) eligible applicants and projects;
- (b) types of grants available under MHPG;
- (c) general requirements for applying for MHPG grants;

- (d) application review process; and
- (e) administrative procedures and requirements.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>.

AUTH: 22-3-1305, 22-3-1306, MCA

IMP: 22-3-1305, 22-3-1306, MCA

REASON: It is reasonably necessary to amend this rule to reflect legislative intent and guidance as outlined in HB 12 of the 67th Legislative Session.

8.94.3102 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program Project Administration Manual (October 2021).

(2) The rules incorporated by reference in (1) relate to the following:

- (a) project start-up requirements;
- (b) environmental requirements;
- (c) procurement requirements;
- (d) financial management;
- (e) protection of civil rights;
- (f) labor requirements;
- (g) project management;
- (h) involving the public;
- (i) project monitoring; and
- (j) project closeout.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>.

AUTH: 22-3-1305, 22-3-1306, MCA

IMP: 22-3-1305, 22-3-1306, MCA

REASON: It is reasonably necessary to amend this rule to reflect legislative intent and guidance as outlined in HB 12 of the 67th Legislative Session.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministraiverules@mt.gov, and must be received no later than 5:00 p.m., November 19, 2021.

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

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

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

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

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

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

Certified to the Secretary of State October 12, 2021.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 18.7.202 and 18.7.206) AMENDMENT
pertaining to Utility Relocation costs)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On November 22, 2021, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on November 12, 2021, to advise us of the nature of the accommodation that you need. Please contact Steve Giard, Utility Section Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail sgiard@mt.gov.

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

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

(5) "Engineering costs" means costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.

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

(7) (8) "Highway" means any highway under the jurisdiction of the Department of Transportation a commission-designated highway system or state highway.

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

(10) (11) "Occupancy agreement," "common use agreement," or "utility encroachment permit," "or utility occupancy agreement permits" means mean the documents the owner must secure from the department, prior to occupancy, showing the conditions of occupancy of highway right-of-way, whether such occupancy is overhead, underground, or on the surface.

(12) "Public utility" means:

(a) all public utilities as defined by 69-3-101, MCA, but including publicly owned water and sanitary sewer facilities;

(b) all common carrier pipelines as defined by 69-13-101, MCA; and

(c) all rural cooperative, non-profit membership corporations organized under the Rural Electric and Telephone Cooperative Act, as set forth in 35-18-101 through 35-18-503, MCA.

(13) "Relocation" means the adjustment or replacement of an existing publicly owned utility facility with a facility of lesser or equal value to accommodate a department highway construction project.

(11) through (13) remain the same but are renumbered (14) through (16).

~~(14) "Utility" means:~~

~~(a) all public utilities as defined by 69-3-101, MCA, but including publicly owned water and sewer facilities;~~

~~(b) all common carrier pipelines as defined by 69-13-101, MCA; and~~

~~(c) all rural cooperative, non-profit membership corporations organized under the Rural Electric and Telephone Cooperative Act, as set forth in 35-18-101 through 35-18-503, MCA.~~

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, 60-4-403, MCA

REASON: The proposed amendments are necessary to update utility rule definitions in accordance with legislative statutory changes and updated MDT electronic permit issuance processes. The proposed addition of (5) will define "engineering costs" as non-covered costs as addressed in ARM 18.7.206. The proposed amendment to (8) will make the definition consistent with statutory changes by use of the phrase "a commission-designated highway system or state highway" to describe the affected roadways. The proposed amendments to (11) will make the definition consistent with MDT's recent electronic Utility Permit Application Process (UPAS) terminology in existing ARM 18.7.207. The proposed addition of (12) will make the definition consistent with proposed changes to ARM 18.7.206, clarifying existing practices for statutory relocation payments for eligible publicly owned utilities. The proposed addition of (13) will add a definition for the term "relocation" to clarify existing statutory authority for utility relocation payments.

18.7.206 AUTHORITY OF PRIVATE AND PUBLIC UTILITY LINES

UTILITIES – RELOCATION COSTS ~~(1) All utilities defined in (3) of ARM 18.7.202, have authority under Montana law to occupy highway rights-of-way, and in event of relocation, are eligible for reimbursement pursuant to the laws of the state of Montana.~~

~~(2) All other facilities are private and have no authority to occupy highway rights-of-way other than by revocable permits issued at the sole discretion of the department. Such facilities are regulated by these provisions, but in the event of relocation, they are not eligible for reimbursement under the provisions of 23 CFR part 645, subpart A, or otherwise.~~

(1) All public utilities defined in ARM 18.7.202 may occupy commission-designated highway systems or state highway rights-of-way by utility occupancy agreement permits issued at the sole discretion of the department.

(2) All utility facilities not meeting the definition in ARM 18.7.202 are private utilities and may only occupy commission-designated highway systems or state highway rights-of-way by revocable utility encroachment permits issued at the sole discretion of the department.

(3) Public utilities granted utility occupancy agreement permits for public utilities occupying commission-designated highway systems are eligible for payment by the department for highway construction project costs of relocation in the percentages allowed pursuant to 60-4-403, MCA, and the following terms:

(a) for publicly owned water or sanitary sewer facilities, when the actual cost of the work performed by a state contractor, excluding engineering costs, is under \$25,000, the department will pay costs including materials, labor, traffic control, and mobilization;

(b) for publicly owned water or sanitary sewer facilities, when the actual cost of the work performed by a state contractor, excluding engineering costs, is over \$25,000, the public utility owner must pay the owner's proportionate share as defined in 60-4-403, MCA, of the actual costs charged by the contractor and the following costs:

(i) eight percent of the owner's proportionate share for traffic control;

(ii) eight percent of the owner's proportionate share for mobilization; and

(iii) the department's current indirect cost rate.

(4) Private utility facilities granted revocable utility encroachment permits are not eligible for highway construction project relocation payment under federal or state statutes, regulations, or rules.

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, 60-4-403, MCA

REASON: The proposed amendments to ARM 18.7.206 are necessary to further clarify existing statutory relocation of utilities requirements in Title 60, chapter 4, part 4, MCA. The amendments will clarify public utility eligibilities for MDT payment of highway construction project costs of relocation in the percentages allowed pursuant to 60-4-403, MCA. The amendment will also clarify MDT's long-standing practice of waiving publicly owned water or sanitary sewer facilities' payment when the actual cost of the work performed by a state contractor is under \$25,000 (excluding engineering costs). In that case, MDT will pay all non-engineering costs including materials, labor, traffic control, and mobilization. The proposed amendment will also clarify MDT's practice of charging owners their proportionate share of traffic control, mobilization, and indirect costs.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Steve Giard, Utility Section Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; fax (406) 444-7254 or e-mail sgiard@mt.gov, and must be received no later than 5:00 p.m., November 19, 2021.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Steve Giard at the above address no later than 5:00 p.m., November 19, 2021.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 60 persons based on the approximately 600 utility occupancy agreements issued annually.

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

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

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

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

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Julie Brown
Julie Brown
Deputy Director
Department of Transportation

Certified to the Secretary of State October 12, 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 37.85.105 pertaining to) PROPOSED AMENDMENT
optometric services rates)

TO: All Concerned Persons

1. On November 12, 2021, at 2:00 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/88589976108>; meeting ID: 885 8997 6108; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 885 8997 6108. Find your local number: <https://mt-gov.zoom.us/u/kdBY0uegL8>.

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 October 29, 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:

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

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

(a) through (h) remain the same.

(i) Optometric services receive a ~~117.50%~~ 114.79% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2020~~ July 1, 2021.

(j) and (k) remain the same.

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

(a) through (s) remain the same.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2021~~ July 1, 2021. ~~The optometric services fee schedule does not incorporate the July 1, 2021 proposed amendments to (2)(a) through (i), (3)(k), and (3)(v), as proposed in MAR Notice No. 37-944.~~

(u) through (6) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105 as it pertains to optometric services.

The department is proposing an optometric provider rate of reimbursement (PRR), which is a pricing factor, of 114.79% with an effective date of July 1, 2021. When this pricing factor is applied against the utilization, relative value units (RVUs), and Allied Health Conversion Factor adopted in MAR Notice No. 37-944, optometrists and opticians will receive a weighted average provider rate increase of 1%. With this notice, the department is proposing to adopt a July 1, 2021, optometric services fee schedule that incorporates the RVUs, Allied Health conversion factor, laboratory rates, and durable medical equipment rates that were adopted in MAR Notice No. 37-944. The department will process mass adjustments of paid claims for optometrists and opticians with a date of service on or after July 1, 2021.

The following explains the reasonable necessity for this proposal and why the optometric service rates are being proposed separately from the rest of the provider rate changes, which were adopted in MAR Notice No. 37-944.

On June 11, 2021, MAR Notice No. 37-944 was published proposing implementation of the state fiscal year (SFY) 2022 provider rate increases provided for in House Bill (HB) 2. Utilizing the annual Resource-Based Relative Value Scale (RBRVS) modeling process, it was determined the optometric services PRR needed to be 115.69% to ensure optometrists and opticians received the appropriated 1% provider rate increase.

RBRVS rates for optometric services are calculated by multiplying code specific RVUs by the Allied Health Services Conversion Factor, applicable policy adjustors, and the optometric services PRR. During the RBRVS reimbursement methodology modeling process, the department considers all these factors in the aggregate using a weighted average based on utilization. At the time of this calculation, the department had proposed an Evaluation and Management Policy Adjustor. Optometrists can bill for evaluation and management codes; therefore, the proposed adjustor impacted the calculation of the optometric PRR, making this pricing factor 115.69%.

On July 9, 2021, the department published an amended notice for MAR Notice No. 37-944. This amended notice eliminated the proposed policy adjustor on evaluation and management codes. As with the proposed inclusion of the policy adjustor, the proposed elimination of the proposed Evaluation and Management Policy Adjustor impacted the overall provider rate increase on optometric services. To maintain the proposed 1% optometrist and optician provider rate increase, the optometric services PRR was amended to 114.79%. While it may appear that this amended value would decrease optometric service rates below the appropriated provider rate increase, it was needed to provide no more than the 1% rate increase authorized by the legislature.

Additionally, the Children, Families, Health, and Human Services Interim Committee lodged an objection to the portion of the rule notice pertaining to optometric services. The interim committee originally lodged a general objection to the rule notice on July 6, 2021, and renewed its objections in subsequent meetings, with the final objection relating to the portions of the rule pertaining to optometric services.

The department met with the Montana Optometric Association (MOA), as recommended by the interim committee, on September 29, 2021. The department provided a detailed walkthrough of the rate setting process, which the department uses to set all RBRVS rates including rates for optometric services. The department explained that based on the pricing factors proposed in the original and amended notices, each notice provided for an overall average optometric service increase of 1%, as appropriated by HB2. The detailed spreadsheet utilized during the meeting was provided to the MOA on September 29, 2021; the spreadsheet included the department's detailed calculations.

Because of the objection by the interim committee only to the portions of the rule pertaining to optometric services, the department adopted MAR Notice No. 37-944 without the optometric services rate increase. While the department would have preferred to finalize all provider rates at the same time, waiting to adopt the other provider rates would have resulted in a great burden to providers, the Medicaid claims processing system, and staff due to the volume of claims that would require adjustments when rate increases were finalized. After meeting with the MOA and providing explanation of the department's rate setting process for optometric services and how the payment rates proposed for optometric services provided a weighted average increase of 1%, the department now proposes to adopt the optometric services rates as proposed in MAR Notice No. 37-944's amended notice.

The proposed July 1, 2021 fee schedules can be found at <https://medicaidprovider.mt.gov/proposedfs>.

Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, optometric services provider rate of reimbursement, and rates for services for SFY 2022 based on the proposed amendments.

Provider Type	SFY 2022 Budget Impact (Federal Funds)	SFY 2022 Budget Impact (State Funds)	SFY 2022 Budget Impact (Total Funds)	Active Provider Count
Optician	\$911	\$288	\$1,199	29
Optometrist	\$49,869	\$15,849	\$65,718	237

The department proposes to apply these amendments retroactively to July 1, 2021.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 19, 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, accordingly, 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/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State October 12, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through XV, and the)	PROPOSED ADOPTION AND
amendment of ARM 42.39.102)	AMENDMENT
pertaining to the implementation of)	
the Montana Marijuana Regulation)	
and Taxation Act)	

TO: All Concerned Persons

1. On November 16, 2021, at 9:00 a.m., the Department of Revenue (department) will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The auditorium is most readily accessed by entering through the north (basement) doors of the building.

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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 29, 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. GENERAL STATEMENT OF REASONABLE NECESSITY The 67th Montana Legislature passed House Bill 701 (HB 701) which amends the Montana Marijuana Regulation and Taxation Act (Act), codified at 16-12-101, *et. seq.*, MCA. Among the stated purposes of the Act in 16-12-101, MCA, and the legislative intent of HB 701, is the authorization and provision of a regulatory framework for Montana's legal adult use cannabis industry and transfer of the Department of Public Health and Human Services' (DPHHS) medical marijuana program (MMP) to the department, which occurred effective July 1, 2021. The department's authority conferred to it by the legislature under 16-12-103, MCA, and the proposed rules under this rulemaking represent the department's initial steps to license and regulate the cultivation, manufacture, transport, and sale of marijuana as allowed by the Act while ensuring the safety of marijuana and marijuana products to the public and eliminating the illicit market for those products.

The department proposes to adopt New Rules I through XV and to amend ARM 42.39.102 to:

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

(b) provide department systems, forms, uniform application processes, and fee schedules through which marijuana businesses may apply to the department for

licensure, including applicable endorsements, in the areas of manufacturing, cultivating, dispensing, or transporting marijuana;

(c) provide department systems, forms, uniform application processes, and fee schedules for the limited cultivation and sale of medical marijuana to individuals with debilitating medical conditions (registered cardholders) under the MMP; and

(d) reorganize and incorporate existing MMP rule provisions, many of which have been in force since 2018, from ARM Title 42, chapter 39, into these proposed rules for administrative consistency between the MMP and the adult-use program.

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

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

NEW RULE I LICENSE, APPLICATION, AND RENEWAL FEES (1) Initial licensure and annual renewal fees for the following license types and endorsements are:

- (a) Marijuana transporter license: \$10,000.
 - (b) Combined-use marijuana license: \$7,500.
 - (c) Marijuana testing laboratory license: \$5,000 per licensed premises.
 - (d) Marijuana dispensary license: \$5,000 per licensed premises.
 - (e) Cultivator license:
 - (i) \$1,000 for a cultivator with a micro tier canopy license;
 - (ii) \$2,500 for a cultivator with a tier 1 canopy license;
 - (iii) \$5,000 for a cultivator with a tier 2 canopy license;
 - (iv) \$7,500 for a cultivator with a tier 3 canopy license;
 - (v) \$10,000 for a cultivator with a tier 4 canopy license;
 - (vi) \$13,000 for a cultivator with a tier 5 canopy license;
 - (vii) \$15,000 for a cultivator with a tier 6 canopy license;
 - (viii) \$17,500 for a cultivator with a tier 7 canopy license;
 - (ix) \$20,000 for a cultivator with a tier 8 canopy license;
 - (x) \$23,000 for a cultivator with a tier 9 canopy license;
 - (xi) \$27,000 for a cultivator with a tier 10 canopy license;
 - (xii) \$32,000 for a cultivator with a tier 11 canopy license; and
 - (xiii) \$37,000 for a cultivator with a tier 12 canopy license.
 - (f) Manufacturer license:
 - (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than ten pounds of concentrate;
 - (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between ten pounds of concentrate and 15 pounds of concentrate; and
 - (iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds of concentrate.
 - (g) Storage facility endorsement: \$1,000 per licensed storage facility.
- (2) At the time of the initial application and at renewal, an applicant shall pay the department a nonrefundable processing fee equal to 20 percent of the license fee identified in (1). The department will not begin processing an application until it receives all processing fees.

(3) The fee for an initial worker permit and a renewal permit is \$50. A replacement permit is \$10.

(4) The fee for an initial registry identification card and a renewal card is \$20. A replacement card is \$10.

(5) Background checks: the department shall assess the applicant a fee of \$30 per background check. This fee is separate from and in addition to the nonrefundable processing fee assessed in (2).

(6) Location changes: the fee for changing the location of any licensed premises is \$2,500.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of New Rule I through the payment and collection of fees for the license types authorized under the Act and described in New Rule I, if known, and the number of persons affected.

Based on the final fiscal note prepared in support of HB 701 which contemplated current medical marijuana licensees and expected growth in the industry, license fee revenue to be collected by the department was estimated to be approximately \$3.9 million for FY 2022, \$4.3 million for FY 2023, \$6.4 million for FY 2024, and \$6.8 million for FY 2025.

The fiscal impact of the fee requirements stated in HB 701 with those proposed in New Rule I, and estimating the numbers of persons (i.e., licensees, registered cardholders, etc.) affected by the fees, cannot be accurately measured for this rulemaking because industry growth is volatile. As of September 2021, there were 296 providers, 434 dispensaries, 222 marijuana-infused products providers, five testing laboratory licensees, and 40,176 registered cardholders, who may be affected by proposed fees in New Rule I. The department directs interested persons to its reports dashboard at <https://mtrevenue.gov/cannabis/mmp-reports-dashboard/#LicensesbyType> for the most current licensee population information.

AUTH: 16-12-112, 16-12-202, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

NEW RULE II MARIJUANA MANUFACTURER LICENSES (1) A marijuana manufacturer license allows a marijuana manufacturer to convert or to compound marijuana into marijuana products. A marijuana manufacturer licensee may buy marijuana and marijuana products from licensed marijuana cultivators and licensed marijuana manufacturers and may sell marijuana products to licensed marijuana dispensaries.

(2) The department shall begin accepting applications for marijuana manufacturers that are not former medical marijuana licensees, as defined in 16-12-102(14), MCA, on July 1, 2023.

(3) A licensee may continue to operate under their existing marijuana-infused products provider license and may apply for a marijuana manufacturer license at their next renewal date.

(4) Licensees will elect their tier level at their next renewal date and pay the fee provided in ARM 42.39.102.

(5) A marijuana manufacturer licensee that manufactures above its licensure level may be subject to administrative proceedings.

(6) The licensed premises of a former medical marijuana licensee that is located in a red county is not eligible to apply to increase its licensure level until the local government approval process in 16-12-301, MCA, allows for marijuana manufacturing.

(7) A marijuana manufacturer licensee must take all reasonable measures and precautions to ensure the following:

(a) that the placement of equipment and storage of materials allow for the maintenance of sanitary operations for the manufacture of marijuana products;

(b) that all surfaces, including utensils and equipment used for the preparation of marijuana products, shall be cleaned and sanitized as frequently as is necessary to protect against contamination;

(c) that the water supply is safe and potable; and

(d) that the storage and transport of finished marijuana products shall be under conditions that will protect products against physical, chemical, and microbial contamination.

(8) A marijuana manufacturer licensee must:

(a) use equipment, counters, and surfaces for manufacturing that are food grade, do not react adversely with any solvent being used, reduce the potential for development of microbials, molds, and fungi, and can be easily cleaned;

(b) maintain detailed instructions for making each infused product, concentrate, or extract; and

(c) conduct necessary safety checks prior to commencing processing.

(9) A marijuana manufacturer licensee that engages in chemical manufacturing must:

(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (10)(b);

(b) only use nonhydrocarbon-based solvents that are food grade;

(c) use only potable water and ice made from potable water;

(d) use a professional grade closed-loop extraction system designed to recover the solvents;

(e) have equipment used in processing approved for use by the fire official having jurisdiction over the licensed premises;

(f) have an emergency eye-wash station in any room in which chemical manufacturing is occurring; and

(g) have all applicable material safety data sheets readily available.

(10) A marijuana manufacturer licensee that engages in chemical manufacturing may use:

(a) a mechanical and/or physical extraction process;

(b) a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or

(c) a chemical extraction process using the solvent carbon dioxide, provided that the process:

- (i) does not involve the use of heat over 180 degrees Fahrenheit; and
- (ii) uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch.

(11) A marijuana manufacturer licensee that engages in chemical manufacturing may not use:

- (a) class 1 solvents;
- (b) pressurized, canned fuel intended for use in camp stoves, handheld torch devices, refillable cigarette lighters, and similar products; or
- (c) denatured alcohol.

(12) A marijuana manufacturer licensee shall not utilize a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as an edible marijuana product except when commercially manufactured food products are used as ingredients in an edible marijuana product in a way that renders them unrecognizable as the commercial food product in the final edible marijuana product; and the licensee does not state or advertise to the consumer that the final edible marijuana product contains the commercially manufactured food product.

(13) A marijuana manufacturer licensee may not infuse any food with marijuana that requires heated, time-temperature control or a hot holding unit to keep it safe for human consumption and may not serve hot or heated foods that promote onsite consumption.

(14) Any foods that require refrigeration or freezing to keep them safe for human consumption must be stored in a refrigerator or freezer until the time of sale and must be affixed with a label that indicates the product must be kept refrigerated or frozen, as appropriate.

(15) A marijuana manufacturer licensee may not treat or otherwise alter a marijuana product with any noncannabinoid additive that would increase potency, toxicity, or addictive potential, or that is added for purposes of making the product more appealing to children.

(16) A marijuana manufacturer licensee must have current, written standard operating procedures at the licensed premises and available for inspection for the following:

- (a) each category and type of marijuana product that it produces;
- (b) cleaning all equipment, counters, and surfaces thoroughly;
- (c) proper handling and storage of any solvent, gas, or other chemical used in processing or on the licensed premises;
- (d) proper disposal of any waste produced during processing; and
- (e) training employees on how to use the closed-loop system and handle and store the solvents and gasses safely.

(17) A marijuana manufacturer licensee and an employee of a marijuana manufacturer licensee may transport their marijuana and marijuana products in accordance with 16-12-222(4), MCA, and [NEW RULE V(4) through (15)] but may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA

IMP: 16-12-204, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule II to provide requirements for the licensure of marijuana manufacturer licensees.

Section (1) is necessary to specify what a marijuana manufacturer licensee is authorized to do because manufacturer activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to state when the department is authorized to accept manufacturer license applications under 16-12-201, MCA, as amended by HB 701.

Section (3) is necessary to implement the provisions of 16-12-201(2)(a), MCA, and achieve the statutory goal of minimal amount of business disruption to former medical marijuana licensees.

Sections (4) and (5) are necessary because beginning January 1, 2022, marijuana-infused products provider (MIPP) licenses are no longer available under the Act. It is necessary for the department to include in rule the process by which MIPP licensees will be converted to the classification of marijuana manufacturer license.

Section (6) pertains to the local government approval process required for a former medical marijuana licensee in a "red county," defined in ARM 42.39.102. The department believes this rule section is a necessary reiteration of what the public may find difficult to locate in HB 701 or the Act, as amended.

Section (7) is proposed as a general requirement for all marijuana manufacturer licensees to establish reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-204, MCA.

Sections (8) through (11) are existing licensee requirements found in ARM 42.39.201 and are proposed for adoption into New Rule II as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding marijuana manufacturing.

Section (12) is proposed to restrict the "copycat" packaging of marijuana and marijuana products with packaging of commercial snack foods, candy, etc., such as those examples provided in the rule section. This restriction is necessary for public safety because the department observes that marijuana and marijuana products have been developed that appear very similar to mainstream food products and those could be misidentified by consumers, particularly children.

Sections (13) and (14) are proposed requirements because marijuana and marijuana products need to be shelf-stable products, and the introduction of variables like time-temperature control that could lead to spoilage or foodborne illness from consumption must be avoided. Section (14) provides for some food product handling through refrigeration or freezing when the manufacturer can maintain that state until the time of sale. Like other perishable food items, the department requires the manufacturer to provide the consumer with some food handling labeling.

Section (15) is a necessary restatement of public policy under the Act that is not permissible for a marijuana manufacturer licensee to alter, with additives, or fortify the potency of marijuana and marijuana products, or to increase the addictive potential of marijuana and marijuana products towards children.

Consistent with the proposed requirements in (7) through (11), proposed (16) includes requirements for a marijuana manufacturer licensee's written standard operating procedures and reflects the 16-12-204, MCA, requirement that marijuana manufacturer premises meet any applicable standards set by a local board of health for a retail food establishment, as defined in 50-50-102, MCA.

Section (17) is proposed for inclusion in the rule for ease of reference to the provision in the Act that permits marijuana manufacturer licensees, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE III MARIJUANA CULTIVATOR LICENSES (1) A marijuana cultivator license allows a marijuana cultivator to plant, cultivate, grow, dry, package, and label marijuana and sell marijuana to licensed marijuana manufacturers, licensed dispensaries, and to other licensed marijuana cultivators, and to sell marijuana products to licensed dispensaries.

(2) The department shall begin accepting applications for marijuana cultivators that are not former medical marijuana licensees, as defined in 16-12-102(14), MCA, on July 1, 2023.

(3) A licensee may continue to operate under its existing license and may apply for a marijuana cultivator license at its next renewal date.

(4) The licensed premises of a former medical marijuana licensee that is located in a red county is not eligible to apply to increase its licensure level until the local government approval process in 16-12-301, MCA, allows for marijuana cultivation.

(5) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation but may not expand their existing outdoor cultivation space.

(6) For purposes of determining the appropriate canopy license tier:

(a) an existing outdoor cultivation space counts as a cultivation facility as used in (5) and its square footage counts toward the total allowable square footage under each tier;

(b) a canopy is measured horizontally starting from the outermost point of a plant on the perimeter of a dedicated growing space and continuing around the outside of all plants located within the dedicated growing space;

(c) a marijuana cultivator licensee may designate multiple canopy areas at a cultivation facility, but each canopy area must be separated by a physical boundary such as an interior wall or by at least eight feet of open space.

(7) A marijuana cultivator licensee that cultivates above its licensure level may be subject to administrative proceedings.

(8) A marijuana cultivator licensee must create and maintain a manual of written standard operating procedures to produce marijuana. The marijuana cultivator licensee must keep the manual at the licensed premises and make it available for department inspection at all times. The manual must include, at a minimum:

- (a) when and how all pesticides or other chemicals are to be applied during the production process;
- (b) water usage and wastewater disposal protocols; and
- (c) a waste disposal plan.
- (9) If a marijuana cultivator licensee makes a material change to the standard operating procedures, it must document the change and revise the written standard operating procedures manual accordingly.
- (10) A marijuana cultivator licensee must maintain on the licensed premises:
 - (a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises; and
 - (b) the original label, or a copy, for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises.
- (11) A marijuana cultivator licensee must maintain a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana in the seed-to-sale tracking system.
- (12) A marijuana cultivator licensee may not cultivate hemp at a licensed premises.
- (13) In accordance with Section 117, Ch. 576, L. 2021, a marijuana cultivator licensee must discontinue the use of hoop houses on or before October 1, 2023.
- (14) A marijuana cultivator licensee and an employee of a marijuana cultivator licensee may transport their own marijuana and marijuana products in accordance with 16-12-222(4), MCA, and [NEW RULE V(4) through (15)] but may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA

IMP: 16-12-112, 16-12-203, 16-12-204, 16-12-210, 16-12-222, 16-12-223, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule III to provide certain requirements in the department's licensure of marijuana cultivators.

Section (1) is necessary to specify what a marijuana cultivator licensee is authorized to do because cultivator activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to the rule to clarify when the department is authorized to accept marijuana cultivator applications under 16-12-201, MCA, as amended by HB 701.

Section (3) is necessary to implement the provisions of 16-12-201(2)(a), MCA, and achieve the statutory goal of minimal amount of business disruption to a marijuana cultivator licensee.

Section (4) pertains to the local government approval process required for a former medical marijuana licensee in a "red county," defined in ARM 42.39.102, and (5) reflects the allowance in 16-12-223, MCA. The department believes these rule sections are necessary reiterations of what the public may find difficult to locate in HB 701 or the Act, as amended.

Section (6) is a revision of existing licensee requirements found in ARM 42.39.111 and is proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding cultivation, canopy measurement, and multiple canopy operations. Section (7) is proposed as necessary notification to a marijuana cultivator licensee that operating beyond canopy licensure levels may constitute a violation of the marijuana cultivator license.

Sections (8) through (11) represent minor revisions of existing licensee requirements found in ARM 42.39.111 and 42.39.310 and are proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding a marijuana cultivator licensee's written standard operating procedures, material safety data sheets, logging pesticides, fertilizers, or other agricultural chemicals in the seed-to-sale tracking system, and describing required marijuana and marijuana products waste disposal protocols. The information may be used by the department and testing laboratories in the analysis of marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants.

Sections (12) and (13) are proposed for inclusion of license-specific requirements for marijuana cultivator licensees. Without this information in the rule, the department believes critical operational information for a marijuana cultivator licensee may be overlooked given the general construction of HB 701 and the amendments to the Act.

Lastly, the department proposes (14) for ease of reference to the provision in the Act that permits marijuana cultivator licensees, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE IV MARIJUANA DISPENSARY LICENSES (1) A marijuana dispensary license allows a marijuana dispensary to sell marijuana and marijuana products to registered cardholders and to consumers 21 years of age and older and to purchase marijuana and marijuana products from licensed cultivators, licensed manufacturers, and other licensed dispensaries.

(2) The department shall begin accepting applications for marijuana dispensaries from applicants that are not former medical marijuana licensees as defined in 16-12-102, MCA, on July 1, 2023.

(3) A former medical marijuana licensee with a dispensary located in a green county may continue to sell to registered cardholders and may begin selling to adult use consumers on January 1, 2022, under its existing license and may apply for a marijuana dispensary license at its next renewal date.

(4) A former medical marijuana licensee with a dispensary located in a red county may only sell to registered cardholders under its existing license until the local government approval process in 16-12-301, MCA, allows for adult use dispensaries.

(5) The fee for a marijuana dispensary license is per licensed premises and is the same regardless of whether a marijuana dispensary licensee sells only to registered cardholders or to registered cardholders and consumers.

(6) A marijuana dispensary licensee and its employees must not sell marijuana or marijuana products to any person obviously or apparently under the influence of drugs or alcohol.

(7) A marijuana dispensary licensee and its employees may sell marijuana paraphernalia to registered cardholders 18 years of age and older.

(8) Marijuana dispensary customers must not handle marijuana or marijuana products outside of its packaging prior to purchase. Customers may not return marijuana or marijuana products unless the items are unopened and in their original packaging. Nothing in this rule prevents a marijuana dispensary licensee from refusing product returns.

(9) A marijuana dispensary licensee and its employees are prohibited from engaging in the unlicensed practice of medicine. A marijuana dispensary licensee and its employees must not:

(a) offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, by use of marijuana or marijuana products or any other means or instrumentality; or

(b) recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

(10) All sales of marijuana and marijuana products must be recorded in real time in the seed-to-sale tracking system.

(11) A marijuana dispensary licensee and its employees must refuse to sell marijuana or marijuana products to registered cardholders who do not possess and present a valid registry identification card or temporary registry identification card at the time of sale.

(12) A marijuana dispensary licensee and its employees must refuse to sell marijuana or marijuana products to any consumer unless the consumer possesses and presents one of the following forms of valid and unexpired photo identification showing that the consumer is 21 years of age or older:

(a) a driver's license or temporary driver's permit issued by Montana or any other state or territory of the United States;

(b) an identification card issued by Montana or any other state or territory of the United States for the purpose of proof of age of the holder of the card;

(c) United States military identification card;

(d) a Merchant Mariner Credential or other similar document issued by the United States Coast Guard;

(e) a passport issued by, or recognized by, the United States Government or a permanent resident card issued by the United States Citizenship and Immigration Services of the Department of Homeland Security; or

(f) a tribal identification card issued by a tribal government which requires proof of the age of the holder of the card for issuance.

(13) The prohibition in 16-12-208, MCA, on marijuana dispensaries selling hemp also includes the prohibition of selling cannabidiol products.

(14) A marijuana dispensary licensee and its employees cannot sell marijuana or marijuana products in excess of the THC levels provided for in 16-12-224, MCA, except to registered cardholders.

(15) A marijuana dispensary licensee and an employee of a marijuana dispensary licensee may transport marijuana and marijuana products in accordance

with 16-12-222(4), MCA, and [NEW RULE V(4) through (15)] but may not transport marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, 16-12-222, MCA

IMP: 16-12-112, 16-12-201, 16-12-222, 16-12-224, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IV to provide certain requirements in the department's licensure of a marijuana dispensary.

Section (1) is necessary to specify what a marijuana dispensary licensee is authorized to do because marijuana dispensary activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to the rule to clarify when the department is authorized to accept marijuana dispensary applications under 16-12-201, MCA, as amended by HB 701.

Sections (3) and (4) are proposed to reference the local government approval process required for a former medical marijuana licensee in either a red county or green county, which are defined in ARM 42.39.102. The department believes these rule sections are necessary reiterations of what the public may find difficult to locate in HB 701 or the Act, as amended, and the designated terms of red county and green county are a more convenient reference.

Section (5) is a necessary clarification for a marijuana dispensary applicant or licensee regarding fee structures regardless of the customer base for the business.

Section (6) is proposed as a necessary restatement of general license restrictions in the Act against the sale of marijuana or marijuana products to persons obviously or apparently under the influence of drugs or alcohol.

Section (7) is proposed as guidance for a marijuana dispensary licensee that it is permissible to sell marijuana paraphernalia to registered cardholders 18 years of age and older.

Section (8) is proposed as a general product restriction which is necessary for inventory control and to ensure that the marijuana or marijuana products are not subject to contamination through direct customer contact. Section (8) also provides the option for a marijuana dispensary licensee to accept customer returns when product is unopened and in its original packaging or to deny marijuana or marijuana products returns.

Section (9) is a necessary restatement of the Act which prohibits a marijuana dispensary licensee or its employees from engaging in the unlicensed practice of medicine. The subsections provide guidance and examples of what constitutes the unlicensed practice of medicine. Complaints or allegations of engaging in the unlicensed practice of medicine may result in administrative action against a marijuana dispensary and its license.

Sections (10) and (11) represent minor revisions of existing marijuana dispensary licensee requirements found in ARM 42.39.203 and are proposed as a part of the department's reorganization of the rules and for familiarity and

administrative consistency regarding marijuana or marijuana products sales under the Act.

Similar to other retail sales restrictions provided in the Act and in these proposed rules, is proposed (12). This informs a marijuana dispensary licensee and its employees of purchaser identification requirements that must be confirmed prior to the sale of marijuana or marijuana products to the purchaser. Failure to adhere to these requirements is a violation and can subject a licensee to administrative action or other penalties for unauthorized sales to persons who are not registered cardholders or to minors.

Section (13) informs and clarifies for a marijuana dispensary licensee that the legislature enacted 16-12-208(7), MCA, to restrict marijuana dispensary licensees from selling hemp; and based on the definition of hemp, also includes the restriction of these licensees to sell cannabidiol products. Reiteration of this restriction in rule is necessary because there are several marijuana dispensary licensees who have, or are, engaged in the sale of cannabidiol products.

Section (14) represents a necessary reiteration of the statutory retail sales restriction for marijuana and marijuana products that exceed statutory THC levels and reserves the sale of those products to registered cardholders only.

Section (15) is proposed for inclusion in the rule for ease of reference to the provision in the Act that permits marijuana dispensary licensees, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE V MARIJUANA TRANSPORTER LICENSES (1) A marijuana transporter license allows a marijuana transporter to physically distribute and deliver marijuana and marijuana products to a licensed premises and to registered cardholders within the state of Montana that present a valid registry identification card.

(2) The department shall begin accepting applications for marijuana transporter licenses on January 1, 2022.

(3) Applicants for a marijuana transporter license must submit to the department proof of a valid Montana driver's license.

(4) All distribution and delivery of marijuana and marijuana products must:

(a) occur in a motor vehicle as defined by ARM 42.39.102;

(b) depart from a licensed premises and be delivered to a licensed premises or to a registered cardholder's address;

(c) be accompanied by a transport manifest derived from the seed-to-sale tracking system that contains the following information:

(i) the physical address and license number of the departure location;

(ii) the physical address and license number or registered cardholder number of the arrival location;

(iii) date and time of departure;

(iv) date and time of arrival;

(v) transport vehicle year, make, model, and license plate number;

(vi) name and signature of each licensee or its employee accompanying the transport; and

(vii) a complete description of the marijuana or marijuana product being transported. The description must include:

(A) the name and type of product being transported;

(B) amount of product being transported; and

(C) RFID tracking tag numbers of the product being transported;

(d) be accomplished within 48 hours from the date and time of departure.

(5) The transport manifest may not be voided or changed after leaving the departure location.

(6) A copy of the transport manifest must be given to each licensed premises receiving the inventory described in the transport manifest.

(7) A receiving licensed premises is prohibited from receiving any marijuana or marijuana products without a valid transport manifest.

(8) A receiving licensed premises is responsible for ensuring that the marijuana or marijuana products match the description in the transport manifest. A receiving licensed premises must immediately record receipt of the transported inventory.

(9) The receiving licensed premises must document any differences between the items described for transport in the transport manifest versus what was actually received and immediately report discrepancies to the department.

(10) While in transport, all marijuana and marijuana products must be shielded from public view and secured in a locked storage compartment inside the body of the transport vehicle.

(11) All vehicles used to transport marijuana or marijuana products:

(a) shall be considered a licensed premises for purposes of inspection by the department. Transport vehicles may be stopped and inspected by the department at any licensed premises or during transport;

(b) shall be lockable and equipped with a security alarm system;

(c) shall not leave the state of Montana while any amount of marijuana or marijuana product is in the motor vehicle; and

(d) shall not have any external markings, words, or symbols that indicate the vehicle is used for the transport of marijuana or marijuana products or that it is owned or leased by a marijuana business.

(12) A marijuana transporter licensee or employee of a marijuana transporter licensee must not sell marijuana or marijuana products; or transport marijuana or marijuana products directly to consumers.

(13) A marijuana transport licensee must contact the department within 24 hours if a vehicle transporting marijuana items is involved in an accident that involves product loss.

(14) Copies of the transport manifest and delivery receipts must be presented to law enforcement officers or authorized department employees, if requested.

(15) If a marijuana transporter licensee maintains a licensed premises to temporarily store marijuana or marijuana products, the licensee must have a marijuana storage facility endorsement for each storage facility as provided in [NEW RULE VIII].

AUTH: 16-12-112, 16-12-222, MCA
IMP: 16-12-112, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule V to provide certain requirements in the department's licensure of a marijuana transporter.

Section (1) is necessary to specify what a marijuana transporter is authorized to do because marijuana transporter activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to the rule for clarity of when the department is authorized to accept marijuana transporter applications under 16-12-222(1)(c), MCA. Section (3) is necessary to inform applicants of the required forms, supporting documents, and other necessary disclosures in order for the department to begin processing a marijuana transporter license application.

Sections (4) through (10), (11)(b), and (13) and (14) are revisions of existing marijuana transporter requirements found in ARM 42.39.114 and are proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding the transport of marijuana and marijuana products. Section (4) describes the allowable vehicle types used for transport, to establish what are the designated departure and arrival locations and allowable transport time frame, and to require a description of what marijuana and marijuana products are subject to transport. Sections (5) through (7) provide guidance regarding transport manifest processing requirements. Sections (8) and (9) continue to describe from ARM 42.39.114 what must occur at the receiving licensee's premises to conclude the transport of the marijuana and marijuana products.

Section (10) continues the existing requirement of a marijuana transporter for minimal to no public visibility of marijuana and marijuana products (See 16-12-108, MCA).

Subsections (11)(a), (c), and (d) are proposed to require detailed information about the vehicle that is used in the transport of marijuana and marijuana products. These provisions are necessary since the transport is considered a licensed premises for inspection purposes, as described in (11)(a).

Section (12) provides necessary guidance to a marijuana transport licensee that the sale of marijuana and marijuana products from a marijuana transport vehicle is not allowed, nor is direct transport of marijuana and marijuana products to consumers.

Sections (13) and (14) are a revision of existing licensee requirements found in ARM 42.39.114 and are proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding timely notification to the department involving the loss of product or if a transport vehicle is involved in an accident; and that transport manifests are subject to inspection by law enforcement or the department, if requested. The requirement in (13) is necessary to preserve evidence of an accident or to coordinate the loss of product in the seed-to-sale tracking system with the marijuana transport licensee. Inspection of

transport manifests in (14) is necessary for verification of compliance with the Act and these rules regarding the transport of marijuana and marijuana products.

Section (15) is proposed as an extension of the marijuana transporter requirements of the Act that require a marijuana transporter licensee to obtain a marijuana storage facility endorsement for any storage facilities, where applicable.

NEW RULE VI COMBINED USE LICENSES (1) A combined use license allows a federally recognized tribe located in the state or a business entity that is majority-owned by a federally recognized tribe located in the state to maintain a marijuana cultivation facility and marijuana dispensary on the same licensed premises.

(2) The department shall begin accepting applications for combined use licenses on January 1, 2022.

(3) A combined use licensee is subject to the marijuana laws.

AUTH: 16-12-112, 16-12-225, MCA

IMP: 16-12-225, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VI to provide procedural requirements and relevant cross references to regulatory authority pertaining to combined use licensees.

Section (1) is a necessary reiteration of the Act which provides the authorized activities associated with this license.

Section (2) is necessary for clarity of when the department is authorized to accept combined use license applications under HB 701.

Section (3) is proposed as guidance to a combined use licensee that this license type is subject to the marijuana laws.

NEW RULE VII MARIJUANA TESTING LABORATORY LICENSES (1) A marijuana testing laboratory license allows a marijuana testing laboratory to provide testing of representative samples of marijuana and marijuana products and to provide information about the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants.

(2) The department shall begin accepting applications for marijuana testing laboratories on January 1, 2022.

(3) Applicants for marijuana testing laboratories must receive an endorsement from the Department of Public Health and Human Services' state testing laboratory before applying for licensure with the department. The department will accept the state laboratory's standard form of approval or endorsement for the applicant of a marijuana testing laboratory license to meet this requirement.

(4) Marijuana testing laboratories may transport samples of marijuana and marijuana products for testing in accordance with 16-12-222(4), MCA, and [NEW RULE V(4) through (15)].

AUTH: 16-12-112, 16-12-202, MCA

IMP: 16-12-112, 16-12-202, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VII to provide licensing and compliance requirements for a marijuana testing laboratory.

Section (1) is necessary to specify what a marijuana testing laboratory is authorized to do because marijuana testing laboratory activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to the rule for clarity of when the department is authorized to accept applications under 16-12-202, MCA, as amended by HB 701.

Section (3) is necessary to inform a marijuana testing laboratory licensee of the requirement in 16-12-202(2), MCA, that the marijuana testing laboratory must be endorsed by the state laboratory of the Department of Public Health and Human Services prior to applying to the department for licensure. The state laboratory's licensing and accreditation (i.e., endorsement) standards are established in ARM Title 37, chapter 107, subchapter 3.

Section (4) is proposed for inclusion in the rule for ease of reference to the provision in the Act that permits marijuana testing laboratories, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE VIII MARIJUANA STORAGE FACILITY ENDORSEMENT (1) A marijuana transporter or a marijuana testing laboratory may obtain a marijuana storage facility endorsement. A marijuana storage facility endorsement allows a marijuana transporter or marijuana testing laboratory to maintain a separate, off-site storage facility.

(2) A marijuana storage facility may only be used for the temporary storage of marijuana or marijuana products. A storage facility may not be used to grow, process, test, manufacture, consume, or sell marijuana or marijuana products.

(3) A marijuana transporter licensee or marijuana testing laboratory with a marijuana storage facility endorsement may not share its storage facility with any other marijuana business.

(4) A marijuana storage facility may only be located in a jurisdiction that allows for the operation of a marijuana business pursuant to 16-12-301, MCA.

AUTH: 16-12-112, 16-12-222, MCA

IMP: 16-12-202, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VIII because the Act authorizes a marijuana transporter licensee or a marijuana testing laboratory to obtain this endorsement but operational activities and general compliance matters are not described in the Act with a necessary level of detail.

Section (1) clarifies the classes of licensees that are eligible under the Act to obtain the endorsement. Sections (2) through (4) are necessary to establish the requirements that facilities associated under a marijuana storage facility

endorsement are temporary in nature, may not be used as a manufacturing facility under any circumstance, may not be shared with any other licensee, and are subject to the statutory local government approval process.

NEW RULE IX WORKER PERMITS (1) A marijuana worker permit is required for any individual age 18 and over who performs work for or on behalf of any aspect of a marijuana business.

(2) Individuals with current, valid agent badges in good standing with the department may continue to work with their existing agent badge.

(3) All individuals required to have a worker permit shall undergo a criminal background before March 31, 2022, on a form provided by the department.

(4) If an individual fails to submit to a background check before March 31, 2022, their worker permit will be subject to suspension or revocation.

(5) Individuals may apply for worker permits under 16-12-226, MCA, at their next renewal date.

AUTH: 16-12-112, MCA

IMP: 16-12-112, 16-12-226, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IX to provide: procedural guidance as to who a marijuana worker is and the services they provide for a marijuana business, as specified in (1); the date the department will begin the issuance of the permits to marijuana workers in good standing, as provided in (2); the deadline specified in HB 701 for marijuana workers to undergo criminal background checks as described in (3); and consequences for a marijuana worker's failure to comply with the background check, provided in (4).

The department believes (1) through (4) are minimal, reasonable, and necessary requirements to ensure compliance with the Act and to fulfill the public policy goal that only reputable employees are involved in the marijuana industry.

NEW RULE X GENERAL LABELING REQUIREMENTS (1) Labeling requirements apply to marijuana and marijuana products sold from a dispensary to customers. A licensee that sells marijuana or marijuana products to other licensees is not required to comply with labeling requirements.

(2) All information required on the label of marijuana or a marijuana product shall be:

(a) unobstructed and conspicuous. A licensee may affix multiple labels to a package, or use a booklet, accordion, or other type of label, provided that no required information is completely and permanently obstructed;

(b) displayed in a legible font, such as Times New Roman, Arial, or Helvetica. The lowercase letter "o" must be at least one-sixteenth of an inch in height;

(c) displayed in a color that contrasts conspicuously with the background;
and

(d) displayed in English, although a licensee may choose to display required information in additional languages.

(3) All marijuana or marijuana products shall be labeled with the following information:

(a) the common or usual name of the marijuana product (e.g., flower, inhaled extract, edible or drinkable, topical, transdermal patch);

(b) the name of the marijuana dispensary that sold the product and the license number or numbers of the cultivator and manufacturer, as applicable;

(c) the unique identification number generated from the seed-to-sale tracking system;

(d) date of harvest for marijuana flower or date of manufacture for marijuana products;

(e) the net quantity of contents of the marijuana product. The statement of quantity shall be:

(i) stated in U.S. Customary Units and Metric (SI) Units, with the latter enclosed in parentheses;

(ii) if the product is a liquid:

(A) expressed in terms of fluid measure; and

(B) preceded by the phrase "Net Contents" or "Net"; or

(iii) if the product is a solid, semi-solid, or viscous:

(A) expressed in terms of weight; and

(B) preceded by the phrase "Net Weight," the abbreviation "Nt. Wt.," or "Net."

(iv) In addition to weight or fluid measure, a licensee shall include the number of servings in the net quantity of contents statement if the product is a multi-serving marijuana product (e.g., Net Weight: 2 oz. (56.7 g) (10 cookies));

(f) the following statement: "This product has been tested and meets the requirements of the state of Montana."

(g) a QR code that links to the product's certificate of analysis with a statement informing customers they can scan the code to see additional product information;

(h) the universal symbol, available from the department's website. The universal symbol:

(i) shall be at least .33 inches wide and .33 inches high;

(ii) may be downloaded from the department's website; and

(iii) shall be in the following form:



(4) All marijuana and marijuana products shall be labeled with the following warnings:

(a) "Keep out of reach of children and pets";

(b) "This product may be addictive"; and

(c) "This product may have intoxicating effects. Do not drive while under the influence of marijuana."

(5) Marijuana or marijuana product labeling shall not contain any statement or information that is false or misleading.

(6) The label of manufactured marijuana products must identify the method of manufacturing (e.g., mechanical, chemical) and for chemical manufacturing must identify the solvent used in the manufacturing process.

(7) Marijuana or marijuana products that, because of their size, do not have sufficient space for all of the information required for compliance with the Act and department rules may, if approved by the department pursuant to 16-12-208, MCA, display the information required in (3) in a legible font that does not meet the minimum size requirement established in (2)(b).

(8) Marijuana or marijuana products in excess of the THC limits in 16-12-224, MCA, may only be sold to registered cardholders and must contain the following additional information:

(a) "For medical use only"; and

(b) "This product is not approved by the U.S. Food and Drug Administration to treat, cure, or prevent any disease."

(9) Marijuana or marijuana products that do not require heat to administer or consume shall not have a total THC or total potential psychoactive THC value listed on the marijuana facts panel.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, 16-12-224, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule X to provide necessary requirements for marijuana dispensaries as general labeling requirements of marijuana and marijuana products.

Section 16-12-101, MCA, provides among other primary purposes of the Act, for legal possession and use of limited amounts of marijuana legal for adults 21 years of age or older and to ensure the safety of marijuana and marijuana-infused products. Section 16-12-112(1)(h), MCA, as an extension of the Act, specifically authorizes the department to adopt rules to implement " . . . labeling and packaging standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount." Section 16-12-208, MCA, allows the department to establish standards for labeling.

Section (1) is proposed as a general statement of applicability that labeling requirements apply to dispensaries that sell marijuana or marijuana products to consumers.

Section (2) requires specific labeling information which the department contends is reasonably necessary under the purpose of 16-12-112(1)(h), MCA.

Sections (3) and (4), similar to (2), are proposed to inform the public or potential consumers of the contents, dosage, or serving sizes, of the marijuana or

marijuana products they are purchasing and include necessary warning statements about the product. The department contends that all of the labeling requirements in (3) and (4) are necessary and reasonable for the public's protection because without contents, measurements, serving sizes, warnings, etc., a consumer may misunderstand product contents or misuse the product to their own detriment. The addition of the QR code to link the product certificate of analysis will also help the consumer make informed decisions about the product such as about cannabinoid content. The department has also included a universal symbol to be applied to marijuana or marijuana products packaging in furtherance of protecting the public.

Section (5) is proposed as another reasonable and necessary requirement to protect the public from false and misleading statements about the product they are purchasing.

Section (6) is proposed as a necessary and reasonable product manufacturing disclosure requirement for those individuals with certain chemical sensitivities that could use chemically manufactured marijuana or marijuana products to their own detriment if this disclosure was not present.

Section (7) is necessary to provide for label review consideration which is authorized under 16-12-208, MCA, when the marijuana or marijuana product proposed for labeling has size constraints that would make traditional labeling impractical or impossible.

Section (8) provides that marijuana or marijuana products with excessive THC limits may only be sold to registered cardholders, which is an express restriction under 16-12-224(8)(c), MCA.

Section (9) clarifies general labeling requirements for marijuana fact panels for marijuana or marijuana products that do not require heat to administer or consume.

NEW RULE XI LABELING REQUIREMENTS FOR MARIJUANA FLOWER

(1) In addition to the general labeling requirements set forth in [NEW RULE X], each package of marijuana flower sold to a customer shall be labeled with a marijuana facts panel.

(2) A marijuana facts panel shall include the percentage of concentration of:

- (a) total potential psychoactive THC;
- (b) THC;
- (c) THCa;
- (d) CBD; and
- (e) CBDa.

(3) A marijuana facts panel may include the percentage concentration of each additional marketed cannabinoid or terpene, if applicable.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XI to require distinct labeling for the marijuana flower sold to a consumer, in addition to the general labeling requirements, because this product category is consumed by

the purchaser. The addition of the percentage of concentration of total potential psychoactive THC is necessary to have a more accurate measure of THC content because this product typically requires heat to administer or consume. The department contends this is a reasonable and necessary extension of its consumer product safety obligations provided in the Act.

NEW RULE XII LABELING OF INGESTIBLE MARIJUANA-INFUSED

PRODUCTS (1) In addition to the general labeling requirements set forth in [NEW RULE X], each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information:

(a) an ingredients list that shall include all ingredients in the ingestible marijuana-infused product listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) or form of concentrate (e.g., oil, infused butter) used as an ingredient in the manufacturing process. Any substance that is present in an ingestible marijuana-infused product in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list;

(b) an allergen statement that shall declare the presence of major food allergens in plain language;

(c) a marijuana facts panel containing the following information:

(i) the milligrams per serving size or dose of:

(A) THC;

(B) THCa;

(C) CBD; and

(D) CBDa;

(ii) the number of servings or doses per package; and

(iii) for multi-serving packages, the total milligrams per package of:

(A) THC;

(B) THCa;

(C) CBD;

(D) and CBDa;

(d) in addition to the required warnings in [NEW RULE X], each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information: "The intoxicating effects of this product may be delayed by two or more hours."

(2) A marijuana facts panel for ingestible marijuana-infused products may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher THC levels than it does.

(3) A marijuana facts panel may include the milligrams of each additional marketed cannabinoid and terpene per serving size, dose, or package.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

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

to require distinct labeling for ingestible marijuana-infused products sold to a consumer, in addition to the general labeling requirements, because this product category is consumed by the purchaser. Requirements for ingredients and possible food allergen reactions for consumers in proposed (1)(a) and (b), respectively, are authorized under 16-12-112, MCA, and protect the public. Requirements in (1)(c), such as those for THC dosage and servings per package, are required by the Act. Section (2) is a proposed requirement to protect the public because the department is aware of circumstances where product claims of "total THC" levels have been misleading. Section (3) is proposed as product guidance for licensees and is information that the department anticipates will be included in the QR code. The department contends the requirements in New Rule XII are a reasonable and necessary extension of its consumer product safety obligations provided in the Act.

NEW RULE XIII LABELING OF NON-INGESTIBLE MARIJUANA-INFUSED PRODUCTS (1) In addition to the general labeling requirements set forth in [NEW RULE X], each packaging of non-ingestible marijuana-infused products shall be labeled with the following information:

(a) an ingredients list that shall include all ingredients in the non-ingestible marijuana-infused product listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) or form of concentrate (e.g., oil, infused butter) used as an ingredient in the manufacturing process. Any substance that is present in a non-ingestible marijuana-infused product in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list;

(b) a marijuana facts panel containing the following information:

(i) the milligrams per serving size or dose of:

(A) THC;

(B) THCa;

(C) CBD; and

(D) CBDa;

(ii) the number of servings or doses per package; and

(iii) for multi-serving packages, the total milligrams per package of:

(A) THC;

(B) THCa;

(C) CBD; and

(D) CBDa.

(2) A marijuana facts panel for non-ingestible marijuana-infused products may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher THC levels than it does.

(3) A marijuana facts panel may include information about each additional marketed cannabinoid and terpene expressed in terms of milligrams per serving size, dose, or package.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XIII to require distinct labeling for non-ingestible marijuana-infused products sold to a consumer, in addition to the general labeling requirements. Requirements for ingredients in proposed (1)(a) are authorized under 16-12-112, MCA, and protect the public. Requirements in (1)(b), such as those for THC dosage and servings per package, are also required by the Act. Section (2) is a proposed requirement to protect the public because the department is aware of circumstances where product claims of "total THC" levels have been misleading. Section (3) is proposed as product guidance for licensees and is information that the department anticipates will be included in the QR code. The department contends the requirements in New Rule XIII are a reasonable and necessary extension of its consumer product safety obligations provided in the Act.

NEW RULE XIV LABELING REQUIREMENTS FOR MARIJUANA CONCENTRATES AND EXTRACTS (1) In addition to the general labeling requirements set forth in [NEW RULE X], each package of marijuana concentrate sold to a customer shall be labeled with the following information:

(a) an ingredients list that shall include all ingredients in the marijuana concentrate listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) from which the marijuana concentrate is derived. Any substance that is present in a marijuana concentrate in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list;

(b) an allergen statement that shall declare the presence of major food allergens in plain language unless the marijuana concentrate is not intended to be cooked with, eaten, or otherwise swallowed and digested;

(c) a marijuana facts panel containing the following information:

(i) for marijuana concentrates that require the application of heat before they are administered or consumed:

(A) the percentage concentration of:

(I) total potential psychoactive THC;

(II) THC;

(III) THCa;

(IV) CBD; and

(V) CBDa;

(B) the number of servings or doses per package;

(ii) for marijuana concentrates that do not require the application of heat before they are administered or consumed:

(A) the percentage concentration of:

(I) THC;

(II) THCa;

(III) CBD; and

(IV) CBDa;

(d) in addition to the required warnings in [NEW RULE X], each package of activated concentrate that is intended to be cooked with, eaten, or otherwise swallowed and digested shall be labeled with the following: "The intoxicating effects of this product may be delayed by two or more hours."

(2) A marijuana facts panel for marijuana concentrates that do not require the application of heat to be administered or consumed may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher THC levels than it does.

(3) A marijuana facts panel may include information about each additional marketed cannabinoid and terpene, expressed in percentage of concentration by weight or by volume or in milligrams.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XIV to require distinct labeling for marijuana concentrates and extracts sold to a consumer, in addition to the general labeling requirements, because this product category is consumable by the purchaser. Requirements for ingredients and possible food allergen reactions for consumers in proposed (1)(a) and (b), respectively, are authorized under 16-12-112, MCA, and protect the public. Requirements in (1)(c), such as those for THC dosage and servings per package, are required by the Act. Section (2) is a proposed requirement to protect the public because the department is aware of circumstances where product claims of "total THC" levels have been misleading. Section (3) is proposed as product guidance for licensees and is information that the department anticipates will be included in the QR code. The department contends the requirements in New Rule XIV are a reasonable and necessary extension of its consumer product safety obligations provided in the Act.

NEW RULE XV PACKAGING REQUIREMENTS (1) All packaging of marijuana and marijuana products shall:

(a) protect the product from contamination and shall not impart any toxic or deleterious substance to the marijuana or marijuana product;

(b) be capable of being resealed if the package contains more than one serving size;

(c) not primarily appeal to children. Packaging that primarily appeals to children includes but is not limited to packaging that:

(i) depicts a child;

(ii) portrays objects, images, celebrities, or cartoon figures that primarily appeal to children or are commonly used to market products to children; or

(iii) otherwise has special attractiveness for children beyond the general attractiveness for adults;

(d) not bear any reasonable resemblance to the trademarked or characteristic packaging of any commercially available product including but not limited to candy, snacks, baked goods, or beverages.

- (2) All marijuana and marijuana products provided to customers at the point of sale shall be in exit packaging that:
- (a) is child resistant as defined in ARM 42.39.102;
 - (b) is opaque; and
 - (c) contains the warnings required by 16-12-215, MCA, in the format required by 16-12-208, MCA.
- (3) Drinkable marijuana products that contain more than one serving per package must include a device or mechanism for measuring a single serving of the product.
- (4) Exit packaging of marijuana and marijuana products provided to customers at the point of sale may not contain any other information or design elements than what is allowed under 16-12-208(6)(b)(ii), MCA.

AUTH: 16-12-112, MCA

IMP: 16-1-101, 16-12-112, 16-12-208, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XV to implement the product packaging requirements expressly provided in the Act or to carry out the department's consumer product safety obligations provided in the Act.

Subsection (1)(a) is proposed as a requirement that most immediately impacts the consumer: packaging that prevents contamination or spoilage of the product. Subsections (1)(b) through (d) are proposed and authorized under 16-12-208(5), MCA, and are intended to prevent marijuana product food packaging from being a copycat of non-marijuana product food packaging which could be mistaken by a child.

Section (2) implements 16-12-208(6), MCA, and is intended to provide additional guidance for exit packaging.

Section (3) is proposed and necessary as another general public protection mechanism so that consumers are aware of what constitutes a single serving of the licensees' drinkable marijuana product when the products are sold in larger volume sizes.

Section (4) is proposed for ease of licensee reference to the statutory restriction regarding exit packaging information and designs.

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

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) "Act" means the Marijuana Regulation and Taxation Act, codified at 16-12-101, MCA, et. seq.

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

(6) "Certificate of analysis" means the report prepared by a marijuana testing laboratory about the analytical testing performed and the results obtained by the laboratory.

(7) "Chemical manufacturing" means the use of chemical compounds such as, but not limited to, hydrocarbon solvents or food grade nonhydrocarbon solvents to separate cannabinoids or marijuana analytes of interest from marijuana.

(5) remains the same but is renumbered (8).

(9) "Compliance audit" means a department review of aspects of a licensee's business without conducting a physical on-site inspection, including but not limited to website compliance checks, review of seed-to-sale tracking system records, permit compliance checks, and local ordinance compliance checks.

(6) remains the same but is renumbered (10).

(11) "Customer" means, collectively, adult use consumers and registered cardholders.

(12) "Edible marijuana-infused product" or "edible" means an ingestible marijuana-infused product that is intended to be taken by mouth, swallowed, and primarily absorbed through the gastrointestinal tract. Edible marijuana-infused products may be psychoactive when used as intended. Without limitation, edible marijuana-infused products may be in the form of a food, beverage, capsule, or tablet.

(13) "Employee" as defined in 16-12-102, MCA, includes an independent contractor that performs work for any aspect of a marijuana business.

(14) "Existing outdoor cultivation space" means outdoor space used to grow live marijuana plants in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind, licensed on or before November 3, 2020.

(7) through (10) remain the same but are renumbered (15) through (18).

(19) "Green county" means a county where the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020 general election.

~~(11) "Harvest lot" means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location, and cured under uniform conditions. A harvest lot may contain multiple strains.~~

(20) "Ingestible marijuana-infused product" or "ingestible" means a product that contains marijuana and at least one other ingredient, is intended for consumption or use other than by smoking or vaporizing, is intended to be taken into the body, and is either categorized as an edible marijuana-infused product or a transmucosal marijuana-infused product.

(21) "Ingredient" means any substance that is added to marijuana items that changes its final form including but not limited to flavorings, aromatic oils, colorants, food items, spices, sweeteners, and preservatives.

(22) "Label" or "labeling" means the written, printed, or graphic matter displayed on the packaging in which marijuana or a marijuana product is dispensed or displayed to a customer.

(12) and (13) remain the same but are renumbered (23) and (24).

(25) "Major food allergen" or "allergen" means milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans and any ingredient containing a protein derived from these foods.

(14) remains the same but is renumbered (26).

(27) "Marijuana" means the same as the definition in 16-12-102, MCA, and includes the biomass of the marijuana plant which contains greater than 0.3% THC concentration and appreciable concentrations of other cannabinoids of interest including flower, bud, shake, trim, and manicure.

(28) "Marijuana concentrate and extract" or "concentrate and extract" means the same as the definition in 16-12-102, MCA, and includes a substance obtained by separating and/or concentrating naturally occurring chemical constituents of marijuana, such as, but not limited to, cannabinoids, from marijuana plant material by mechanical, physical, chemical, or other processes that may:

(a) contain solvents in allowable amounts and ingredients used to promote a desired physical state, texture, or flavor in the marijuana concentrate, but no other ingredients; or

(b) be intended for use in the production of marijuana-infused products; or

(c) be a finished product intended for consumption or use.

(29) "Marijuana-infused product" means the same as the definition in 16-12-102, MCA, and includes the infusion of cannabinoids of interest using marijuana or marijuana concentrate or extract into existing products, substances, or consumer goods, and as an ingredient in the production of consumer goods that would not naturally or ordinarily contain cannabinoids of interest.

(15) remains the same but is renumbered (30).

(31) "Marijuana laws" for the purposes of these rules, means any combination of regulatory authority pursuant to the Montana Marijuana Regulation and Taxation Act (Title 16, chapter 12, MCA), rules of the department, rules of the Department of Public Health and Human Services regarding marijuana testing laboratories, or local ordinances applicable to marijuana businesses.

(32) "Marijuana product category" means a defined group of marijuana products that are in the same form. Marijuana product categories are:

(a) marijuana flower;

(b) marijuana concentrates; and

(c) marijuana-infused products, including the following subcategories:

(i) ingestible marijuana-infused products, including the following

subcategories:

(A) edible; and

(B) transmucosal;

(ii) non-ingestible marijuana-infused products, including the following

subcategories:

(A) topical; and

(B) transdermal.

(33) "Mechanical manufacturing" means the use of mechanical methods to produce or refine marijuana concentrates and extracts, such as but not limited to a press, centrifuge, or evaporation.

(34) "Monthly" means, for purposes of determining a registered cardholder's maximum monthly amount of usable marijuana, a period of 30 consecutive days.

(35) "Motor vehicle," for purposes of these rules, means a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state with an interior passenger compartment.

(36) "Non-ingestible marijuana-infused product" or "non-ingestible" means a product that contains marijuana and at least one other ingredient, is intended for consumption or use other than by smoking or vaporizing, is intended for external use only, and is either a topical marijuana-infused product or a transdermal marijuana-infused product.

(37) "Opaque" means packaging that does not allow the contents to be seen when unopened. Packaging may be opaque by virtue of the specific properties of the material of which it is composed, including any coating applied to it, or by means of a secondary opaque covering, such as a sticker.

(38) "Package" or "packaging" means the immediate container in which a finished marijuana product is placed for retail sale to consumers and any outer container or wrapping used in the retail display of the marijuana or marijuana product to customers.

(39) "Performing work on behalf of any aspect of a marijuana business" means and includes:

(a) possessing, handling, producing, propagating, processing, securing, or selling marijuana or marijuana products at the licensed premises;

(b) recording of the possession, handling, production, propagation, processing, securing, or selling of marijuana or marijuana products at the licensed premises; and

(c) the direct supervision of a person described in (a) or (b).

(16) remains the same but is renumbered (40).

(17) "Process lot" means:

(a) any amount of cannabinoid concentrate or extract of the same type and processed at the same time using the same extraction methods, standard operating procedures, and test batches from the same or different harvest lots; or

(b) any amount of cannabinoid products of the same type and processed at the same time using the same ingredients, standard operating procedures, and test batches from the same or different harvest lots or process lots of cannabinoid concentrate or extract.

(18) and (19) remain the same but are renumbered (41) and (42).

(43) "Psychoactive" means capable of affecting mental processes or cognition when used as intended. A marijuana product is considered *per se* psychoactive if it is not a topical marijuana-infused product and the labeled potency is greater than .3% THC.

(44) "Red county" means a county where the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020 general election.

(20) and (21) remain the same but are renumbered (45) and (46).

(47) "Resident" means a person determined to be a resident of Montana for tax purposes, pursuant to ARM 42.15.109.

(48) "Seed-to-sale tracking system" means the system provided in 16-12-105, MCA, for tracking inventory of marijuana, marijuana concentrate, and marijuana-infused products from either the seed or the seedling stage until the marijuana or marijuana product is sold to a consumer.

(22) through (24) remain the same but are renumbered (49) through (51).

(52) "Topical marijuana-infused product" or "topical" means a non-ingestible marijuana-infused product that is not psychoactive when used as intended. Topicals include but are not limited to creams, salves, bath soaks, and lotions.

(53) "Total potential psychoactive THC" means the highest theoretical concentration of psychoactive THC available in a marijuana item achievable only through the complete conversion of THCa to THC with the application of heat during administration/consumption. Total potential psychoactive THC is the sum of THC and THCa calculated using the following equation: Total psychoactive THC = (THCa x .877) + THC.

(54) "Transdermal marijuana-infused product" or "transdermal" means a non-ingestible marijuana-infused product that contains at least one skin-permeation-enhancing ingredient to facilitate absorption through the skin into the bloodstream, and may be psychoactive when used as intended. Transdermal products include but are not limited to adhesive patches applied to the skin.

(55) "Transmucosal marijuana-infused product" means an ingestible marijuana-infused product that is intended to be placed in a body cavity and absorbed through the mucosal lining of the cavity, and may be psychoactive when used as intended. Transmucosal marijuana-infused products include, but are not limited to, marijuana-infused tinctures, anal suppositories, lozenges, and nasal sprays.

AUTH: 50-46-344, MCA

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

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.102 to add necessary definitions for new terminology relating to the department's implementation of the Act and to provide concise terminology for concepts that were utilized in the drafting of HB 701. The use of concise terminology is beneficial for all stakeholders and the department, such as using the term "red county" to describe " . . . a county in which the majority of voters voted not to approve Initiative Measure No. 190 in the November 3, 2020 general election." Similarly, a "green county" is proposed to describe " . . . a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020 general election."

The department also proposes to remove the definitions of "harvest lot" and "process lot." These definitions were transferred to the department from DPHHS and are unnecessary and are most often referenced in the testing laboratory rules that remain with DPHHS. The department will evaluate the necessity for cross-referencing these definitions upon DPHHS adopting its testing laboratory rules definitions and as the department continues to implement HB 701.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696;

or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., November 29, 2021.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Hopkins, was contacted by e-mail on October 5, 2021.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses, but any significant or direct small business impact is attributable to the department through the implementation of the statutory requirements of HB 701 and the Act.

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 12, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.10.501, 42.10.505, and) PROPOSED AMENDMENT
42.10.506 pertaining to debtor)
appeals of department collections)

TO: All Concerned Persons

1. On November 18, 2021, at 9:30 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 rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 29, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.10.501 DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) remains the same.

(2) "Criteria for uncollectibility" means ~~the~~ an agency's written standards stating the collection methods that must occur in order for the agency to determine that the debt is uncollectible.

(3) "Form CB-1" means the department's Request for Informal Review form, which is available at the department's website at www.mtrevenue.gov, for use by a person to file a written objection with the department concerning the transfer of a debt to the department or the department's collection of a debt.

(4) "Form CB-2" means the department's Notice of Referral to the Office of Dispute Resolution form, which is available at the department's website at www.mtrevenue.gov, for use by a person to appeal an informal review determination to the department's Office of Dispute Resolution (ODR).

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

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-101, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108,
MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.501 to define new terms because the forms and notice are referenced throughout the rules subchapter, some of which are proposed for amendment in this rulemaking. Defining terminology improves taxpayer understanding of department requirements, business practices, and forms.

The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

42.10.505 DEBTOR APPEALS ON VALIDITY OF TRANSFER OF DEBT

(1) The department shall notify ~~the a~~ debtor that another agency has transferred ~~the a~~ debt to the department for collection services. The notice of transfer shall identify the debt and provide:

(a) through (c) remain the same.

(d) the debtor's appeal rights as set forth in (2) through (4).

(2) To object to the transfer of the debt from the agency to the department, the debtor must submit a written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer. Written objections may be submitted on Form CB-1, by letter sent through U.S. mail or other generally accepted delivery service, or as electronic mail to the department's email address provided on the notice of transfer. The objection must be postmarked or electronically date stamped within 30 days of the date on the notice of transfer. Failure to timely submit a written objection shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(3) The department shall review the objection and shall mail written notice to the debtor advising the debtor of the department's determination within 30 days after receipt of the objection. If the department concurs with the debtor's objection, the department will return the debt to the submitting agency. If the department disagrees with the debtor, the department shall explain the reasons for the disagreement, notify the debtor that the department's determination may be appealed to the Office of Dispute Resolution, and provide a copy of Form CB-2. The department shall also notify the debtor that the debtor must submit a Form CB-2 or other written objection to the department within 30 days of the date on the department's determination, and that the debtor will forfeit the right to a hearing if the debtor fails to submit Form CB-2 or other written objection within the 30-day period.

~~(2) (4) To request a hearing before the department on whether the transfer of the debt from the agency to the department was valid~~ If the debtor disagrees with the department's determination, the debtor must submit a Form CB-2 or other written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer department's determination to request a hearing before the Office of Dispute Resolution. Failure to timely submit a written request shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing. Objections should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. The objection must be postmarked or electronically date stamped within 30 days of the date on the department's determination. Failure

of the debtor to file a timely appeal shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(5) Deadlines may be extended if both parties agree.

(3) (6) Hearings conducted pursuant to this rule are limited to whether the transfer of the debt from the agency to the department was valid. The department shall not make any determination regarding the validity of the underlying debt. If the debtor's objection to the debt transfer includes a challenge to the validity of the underlying debt, the department may return the debt to the submitting agency. The debtor is not entitled to a hearing on the validity of the debt if the debt has been the subject matter of any proceeding to determine the validity of the debt and a decision made as a result of that proceeding has become final.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.505 to incorporate an informal review process which affords a debtor the opportunity to review the debt transfer with a department employee. The rule amendment is necessary because, as currently written, the rule does not include the option for a debtor to request informal review as required by 15-1-211, MCA. The proposed process is substantially similar to the notice of assessment appeal process set forth in ARM 42.2.510.

The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

42.10.506 DEBTOR APPEALS ON DEPARTMENT'S COLLECTIONS

(1) The department shall notify the debtor when it identifies funds that may be subject to offset. The notice of offset shall:

~~(a) identify the debt and the funds held; and~~

~~(b) state inform the debtor that the department will hold the funds for 30 days pending receipt of a hearing request; an objection.~~

~~(c) inform the debtor of the right to request a hearing on the potential offset of the funds held;~~

~~(d) The notice shall also provide the department's contact information, including phone number and mailing address; and the debtor's appeal rights, as provided in (2) through (4).~~

~~(e) identify the methods for filing an objection to the offset.~~

~~(2) To request a hearing on the potential offset of the funds held, the debtor must submit a written request to the department stating the basis of the debtor's objection within 30 days of the date on the notice of offset.~~

~~(3) If the 30 days provided for in (2) expire without the debtor requesting a hearing, the department will apply the held funds to the debt.~~

(2) To object to the potential offset of funds held, the debtor must submit a written request stating the basis of their objection within 30 days of the date on the notice of transfer. Written objections may be submitted on Form CB-1, by letter sent through U.S. mail or other generally accepted delivery service, or as electronic mail

to the department's email address provided on the notice of transfer. The objection must be postmarked or electronically date stamped within 30 days of the date on the notice of offset. If the debtor fails to timely submit a written objection, the department will apply the held funds to the debt.

(3) The department shall review the objection and shall mail written notice to the debtor advising them of the department's determination within 30 days after receipt of the objection. If the department concurs with the debtor's objection, the department will release the held funds to the debtor. If the department disagrees with the debtor, the department shall explain the reasons for the disagreement, notify the debtor that the department's determination may be appealed to the Office of Dispute Resolution, and provide a copy of Form CB-2. The department shall also notify the debtor that the debtor must submit a Form CB-2 or other written objection to the department within 30 days of the date on the department's determination, and that the debtor will forfeit the right to a hearing if the debtor fails to submit Form CB-2 or other written objection within the 30-day period.

(4) If the debtor disagrees with the department's determination, the debtor must submit a Form CB-2 or other written objection within 30 days of the date on the department's determination to request a hearing before the Office of Dispute Resolution. Objections should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. The objection must be postmarked or electronically date stamped within 30 days of the date on the department's determination. If the debtor fails to timely submit a written objection, the department will apply the held funds to the debt.

(5) Deadlines may be extended if both parties agree.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.506 to incorporate an informal review process which affords a debtor the opportunity to review the collection action with a department employee. The rule amendment is necessary because, as currently written, the rule does not include the option for a debtor to request informal review as required by 15-1-211, MCA. The proposed process is substantially similar to the notice of assessment appeal process set forth in ARM 42.2.510. The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., November 22, 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 rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 12, 2021.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.11.463 pertaining to)
disqualification for unemployment)
insurance benefits due to failure or)
refusal of a drug test, and)
requalification)

TO: All Concerned Persons

1. On August 27, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-11-375 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1011 of the 2021 Montana Administrative Register, Issue Number 16.

2. The department held a public hearing on September 21, 2021, over the Zoom videoconference and telephonic platform at which no members of the public commented. One written comment was received during the public comment period.

3. The department has thoroughly considered the comment made. A summary of the comment and the department's response are as follows:

COMMENT 1: Chapter 576, Laws of 2021 (House Bill 701) adopted, amended, and repealed laws related to medical marijuana and medical marijuana registered cardholders. The statutes for medical marijuana registered cardholders will be codified in Title 16, chapter 12, part 5, MCA.

RESPONSE 1: The department acknowledges the comment. The department amends ARM 24.11.463 below to reflect the new citation to the applicable medical marijuana registered cardholder laws.

4. The department has amended ARM 24.11.463 with the following changes, stricken matter interlined, new matter underlined:

24.11.463 LIE DETECTOR TESTS–DRUG AND ALCOHOL TESTING

(1) remains as proposed.

(2) A claimant cannot be disqualified for benefits under this chapter solely for refusal to submit to drug or alcohol testing required by an employer or prospective employer, or on the basis of the results of such a test, unless the testing procedures fully comply with federal drug and alcohol testing statutes and regulations applicable to private sector workers, or the provisions of the Workforce Drug and Alcohol Testing Act found in Title 39, chapter 2, MCA. This rule does not apply to a drug test for marijuana or marijuana products that was administered to an individual who is a registered cardholder under ~~Title 50, chapter 46, part 3, MCA~~ Title 16, chapter 12, part 5, MCA.

(3) and (4) remain as proposed.

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

IMP: 39-51-2302, 39-51-2303, 39-51-2304, MCA

/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 October 12, 2021.

BEFORE THE BOARD OF ARCHITECTS
AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.114.401 fee schedule)

TO: All Concerned Persons

1. On June 25, 2021, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-39 regarding the public hearing on the proposed amendment of the above-stated rule, at page 733 of the 2021 Montana Administrative Register, Issue No. 12.

2. On July 16, 2021, a public hearing was held on the proposed amendment of the above-stated rule via the videoconference and telephonic platform. No comments were received by the July 23, 2021 deadline.

3. The board has amended ARM 24.114.401 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
MAIRE EITHNE O'NEILL
PRESIDENT

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

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

Certified to the Secretary of State October 12, 2021.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 24.171.401 fees, 24.171.408)	
outfitter records, 24.171.410 outfitter's)	
assistants, 24.171.412 safety and first)	
aid provisions, 24.171.501 application)	
for outfitter license, 24.171.502)	
outfitter qualifications, 24.171.505)	
fishing outfitter operations plan,)	
24.171.509 insurance for outfitters,)	
24.171.513 outfitter acting as guide,)	
24.171.520 operations plans and)	
amendments, 24.171.701 NCHU)	
categories, transfers, and records,)	
24.171.2101 renewals, 24.171.2301)	
unprofessional conduct and)	
misconduct, and 24.171.2305 web site)	
posting of license discipline)	

TO: All Concerned Persons

1. On August 27, 2021, the Board of Outfitters (board) published MAR Notice No. 24-171-41 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1014 of the 2021 Montana Administrative Register, Issue No. 16.

2. On September 22, 2021, a public hearing was held on the proposed amendment of the above-stated rules via the videoconference and telephonic platform. Several comments were received by the September 24, 2021 deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters supported all proposed rule amendments, and a few provided their understanding of the effect of the amendments.

RESPONSE 1: The board appreciates all comments received and is amending the rules exactly as proposed for the reasons provided in the reasonable necessity statements.

COMMENT 2: Several commenters supported the fee reductions in ARM 24.171.401, but requested the board decrease fees further than originally proposed, including the removal of the fee for NCHU transfers.

RESPONSE 2: The board initially determined to reduce fees after reviewing and accepting a budgetary analysis and supporting information provided by department fiscal staff. Additionally, the board is abating fees for this renewal period, which will further reduce the board's excess cash reserves. The board is concerned that further amendments at this time may delay the timely implementation of the rule changes and is amending the rules exactly as proposed. As is the normal procedure, the department and board will continue to monitor board costs, revenues, and cash balance to determine whether additional fee changes may become necessary.

4. The board has amended ARM 24.171.401, 24.171.408, 24.171.410, 24.171.412, 24.171.501, 24.171.502, 24.171.505, 24.171.509, 24.171.513, 24.171.520, 24.171.701, 24.171.2101, 24.171.2301, and 24.171.2305 exactly as proposed.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

/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 October 12, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.19.402 pertaining to the)
Property Tax Assistance Program)
(PTAP) and for Montana Disabled)
Veteran (MDV) Property Tax)
Assistance Program)

TO: All Concerned Persons

1. On August 27, 2021, the Department of Revenue published MAR Notice No. 42-1036 pertaining to the proposed amendment of the above-stated rule at page 1044 of the 2021 Montana Administrative Register, Issue Number 16.

2. No requests for a public hearing were received. The department did not receive any written comments in direct support or opposition to the proposed amendments.

3. The department did receive one written question relating to the rule, as a whole, which asked why the formulas in the rule were included as they only seem to complicate matters.

The department thanks the commenter for the question and understands that formulas placed into administrative rules have the potential to be confusing or may be difficult to compute. The legislature, under 15-6-305 and 15-6-311, MCA, requires the department to make these calculations annually. The department contends it is implementing the will of the legislature and is providing transparency to those affected by the rule's annual adjustment by having the details (formula) of the calculation in the rule. Further, the 2021 Legislature modified the definition of the personal consumption expenditures (PCE) inflation factor in 15-6-301, MCA, which modified the statute such that the income levels cannot go down because of deflation. If statutes change and the department is able to achieve the calculations with the same level of accuracy and transparency as what the rule currently contains, the department could explore a more simplified manner of presenting the calculations.

4. The department has amended ARM 42.19.402 as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 12, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 10, 2021, the Secretary of State published MAR Notice No. 44-2-244 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1135 of the 2021 Montana Administrative Register, Issue Number 17.

2. The Secretary of State has amended ARM 1.2.419 as proposed, but with the following changes from the original proposal, 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:

2022 Register Publication Schedule

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

20	October 11	October 21
21	October 25	November 4
22	November 8 <u>November 9</u>	November 18
23	November 29	December 9
24	December 13	December 23

(2) remains as proposed.

AUTH: 2-15-401, MCA

IMP: 2-4-312, MCA

3. The Secretary of State has considered the comments received. A summary of the comment received and the Secretary of State's response follows:

COMMENT #1: A commenter from the Department of Labor and Industry pointed out that the filing submission deadline date for Issue 22 falls on a state holiday.

RESPONSE #1: The Secretary of State appreciates the comment and has amended the filing submission deadline date accordingly.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 12th day of October, 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 April 30, 2021, through October 8, 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 |
| 2-59-613 | 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, 1319 |
| 2-59-618 | Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Loan Originators, p. 1007, 1320 |

(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 |
|----------|---|

(Burial Preservation Board)

- | | |
|----------|--|
| 2-65-620 | Permits for Scientific Analysis, p. 1092 |
|----------|--|

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

- 6-264 Suitability in Annuity Transactions Act, p. 971, 1206

(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, 1208
- 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, 1138

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 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)

- 12-541 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

(Petroleum Tank Release Compensation Board)

- 17-416 Eligibility Determination for Petroleum Storage Tank Cleanup, p. 1095

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
24-17-380 Prevailing Wage Rates for Public Works Projects, p. 1259
24-21-378 Montana's Registered Apprenticeship Program - Recognition of Pre-Apprenticeship Programs, p. 1098
24-29-367 Medical Fee Schedules for Workers' Compensation Purposes, p. 397, 716
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, 1210
24-35-376 Independent Contractors, p. 1109
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

- 24-122-2 Creation of a Limited Low-Pressure Boiler Operating Engineer's License - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees, p. 1113
- 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
- 24-142-3 Elevator Licensing Program - Fee Schedule - Continuing Education Credits Required - Continuing Education Sponsors and Courses, p. 1117
- 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, 1216

(Board of Personnel Appeals)

- 24-26-377 Practices, Procedures, and Grievances Before the Board of Personnel Appeals, p. 1105

(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)

24-156-91 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, 1321

(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
- 24-174-76 Dispenser Registration for Medical Practitioners, p. 1164
- 24-174-77 Waiving the Pharmacist to Pharmacy Technician Ratio for Vaccine Activities and COVID-19 Testing - Allowing Any Licensed Health Care Provider Authorized to Administer Vaccines Within Their Scope of Practice to Assist Pharmacists in Administering Vaccines, p. 1211

(Board of Physical Therapy Examiners)

- 24-177-36 Examinations - Unprofessional Conduct, p. 1263

(Board of Professional Engineers and Professional Land Surveyors)

- 24-183-44 Definitions - Teaching of Land Surveying Subjects - Continuing Professional Competency–Continuing Education, p. 401, 1215

(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 Public Accountants)

- 24-201-54 Board Organization - Definitions - Firms–Registration - Nonroutine Applications - Board Meetings - Committees - Cheating - Introduction - Renewals, p. 1170

(Board of Real Estate Appraisers)

- 24-207-45 Incorporation by Reference of the Real Property Appraiser Qualification Criteria, p. 845, 1322

(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

(Board of Behavioral Health)

- 24-219-36 License Requirements for Clinical Social Workers (LCSW), Licensed Master's Social Workers (LMSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), and Licensed Addiction Counselors (LAC) - Examination—LAC - Professional Counselor Licensure Candidate Requirements - Continuing Education Requirements, p. 1176

LIVESTOCK, Department of, Title 32

- 32-21-317 Diagnostic Laboratory Fees, p. 599, 925
32-21-318 Brands Enforcement Division Fees - Freeze Branding, p. 1186
32-21-319 Fluid Milk and Grade A Milk Products, p. 1189
32-21-320 Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 1192
32-21-321 Scope of Rules, p. 1267
32-21-322 Diagnostic Laboratory Fees, p. 1269

(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
36-22-212 Categorical Exclusion of the State Revolving Fund Grant Issuance Under the Montana Environmental Policy Act, p. 889, 1323

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 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, 1324
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, 1217
37-948 Nursing Facility Reimbursement, p. 711, 1139
37-949 Developmental Disabilities Program Provider Rates Update, p. 748, 1120

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, 1232
37-953	Youth Foster Homes, p. 893, 1233
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, 1328
37-957	Updating Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 1272
37-958	Severe and Disabling Mental Illness, p. 1124
37-959	Child Care Licensing, p. 1277
37-960	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, p. 1141
37-961	Public Participation, p. 1290
37-964	Waiver of Swing-Bed Requirements, p. 1330
37-965	Health Emergency Waiver, p. 1294

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
38-2-249	Department's Procedures for Collecting Fees and Other Charges, p. 1194
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, 1147
42-1032	Marijuana Provider Canopy Tier Size Increases - Limitations on Advertising, p. 908, 1127, 1333
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, 1152
42-1036	Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) Property Tax Assistance Program, p. 1044
42-1037	Temporary Operating Authority for Alcoholic Beverage License Applicants, p. 1132
42-1038	2022 Personal Property Depreciation Schedules and Trend Tables - Updated Business Equipment Exemption, p. 1301

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
- 44-2-244 Scheduled Dates for the 2022 Montana Administrative Register, p. 1135
- 44-2-245 Poll Watchers at Places of Deposit, p. 1198
- 44-2-246 Testing of Vote Tabulation Machines, p. 1200
- 44-2-247 Eligibility of Applicants to Be Issued and to Cast a Ballot, p. 1202
- 44-2-248 Notification Requirements for Emergency Rules Under the Montana Administrative Procedure Act, p. 1204
- 44-2-249 Legislative Oversight of Administrative Rules, p. 1306
- 44-2-250 Voter Registration Requirements - Provisional Registration - Late Registration Procedures - Voter Identification - Related Definitions, p. 1309

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in September 2021 appear. Potential vacancies from November 1, 2021 through January 31, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2021.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council			
Mrs. Kimberly Burdick	Governor	reappointed	9/1/2021
Fort Benton			8/31/2025
Qualifications (if required): MT Association of Public Safety Communication Officials representative			
Ms. Rene Clampitt	Governor	Glass	9/1/2021
Glasgow			8/31/2025
Qualifications (if required): Public safety answering point manager serving population less than 30,000			
Chief Richard E. Cowger	Governor	reappointed	9/1/2021
Columbus			8/31/2025
Qualifications (if required): MT Fire Chiefs Association representative			
Ms. Kris Hansen	Governor	Ness	9/1/2021
Helena			8/31/2025
Qualifications (if required): Dept. of Justice designee			
Mr. Clinton Loss	Governor	reappointed	9/1/2021
Helena			8/31/2025
Qualifications (if required): MT Emergency Medical Services Association representative			
Mr. Tim Martindale	Governor	Beck	9/1/2021
Bozeman			8/31/2025
Qualifications (if required): Public safety answering point manager serving population more than 30,000			

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council Cont.			
Mr. Jeff Newton Great Falls	Governor	reappointed	9/1/2021 8/31/2025
Qualifications (if required): MT League of Cities and Towns representative			
Mr. Scott Paul Scobey	Governor	Duman	9/1/2021 8/31/2025
Qualifications (if required): MT telecommunication provider			
Mr. Pat Roos Miles City	Governor	reappointed	9/1/2021 8/31/2025
Qualifications (if required): MT Sheriff and Peace Officers Association representative			
Ms. Jennie Stapp Helena	Governor	reappointed	9/1/2021 8/31/2025
Qualifications (if required): State Librarian			
Advisory Council on Aging			
Ms. Lori Brengle Glendive	Governor	Opitz	9/7/2021 6/30/2025
Qualifications (if required): Public representative			

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Advisory Council on Aging Cont.			
Ms. Rita Harden Broadus Qualifications (if required): Public representative	Governor	Pease	9/7/2021 6/30/2025
Mr. Wally Melcher Helena Qualifications (if required): Public representative	Governor	Glover	9/7/2021 6/30/2025
Board of Physical Therapy Examiners			
Ms. Anna Larson Helena Qualifications (if required): Licensed Physical Therapist	Governor	Wadsworth	9/15/2021 6/30/2024
Ms. Bonnie Larson Troy Qualifications (if required): Public member	Governor	Goodover	9/15/2021 6/30/2024
Mrs. Bridget Mennie Laurel Qualifications (if required): Licensed Physical Therapist	Governor	reappointed	9/15/2021 6/30/2024

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Respiratory Care Practitioners			
Mr. Brian Cayko Great Falls Qualifications (if required): Respiratory care practitioner	Governor	Miller	9/15/2021 12/31/2024
Mr. Tony Jay Miller Joplin Qualifications (if required): Respiratory care practitioner specializing in pulmonary functions or sleep studies	Governor	Davies	9/15/2021 12/31/2024
Ms. Melissa Wells Red Lodge Qualifications (if required): Respiratory care practitioner	Governor	Bates	9/15/2021 12/31/2024
Burial Preservation Board			
Mr. Kevin Askan Pablo Qualifications (if required): CSKT representative	Governor	reappointed	9/1/2021 8/31/2023
Mr. Tom Escarcega Poplar Qualifications (if required): Ft. Peck Assiniboine and Sioux representative	Governor	reappointed	9/1/2021 8/31/2023

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board Cont.			
Ms. Skye Gilham Cut Bank Qualifications (if required): Physical anthropologist	Governor	reappointed	9/1/2021 8/31/2023
Mr. Thomas Livoti Missoula Qualifications (if required): Public representative	Governor	Moore	9/1/2021 8/31/2023
Mr. John Murray Browning Qualifications (if required): Blackfeet representative	Governor	reappointed	9/1/2021 8/31/2023
Ms. Erika Scheuring Missoula Qualifications (if required): Montana State historical officer representative	Governor	Bush	9/1/2021 8/31/2023
Ground Water Assessment Steering Committee			
Mr. Scott Brown Conrad Qualifications (if required): Conservation or ecological protection organization representative	Governor	Holzer	9/7/2021 6/30/2025

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Ground Water Assessment Steering Committee Cont.			
Mr. Eugene Graf IV Bozeman	Governor	Runkle	9/7/2021 6/30/2025
Qualifications (if required): Development community representative			
Montana Land Information Advisory Council			
Ms. Dawn Anderson Helena	Governor	reappointed	9/7/2021 6/30/2023
Qualifications (if required): FWP designee			
Mr. Allen J. Armstrong Billings	Governor	reappointed	9/7/2021 6/30/2023
Qualifications (if required): US Dept. of Interior designee, BLM			
Mr. Mike Bousliman Helena	Governor	reappointed	9/7/2021 6/30/2023
Qualifications (if required): Dept. of Transportation designee			
Mr. Bill Bullock Red Lodge	Governor	Stanenberg	9/7/2021 6/30/2023
Qualifications (if required): County or municipal government representative active in land information systems			

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Land Information Advisory Council Cont.			
Mr. Brian Collins Helena Qualifications (if required): DNRC designee	Governor	Tubbs	9/7/2021 6/30/2023
Mr. Kevin Gilbertson Helena Qualifications (if required): Chief Information Officer	Governor	Bottenfield	9/7/2021 6/30/2023
Mr. Carl Healy Sr. Harlem Qualifications (if required): Indian tribal interest representative	Governor	reappointed	9/7/2021 6/30/2023
Mr. Matthew Heller Bozeman Qualifications (if required): US Dept. of Interior designee, USFWS	Governor	reappointed	9/7/2021 6/30/2023
Mr. Valentijn Hoff Missoula Qualifications (if required): Montana University System representative	Governor	reappointed	9/7/2021 6/30/2023
Ms. Brandy Holstein Helena Qualifications (if required): Dept. of Revenue designee	Governor	Hofland	9/7/2021 6/30/2023

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Land Information Advisory Council Cont.			
Ms. Charlotte Lauerman Helena	Governor	Gregenc	9/7/2021 6/30/2023
Qualifications (if required): Active in land information systems representing public utility or private business			
Mr. Kevin Loberg Bozeman	Governor	Dado	9/7/2021 6/30/2023
Qualifications (if required): USDA (NRCS) designee			
Mrs. Lee Macholz Missoula	Governor	reappointed	9/7/2021 6/30/2023
Qualifications (if required): County or municipal government representative active in land information systems			
Mr. Ken Miller Hamilton	Governor	Dougher	9/7/2021 6/30/2023
Qualifications (if required): MT Association of GIS Professionals			
Mr. Eric Spangenberg Helena	Governor	Ahl	9/7/2021 6/30/2023
Qualifications (if required): County or municipal government representative active in land information systems			
Mr. Dan Stahly Bozeman	Governor	reappointed	9/7/2021 6/30/2023
Qualifications (if required): Montana Association of Registered Land Surveyors representative			

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Land Information Advisory Council Cont.			
Ms. Jennie Stapp Helena Qualifications (if required): State Librarian	Governor	reappointed	9/7/2021 6/30/2023
Ms. Heather Weldon Missoula Qualifications (if required): USDA Forest Service designee	Governor	Graham	9/7/2021 6/30/2023
Mr. Brandon Wittman Huntley Qualifications (if required): Active in land information systems representing public utility or private business	Governor	Cornish	9/7/2021 6/30/2023
Teachers' Retirement Board			
Ms. Dee Brown Hungry Horse Qualifications (if required): Active member of the retirement system	Governor	Greenfield	9/14/2021 6/30/2026
Ms. Sarah Hitchcock Glasgow Qualifications (if required): Actively employed as a public school classroom teacher	Governor	Muller	9/14/2021 6/30/2026

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2021

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Traumatic Brain Injury Advisory Council			
Ms. Patricia Spencer	Governor	Grant	9/15/2021
Clancy			1/1/2023
Qualifications (if required): Representative of injury control or prevention programs			
Underground Facility Protection Advisory Council			
Mr. John Cross	Governor	Hansen	9/7/2021
Glendive			6/30/2022
Qualifications (if required): Member representing a public utility that is a jurisdictional pipeline			

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Chiropractors Dr. Gregory L. Pisk, Kalispell Qualifications (if required): Licensed Chiropractor	Governor	1/1/2022
Board of Horse Racing Senator Dale Mahlum, Missoula Qualifications (if required): Horse racing Industry	Governor	1/1/2022
Mr. Gary William Koepplin, Florence Qualifications (if required): District 5	Governor	1/1/2022
Mr. Shawn Real Bird, Crow Agency Qualifications (if required): District 2	Governor	1/1/2022
Board of Public Assistance Ms. Sharon Bonogofsky-Parker, Billings Qualifications (if required): Public member	Governor	1/5/2022
Ms. Danielle Shyne, Bozeman Qualifications (if required): Attorney member	Governor	1/5/2022
Judicial Nominations Commission Mrs. Nancy Zadick, Great Falls Qualifications (if required): Lay member who is not a judge or attorney, active or retired	Governor	1/1/2022

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Alfalfa Seed Committee		
Mr. Dallas Dale Steiger, Hysham	Governor	12/1/2021
Qualifications (if required): Actively engaged in the growing of alfalfa seed within the state		
Mr. Justin Lee Wiese, Malta	Governor	12/1/2021
Qualifications (if required): Actively engaged in the growing of alfalfa seed		
Montana Children's Trust Fund Board		
Ms. Tracy Moseman, Helena	Governor	1/1/2022
Qualifications (if required): Representative of state government agency involved in education		
Mr. James Scott Wheeler, Kalispell	Governor	1/1/2022
Qualifications (if required): Member		
Ms. Patricia Butler, Helena	Governor	1/1/2022
Qualifications (if required): Representative of state government agency involved in social work		
Ms. Kristina A. Davis, Great Falls	Governor	1/1/2022
Qualifications (if required): Member		
Montana Grass Conservation Commission		
Mr. Richard Louis Stuker, Chinook	Governor	1/1/2022
Qualifications (if required): Member who holds active grazing preference rights within a state district		

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Employee Group Benefits Advisory Council		
Director Sheila Hogan, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Representative Jim Keane, Butte Qualifications (if required): Legislature Representative	Governor	12/31/2021
Ms. Penny Fassett, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Ms. Diane Fladmo, Helena Qualifications (if required): State Employees and labor organizations	Governor	12/31/2021
Ms. Susan Fox, Helena Qualifications (if required): Legislative Branch	Governor	12/31/2021
Ms. Cheryl Grey, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Mr. Jim Lewis, Helena Qualifications (if required): Retired State Employees' Representative	Governor	12/31/2021
Mr. Quint Nyman, Helena Qualifications (if required): State Employees and Labor Organizations	Governor	12/31/2021
Mr. Duane Preshinger, Helena Qualifications (if required): Ex-Officio member representing the Department of Administration	Governor	12/31/2021

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Employee Group Benefits Advisory Council Cont.		
Ms. Amy Sassano, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Mr. Derek Shepherd, Helena Qualifications (if required): Judicial Branch	Governor	12/31/2021
Ms. Samantha Chase, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Ms. Peggy MacEwen, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Mr. George Mathieus, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Ms. Michelle Wheat, Helena Qualifications (if required): State Employees and Labor Organizations	Governor	12/31/2021
State Lottery Commission		
Mr. John Tarr, Helena Qualifications (if required): Public Representative	Governor	1/1/2022
Mr. Thomas M. Keegan, Helena Qualifications (if required): Member	Governor	1/1/2022

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Lottery Commission Cont.		
Ms. Jean L. Price, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2022
Statewide Independent Living Council		
Ms. Barbara Louise Davis, Missoula Qualifications (if required): Person with a disability not employed by a state agency	Governor	12/1/2021
Mr. Thomas Henry Thompson, Missoula Qualifications (if required): Person with a disability	Governor	12/1/2021
Dr. Julie Melissa Lane Tudor, Three Forks Qualifications (if required): Person with a disability	Governor	12/1/2021
Ms. Beverly Ann Berg, Great Falls Qualifications (if required): Designated State Unit Representative	Governor	12/1/2021
Mr. Richard Scott Williamson, Ronan Qualifications (if required): Person with a disability employed by a State Agency	Governor	12/1/2021
Ms. Lisa L. Allensworth, St. Marie Qualifications (if required): Representing a person with a disability	Governor	12/1/2021
Ms. June Guenzler Hermanson, Helena Qualifications (if required): Person with a disability	Governor	12/1/2021

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2021 THROUGH JANUARY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Statewide Independent Living Council Cont. Mr. Brent Allen Morris, Billings Qualifications (if required): Person with a disability	Governor	12/1/2021
Traumatic Brain Injury Advisory Council Mr. Ian Ray Elliot, Billings Qualifications (if required): Advocate for Brain Injured Persons	Governor	1/1/2022
Dr. Braxton Norwood, Kalispell Qualifications (if required): Representative of injury control	Governor	1/1/2022

MONTANA ADMINISTRATIVE
REGISTER

2021 ISSUE NO. 20
OCTOBER 22, 2021
PAGES 1352-1440

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620