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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE LOTTERY AND SPORTS WAGERING COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.63.203, 2.63.401, 2.63.403, 2.63.407,	)	AMENDMENT
2.63.611, and 2.63.1201 pertaining to)	
definitions, places of sale, applications	)	NO PUBLIC HEARING
and fees, commission, revocation or	)	CONTEMPLATED
suspension of license, and prizes)	

TO: All Concerned Persons

1. On December 24, 2021, the commission proposes to amend the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Lottery no later than 5:00 p.m. on November 17, 2021, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, Montana Lottery, 2525 North Montana Avenue, P.O. Box 6073, Helena, Montana 59604-6073; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY:

As part of its required biennial review of rules, the commission has identified necessary changes identified in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation. Reasons for other proposed changes are addressed specifically for those rules.

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

2.63.203 DEFINITIONS In addition to the definitions found in 23-7-103, MCA, the following definitions apply to this chapter:

- (1) remains the same.
- (2) "License" means the document issued by the lottery which authorizes a ~~retailer~~ sales agent to sell lottery tickets at a fixed place of business.
- (3) through (8) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-301, 23-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is changing the terminology from "retailer" to "sales agent" to be consistent with the terminology

used in other rules in this chapter and in Chapter 284, Laws of 2019 (House Bill 725).

2.63.401 SALES AGENT PLACES OF SALE (1) through (2)(b) remain the same;

~~(c) whose owner has the appropriate alcoholic beverage license as defined in 23-5-119, MCA;~~

(d) through (i) remain the same but are renumbered (c) through (h).

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-103, 23-7-301, 23-7-306, 23-7-307, MCA

STATEMENT OF REASONABLE NECESSITY: The commission proposes to remove (2)(c) as the result of an order of the Montana First Judicial District Court of Lewis and Clark County that determined the alcoholic beverage license requirement was in conflict with House Bill 725.

2.63.403 SALES AGENT APPLICATIONS AND FEES (1) A person interested in obtaining a license as a sales agent shall:

(a) complete an eStop application and pay the required licensing fee ~~on the state licensing system portal at www.eStop.mt.gov;~~

(b) through (3) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Based on input from applicants, the commission proposes to amend ARM 2.63.403 to remove reference to eStop. Because the specific information technology system used to submit applications is subject to change based on the needs of the State as a whole, it will be less confusing to applicants if the commission removes reference to a specific IT system that may change or be rebranded. As stated in the remainder of ARM 2.63.403, application forms are available at montanalottery.com.

2.63.407 SALES AGENT COMMISSION (1) through (5) remain the same.

~~(6) Sales agents who offer sports wagers are entitled to a 6 percent base commission of the value of sports wagers made.~~ The sales agent commission for sports wagers will be set by the State Lottery and Sports Wagering Commission.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: In response to requests from sports wagering sales agents, the lottery is proposing to allow the commission to set sales agent commissions in response to quickly changing business needs.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (3) remain the same.

~~(4) The director may decline to renew a license that could be revoked or suspended under this rule.~~

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

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Lottery licenses do not need to be renewed periodically. Because the commission does not renew licenses, (4) was not necessary.

2.63.1201 PRIZES (1) through (3) remain the same.

(4) The claimant's ~~name~~, city of residence, and amount of prize is public information. The lottery may use a claimant's name and photograph for publicity and advertising purposes only upon written authorization by the claimant.

(5) through (15) remain the same.

AUTH: 23-7-202, 23-7-311, MCA

IMP: 23-7-108, 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The 2021 legislature enacted Chapter 116, Laws of 2021 (House Bill 232), to protect the privacy of lottery players. With the enactment of HB 232, it is necessary for the commission to amend (4) to provide that a claimant's name is not public information.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Bryan Costigan, Montana Lottery, 2525 N. Montana Ave., Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail bcostigan@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

6. 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 Bryan Costigan at the above address no later than 5:00 p.m., November 17, 2021.

7. If the commission receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The commission will hold a hearing on this proposal if the commission receives requests for a hearing from 25 persons, because ten percent

of those directly affected has been determined to be 158 persons based on the approximately 1,577 licensed sales agents in Montana.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Frank Garner, the primary sponsor of HB 232 (2021), was contacted on October 26, 2021, by electronic mail and United States Postal Service first class mail to the address on file for him with the Secretary of State. No comments were received.

11. The commission has determined that under 2-4-111, MCA, the proposed amendments will not significantly and directly affect small businesses.

By: /s/ John Tarr
John Tarr, Chair
State Lottery and
Sports Wagering Commission

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

Certified to the Secretary of State October 26, 2021.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PROPOSED
Rules I and II pertaining to Courtesy) ADOPTION
Car grant applications)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On December 6, 2021, the Department of Transportation proposes to adopt 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 26, 2021, to advise us of the nature of the accommodation that you need. Please contact Marc McKee, Airport/Airways Bureau Chief, Department of Transportation, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-9581; fax (406) 444-2519; TTY Service (800) 335-7592; or e-mail mmckee@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Legislature enacted House Bill 20, Ch. 469, L. 2021, an act generally revising the laws relating to the issuance of courtesy car grants by the Montana Department of Transportation. Among other changes, the bill amended the statutes to allow the department to provide grants for the purchase of courtesy cars at municipal and state-owned airports by eligible third parties. The bill became effective May 12, 2021.

The department is proposing New Rules I and II to conform to the new legislative changes and implement the bill by detailing the process used by the department to evaluate, select, and award courtesy car grants to eligible airports.

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

NEW RULE I APPLICATION PROCESS, FEES, AND DEADLINES (1) The department may provide grant money from the department's special revenue account for the purchase of courtesy cars for use at qualified airports.

(2) All eligible applicants must complete the courtesy car grant application form found on the Department of Transportation's web site at www.mdt.mt.gov. Applications will be accepted by the Aeronautics Division annually between April 1 and May 31 of each year. Completed applications and all supplemental materials must be submitted electronically to the Aeronautics Division and must be received no later than May 31. Applications must be verified by an electronic signature. The

deadline may be subject to change by the Aeronautics Division only after notification of any change is posted on the Department of Transportation's web site and sent to the official manager of record of every eligible airport.

(3) Each application must be complete and accompanied by all required supplemental materials. The application must be submitted by a qualified applicant and the proposed courtesy car program must be detailed in the application. The Aeronautics Division may reject ineligible, incomplete, or otherwise improper applications. The applicant is solely responsible for any incomplete, improperly edited, or erroneous information submitted as part of the application.

(4) All grant monies awarded under this program must be used to purchase a car for the municipality's or third party's courtesy car program. The applicant is responsible for retaining and providing documentation to ensure all grant monies received under the program are used as set forth within the application.

(5) There is no fee for any part of the application or review process.

AUTH: 67-2-102, 67-10-903, MCA

IMP: 67-10-901, 67-10-902, 67-10-903, 67-10-904, MCA

REASON: Proposed New Rule I is necessary to provide a fair and consistent process to all eligible applicants for a courtesy car grant. New Rule I defines the responsibilities for each applicant, the requirements for the application process, establishes application deadlines, and allows MDT to reject incomplete applications.

NEW RULE II EVALUATION, SELECTION, AND AWARD (1) The amount of the courtesy car grants available to be awarded each year shall be determined by the department annually and posted on the department's web site prior to the first date the annual courtesy car application is available on the web site.

(2) After the submission deadline for applications, the department will evaluate applications and award grants based on:

- (a) the availability of alternate transportation;
- (b) whether the applicant currently owns and operates any courtesy car(s);
- (c) distance to the nearest town;
- (d) previous years' awards to the applicant; and
- (e) number of annual airport take-offs and landings.

(3) The department will provide preference for the award of grants for vehicles that are accessible to persons with disabilities.

AUTH: 67-2-102, 67-10-903, MCA

IMP: 67-10-901, 67-10-902, 67-10-903, 67-10-904, MCA

REASON: Proposed New Rule II is necessary to allow MDT to define the criteria that it will use to evaluate and select recipients for courtesy car grant awards.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Marc McKee, Airport/Airways Bureau Chief, Department of Transportation, P.O. Box 200507, Helena, Montana, 59620-

0507; telephone (406) 444-9581; fax (406) 444-2519; or e-mail mmckee@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

6. 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 Marc McKee at the above address no later than 5:00 p.m., November 26, 2021.

7. 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 5 based on approximately 50 airport managers for the 50 airports located in the state of Montana.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email and regular U.S. mail postage prepaid on October 12, 2021.

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

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

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

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

Certified to the Secretary of State October 26, 2021.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 23.16.101, 23.16.116,	)	PROPOSED AMENDMENT AND
23.16.117, 23.16.118. 23.16.119,	)	REPEAL
23.16.301, 23.16.508, 23.16.1703,)	
23.16.1704, 23.16.1705, 23.16.1713,)	
23.16.1714, 23.16.1802, 23.16.1901,)	
23.16.1904, 23.16.1911, 23.16.1918,)	
23.16.1920, 23.16.1922, 23.16.1931,)	
and 23.16.3501 pertaining to transfer)	
of interest among licensees, transfer)	
of interest to new owners, shake-a-)	
day games, changes in managers,)	
sports pools and sports tabs,)	
Electronic Player Rewards Systems,)	
and procedure on VGM malfunction)	
and the repeal of ARM 23.16.2115)	
pertaining to the use of AARS data)	
for player tracking)	

TO: All Concerned Persons

1. On November 29, 2021, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division building, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, no later than 5:00 p.m. on November 19, 2021, to advise us of the nature of the accommodation that you need. Please contact Michael L. Fanning, Gambling Control Division, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1995; or e-mail mikefanning@mt.gov.

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

23.16.101 DEFINITIONS As used throughout this chapter, the following definitions apply:

(1) through (3) remain the same.

(4) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(5) through (15) remain the same.

(16) "Owner" or "owner of an interest" means a person ~~with a right to share in the profits, losses, or liabilities of a gambling operation holding ownership as defined in 23-5-112, MCA. The term "ownership interest" is synonymous with "owner" or "owner of an interest."~~ The term "owner" or "owner of an interest" does not include route operators with a right to share in proceeds from VGMs they have leased to location operators. "Owner" or "owner of an interest" includes:

(a) through (19) remain the same.

(20) "Stranger to the license" means a person who ~~does not own an interest in the licensed gambling operation~~ has not both applied for licensure under Title 23, chapter 5, MCA, and these rules, and been approved by the department to hold an ownership interest in that licensed gambling operation.

(21) through (23) remain the same.

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

IMP: 23-5-112, 23-5-115, 23-5-118, 23-5-176, 23-5-629, 23-5-637,

REASON: The 2021 Legislature enacted SB 49, sponsored by Sen. Mark Blasdel, and signed into law by Gov. Greg Gianforte on April 20, 2021. 2021 Mont. Laws Ch. 259. The bill consolidated into one generally applicable definition the statute and rule references to ownership, control, and the rights of an owner. Similar administrative rules defining ownership and control must be amended to align with those terms' usage in the Gambling Code.

Additionally, the bill significantly altered transfers of ownership interests in a gambling operation. The bill directs separate treatment of ownership transfers among existing owners versus ownership transfers to a new person, unaffiliated with the license – a stranger to the license.

Prior to passage, all transfers of ownership interests had to have prior approval of the Gambling Control Division (GCD). GCD's administrative rules followed that Legislative directive. SB 49 amended 23-5-118, MCA, to require prior approval only when the transfer results in a new person, who has never been investigated in connection with that license, acquiring an ownership interest. Following passage, if both parties to the transfer are already investigated and approved owners of that licensee, prior approval is not needed. The administrative rule on transfers among existing owners, ARM 23.16.116, must be amended to conform and to establish reporting requirements as directed by the amended statute. Further, other rules cross-referencing the former standards of ARM 23.16.116 also must be amended to conform. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.101, 23.16.116, 23.16.117, 23.16.118, and 23.16.119, which follow.

The bill was effective upon passage and approval.

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES (1) Except as provided in (9) and (10), ~~an ownership interest may not be transferred among existing owners without submitting an amended gambling license application to the department and obtaining department approval prior to the transfer~~ existing owner of a licensed gambling operation may transfer an ownership interest to another existing owner of that same licensed gambling operation without receiving prior Gambling

Control Division approval. Upon the licensee's next license renewal application, the licensee must file with GCD the form(s), information, and records required by the applicable section of this rule.

(2) through (10) remain the same.

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

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

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) Except as provided in (7), (8), (9), and (10), an ownership interest may not be transferred to a ~~new owner~~ stranger to the license until a new gambling license application reflecting the proposed transfer is submitted to the department and the department approves the transfer.

(2) through (8) remain the same.

(9) Transfers of ~~ownership~~ control of a licensed gambling operation into a receivership, trust, ~~or~~ an estate mandated by court order, or to an attorney in fact under a power of attorney require an amended application to be filed. The transfer of ownership interest to an estate that results from the death of a licensee may be reported on Form 37.

(a) Under this circumstance, gambling activity may continue pending the outcome of the license investigation if the following documents are submitted and determinations are made:

(i) documentation of the event precipitating the transfer of the licensed gambling operation into a receivership, trust, or estate, e.g., death certificate;

(ii) documents naming/appointing a person to exercise ~~ownership~~ control, e.g., receiver, personal representative, trustee, attorney in fact;

(iii) personal history statement, (Form 10), as that form is described in ARM 23.16.102(3)(b), for the person designated to act in the capacity of a receiver, trustee, or attorney in fact;

(iv) a complete set of fingerprints, Form FD-258 provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement; and

(v) a copy of the licensee's most recent financial statements or tax returns; and

(vi) the department determines the receiver or attorney in fact is suitable to hold or own a license.

(b) Upon the dissolution or termination of a receivership, trust, ~~or~~ estate, or power of attorney licensed under (9), if ownership interests are distributed to strangers to the license, a new license application must be filed and all applicable rules and procedures must be followed.

(c) If ownership interests are transferred to existing owners following the dissolution of a receivership, trust, or estate, an amended license application must be filed.

(10) remains the same.

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

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

REASON: As noted in the statement of necessity following ARM 23.16.101, some of the amendments to ARM 23.16.117 are required to conform to new definitions of "ownership," "control," and "stranger to the license." Additionally, amendments to this rule to include attorneys in fact are necessary to govern instances where a licensee voluntarily transfers control of a licensed gambling operation through a power of attorney. GCD has encountered instances where an unvetted stranger to the license assumes control of a licensed operation through a power of attorney. In one such disciplinary case, the approved licensee moved out of state and transferred control of the gambling operation to a family member. For many months, that unvetted family member acted as the sole individual in control of the operation, yet that person had never been investigated and approved. The rule amendment will allow temporary transfers of control through a power of attorney, but the person who assumes that role must now report their role and undergo a limited review. That review will be much like reviews which have long been expected of receivers, trustees, and personal representatives of estates.

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

(2) and (3) remain the same.

AUTH: 23-5-115, MCA

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

23.16.119 PARTICIPATION IN OPERATIONS (1) Except as provided in ARM 23.16.509, a ~~person~~ stranger to the license who proposes to acquire an ownership interest in a licensed gambling operation may not control or participate in any capacity reflecting ownership in that operation until the applicant's license has been approved by the department as provided for in ARM ~~23.16.116~~ or 23.16.117.

(2) remains the same.

AUTH: 23-5-115, MCA

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

23.16.301 SHAKE-A-DAY GAMES (1) All shake-a-day games are subject to these general rules:

(a) only establishments licensed for the sale of alcoholic beverages to be consumed on the premises may offer shake-a-day games;

(a) through (f) remain the same but are renumbered (b) through (g).

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

(a) ~~a gambling operator~~ the establishment may contribute cash to initially fund the pot, but that contribution may not be removed to reimburse the licensee;

(b) ~~a gambling operator~~ the establishment may not remove money from a pot for any reason, including reimbursing the licensee for noncash prizes such as drinks or merchandise awarded to players;

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

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

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

(f) remains the same.

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

(a) through (d) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-160, MCA

REASON: This amendment is necessary to correct an error inadvertently introduced in the GCD's 2019 rule update. The statute implemented by this rule, 23-5-160, MCA, allows shake-a-day games in establishments licensed for on-premises alcohol consumption whether licensed for gambling or not. The 2019 amendments to this rule incorrectly referenced only gambling operators. These amendments conform the rule to the statute and clarify there is one rule for all shake-a-day games whether the establishment holds a gambling operator license or not.

23.16.508 CHANGES IN MANAGERS, OFFICERS, AND DIRECTORS

(1) Except as provided in (2) and ARM 23.16.510, any change in location managers, officers, or directors must be reported to the department within 30 days of the date of change.

(2) Any gambling operator holding an alcoholic beverage license issued under 16-4-201(8), MCA, to military clubs, veterans' organizations, or fraternal organizations must report any change in officers or directors no later than the licensee's next license renewal application.

(2) and (3) remain the same, but are renumbered (3) and (4).

AUTH: 23-5-112, 23-5-115, 23-5-176, MCA

IMP: 16-4-414, 23-5-176, 23-5-177, MCA

REASON: This amendment is necessary to avoid burdening veterans' and fraternal organizations. Unlike for-profit, commercial establishments, veterans' and fraternal organizations' officers and directors are typically volunteer members. In GCD's experience, there is predictable turnover among these officers and directors which is often unreported or reported after the current 30-day deadline. These reporting omissions expose the organizations to fines. Commonly, the organizations' day-to-day operations and regulatory compliance are entrusted to designated location managers. As the individual charged with general oversight of

the gambling operation and tasked with ensuring compliance with gambling laws, a location manager must be reported, investigated, and approved quickly. Oftentimes, this urgency is not shared by the volunteers on a veterans' or fraternal's board of directors. Reporting changes in officers and directors through a license renewal application will sufficiently update GCD records without exposing the organizations to fines for reporting oversights. Consequently, GCD proposes to amend this rule to avoid technical, time-based violations with no clear regulatory objective.

23.16.1703 SALE OF SPORTS POOL CHANCES (1) The total cost of a chance ~~shall not exceed \$100 per in a sports event, or \$100 per in a sports event for a series sports pool as described in ARM 23.16.1705(3)(b), and is unlimited. The total cost for each chance~~ must be paid in full and in cash at the time the chance is selected.

(2) through (5) remain the same.

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

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

REASON: The 2021 Legislature enacted HB 193, sponsored by Rep. Jimmy Patelis, and signed into law by Gov. Greg Gianforte on March 25, 2021. 2021 Mont. Laws Ch. 75. Formerly, there were dollar caps on the entry charges for sports pools and sports tabs and a cap on the total amount paid to winners. HB 193 did away with those caps. These amendments are needed to conform the existing administrative rules to the revised statute, 23-5-503, MCA. The bill is effective on October 1, 2021. 1-2-201, MCA. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.1704, 23.16.1705, 23.16.1713, and 23.16.1714, which follow.

23.16.1704 DETERMINATION OF SPORTS POOL WINNERS - PRIZES

(1) remains the same.

(2) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise ~~but must not exceed a total value of \$2,500 per sports event.~~

(a) through (4) remain the same.

AUTH: 23-5-115, MCA

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

23.16.1705 AUTHORIZED SPORTS POOLS (1) through (3)(d)(ii) remain the same.

~~(iii) The pool must be designed so that the total of each participant's wager(s) does not exceed \$100, the total value of all prizes equals the total of all wagers, and the total value of all prizes awarded does not exceed \$2,500.~~

(iv) remains the same but is renumbered (iii)

(e) through (g) remain the same.

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

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

23.16.1713 PURCHASE AND SALE OF SPORTS TABS BY SPONSOR - LICENSURE (1) and (2) remain the same.

(3) The total cost of each sports tab on the same sports tab card must be identical and may not exceed \$25. A participant shall pay cash for the sports tab at the time the tab is selected.

(4) remains the same.

AUTH: 23-5-115, 23-5-178, MCA

IMP: 23-5-178, 23-5-502, 23-5-503, MCA

23.16.1714 SPORTS TAB GAME PRIZES ~~(1) For the purposes of this rule, "cost of the sports tabs" means an amount that is equal to the amount paid by a participant for a single sports tab multiplied by 100.~~

(2) remains the same, but is renumbered (1).

~~(3) (2)~~ Except as provided in ~~(5)(4)~~, a sponsor shall pay to the winners of a sports tab game at least 90% of the cost of the sports tabs. The sponsor may retain up to 10% of the cost of the sports tabs.

~~(4) (3)~~ The cost to participate in a sports tab game is unlimited and ~~The the~~ total value of all prizes awarded in a sports tab game ~~may not exceed \$2,500 is~~ unlimited. Prizes may be in cash or merchandise, or a combination of cash and merchandise. If merchandise is awarded, the purchase price paid for the merchandise is considered to be the value of the prize. Except as provided in ~~(5)(4)~~, if the value of the merchandise is less than 90% of the cost of the sports tabs the difference must be awarded to the winners in cash.

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

AUTH: 23-5-115, MCA

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

23.16.1802 DEFINITIONS (1) through (4) remain the same.

(5) "CTVS" (cash ticket validation system) means a stand-alone system that electronically acquires information from VGMS ~~solely~~ for the purpose of validating cash ticket vouchers.

(6) through (8) remain the same.

(9) "EPRS" (electronic player rewards system) means a stand-alone system that electronically acquires information from VGMS to be used for any purpose authorized by Title 23, chapter 5, MCA.

(9) through (30) remain the same but are renumbered (10) through (31).

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

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

REASON: The 2021 Legislature enacted HB 197, sponsored by Rep. Edward Buttrey, and signed into law by Gov. Greg Gianforte on March 26, 2021. 2021 Mont. Laws Ch. 98. Montana statutes enacted in 1999 authorized computer-

driven interactive accounting and reporting systems to automate certain recordkeeping, and tax accounting and reporting functions for video gambling machines. 23-5-637, MCA. The Gambling Control Division was given express rulemaking authority to implement these automated accounting and reporting systems (AARS). 23-5-621, MCA. That statute required GCD to adopt a rule providing, "the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes." 23-5-621(1)(e)(i), MCA. As directed by the Legislature, in 2006 GCD adopted ARM 23.16.2115 to prohibit the use of AARS data for player tracking purposes. Over time, GCD adopted other rules consistent with that prohibition.

HB 197 reversed 23-5-637, MCA, and allows the use of AARS data for player tracking purposes. Consequently, ARM 23.16.2115 now must be repealed and eight other existing rules must be amended to conform to the new statutes. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.1901, 23.16.1911, 23.16.1918, 23.16.1920, 23.16.1922, and 23.16.1931 and to the proposed repeal of ARM 23.16.2115.

HB 197, 2021 Mont. Laws Ch. 98, was effective July 1, 2021.

23.16.1901 GENERAL SPECIFICATIONS OF VGMS (1) through (2) remain the same.

(3) When the department finds that any EPRS, CTVS, AARS, VGM, VGM component, or game title does not comply with statutes and rules applicable at the time of approval, or its actual operation differs from its intended and approved functioning, the department may require game title(s) to be disabled, suspend or revoke a permit, or revoke approval of the EPRS, CTVS, AARS, VGM, or VGM component. The department may also require game title(s) to be disabled, suspend or revoke the permits, or revoke approval of models of a an EPRS, CTVS, AARS, VGM, or VGM component similar to one the department finds noncompliant.

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

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

23.16.1904 PROCEDURE ON DISCOVERY OF SUSPECTED OR CONFIRMED VGM MALFUNCTION (1) through (3) remain the same.

(4) VGM manufacturers must report software or hardware malfunctions on a completed Form 50A supported by all required documents. The Form 50A and supporting documents must be submitted to the department within 24 hours of the malfunction being reported to, or identified by, the VGM manufacturer.

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

AUTH: 23-5-115, 23-5-608, 23-5-621, MCA

IMP: 23-5-602, 23-5-607, 23-5-608, 23-5-616, 23-5-621, MCA

REASON: GCD issued this rule in 2018 based on incidents where gambling operators hesitated to pay a player when the operator believed a ticket voucher was the result of a VGM malfunction. The rule has remained unchanged since 2018.

Since then, GCD has learned of instances where a manufacturer of a VGM – not operators offering the VGM for play – discovered a "bug" or software malfunction. Because the rule was limited to operators, manufacturers had no duty to report known malfunctions. Such malfunctions are not uncommon. Since early 2020, manufacturers have self-reported a number of such malfunctions. Manufacturers submitted those reports based only on GCD's reporting directive in VGM approval letters. Other malfunctions likely go unreported because no rule compels reporting. This rule amendment is necessary to protect players by requiring both gambling operators and manufacturers to report malfunctions.

23.16.1911 INFORMATION TO BE PROVIDED TO THE DEPARTMENT

(1) To ensure a an EPRS, VGM, AARS, or CTVS complies with the act and these rules, the department may require a licensed manufacturer, ~~or~~ accounting system vendor, or associated gambling business to supply information, including but not limited to:

(a) through (l) remain the same.

(m) additional information to be provided for an EPRS, AARS, or CTVS upon request.

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

IMP: 23-5-607, 23-5-621, 23-5-631, 23-5-637, MCA

23.16.1918 TESTING FEES (1) Each person submitting a an EPRS, VGM, an AARS, CTVS, or a modification to an approved EPRS, VGM, ~~or an AARS, or CTVS~~ for testing and department approval must:

(a) be licensed as a manufacturer, ~~and/or~~ accounting system vendor, or associated gambling business within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to begin testing. This sum is to be as follows:

(i) VGMS, \$10,000;

(ii) CTVS, \$5,000;

(iii) AARS, \$15,000;

(iv) EPRS, \$5,000;

~~(iv)~~ (v) modification to an approved EPRS, VGM, CTVS, or AARS, \$1,000.

(2) and (3) remain the same.

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

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

23.16.1920 EPRS, AARS, CTVS, AND VGM HARDWARE AND SOFTWARE SPECIFICATIONS (1) through (3) remain the same.

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

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

23.16.1922 CTVS TESTING AND RESTRICTIONS (1) A CTVS is associated equipment that electronically acquires information and data from a VGM

for the sole purpose of validating the authenticity of a ticket voucher presented for payment.

(2) through (2)(c) remain the same.

(d) all electronically acquired information must be limited to the sole purpose of validating ticket vouchers ~~and may not include player tracking.~~

(3) and (3)(a) remain the same.

(b) before acquiring a CTVS system, every gambling operator must complete a CTVS use disclosure form (Form 33) supplying information to the department, which must include the gambling operator's confirmation:

(i) only AARS enabled VGMs will use a CTVS; and

(ii) the operator's use of electronically acquired information:

(A) will be limited to ticket voucher validation for VGMs permitted to the gambling operator's individual licensed premises; and

(B) will be restricted to VGM ticket voucher validation; ~~and~~

~~(C) will not be used for player tracking purposes.~~

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

IMP: 23-5-602, 23-5-621, 23-5-625, 23-5-631, MCA

23.16.1931 INSPECTION AND SEIZURE (1) The department has the right during the licensee's normal business hours to inspect ~~an~~ any EPRS, AARS, or CTVS, or ~~any~~ VGM. Such right of inspection includes immediate access to each EPRS, AARS, CTVS, or VGM and unlimited inspection of all VGM parts. The department may immediately seize and remove any EPRS, AARS, CTVS, or VGM or device that violates state law or these rules.

(2) Given reasonable cause, the department may remove ~~an~~ any EPRS, AARS, CTVS, or VGM or parts from a VGM for laboratory testing and analysis.

(3) The department may seal any EPRS, AARS, CTVS, or VGM left on the licensee's premises pending the department's investigation. Breaking or removing the department's seal will subject the licensee to seizure of the entire EPRS, AARS, CTVS, or VGM and suspension or revocation of any permit or license issued by the department.

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

IMP: 23-5-113, 23-5-602, 23-5-603, 23-5-608, 23-5-611, 23-5-613, 23-5-621, MCA

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES, OR ENTERPRISES (1) and (2) remain the same.

(3) Any devices, machines, instruments, apparatuses, contrivances, schemes, activities or enterprises that simulate the following games, variations of the following games, or in any manner incorporate aspects of the following games are prohibited and shall not be approved by the department:

(a) banking card games, such as blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) dice games, ~~such~~ known as craps, hazard, or chuck-a-luck;

(c) sports betting other than horse racing, sports pools as authorized by law, or as provided in (9); or

(d) table games, such as roulette or faro.

(4) through (7) remain the same.

(8) No department approval is required for ticket or card devices described under 23-5-112(19)(a), MCA, and promotional wheel devices as defined herein, so long as such devices are bona fide promotional games of chance; and the ticket or card devices described under 23-5-112(19)(a), MCA, comply with (7)(f) of this rule; and promotional wheel devices comply with (7)(e), (f), and (g) of this rule. For the purposes of this rule, a promotional wheel device is defined as one or more vertically constructed circular frames or disks, displaying various symbols, such as numbers or pre-identified sectors, that is freely spun for the random selection of a symbol as determined by a permanently stationary mark for selecting the particular symbol when the wheel stops spinning.

(9) through (12) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-112, 23-5-115, 23-5-152, MCA

REASON: The 2021 Legislature enacted HB 548, sponsored by Rep. Jimmy Patelis, and was signed into law by Gov. Greg Gianforte on April 11, 2021. 2021 Mont. Laws Ch. 180. Formerly, the Gambling Code generally prohibited dice games with exceptions for shake-a-day and shake for music. The administrative rule controlling promotional games of chance was constructed similarly and generally disallowed dice-based promotions.

HB 548 reversed the general prohibition on dice games and now generally authorizes dice games played by patrons on premises licensed for on-premises alcoholic beverage consumption. Under the new law, three specific dice games are prohibited. To conform with the new statute, the promotional games of chance rule must be amended to generally authorize dice promotions with the exception of the three prohibited games.

The bill is effective on October 1, 2021. 1-2-201, MCA.

Section (8) must be amended to correct an inaccurate cross-reference within the definitional statute. Amendments adding paragraphs to 23-5-112, MCA, in the 2019 Legislative Session (SB 25), renumbered the illegal gambling device definition from (19) to (21).

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

23.16.2115 AUTOMATED ACCOUNTING AND REPORTING SYSTEM
DATA NOT TO BE USED FOR PLAYER TRACKING

AUTH: 23-5-621, MCA

IMP: 23-5-621, MCA

REASON: See REASON for ARM 23.16.1802.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; or e-mail mikefanning@mt.gov and must be received no later than 5:00 p.m., December 29, 2021.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail and United States mail on June 15, 2021, and by email on September 30, 2021.

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

10. Pursuant to 2-4-302, MCA, the department advises the adoption of testing and approval fees for electronic player rewards systems (EPRS) under ARM 23.16.1918 will require licensees to pay the same hourly testing fee GCD charges for testing other devices or systems: \$130 per hour. The department does not expect to average more than one EPRS application per year. Based on its experience with testing other devices and systems, EPRS testing fees will approximate \$5,000 per EPRS application. The cumulative annual amount of the new fee for all persons is predicted to average \$5,000.

/s/ Derek Oestreicher
Derek Oestreicher
Rule Reviewer

/s/ Austin Knudsen
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State October 26, 2021.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.13.101 and 24.13.105, and	)	PROPOSED AMENDMENT AND
the repeal of ARM 24.13.109	)	REPEAL
pertaining to the Montana HELP Act)	
workforce development services)	

TO: All Concerned Persons

1. On November 30, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83342666723>, Meeting ID: 83342666723; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 83342666723.

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

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Westerhold, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-1647; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail Jessica.Westerhold@mt.gov.

3. General Statement of Reasonable Necessity: There is a reasonable necessity to amend and repeal the following rules to comply with the changes implemented by Chapter 547, Laws of 2021 (House Bill 614), amending the Montana Health and Economic Livelihood Partnership (HELP Act), 39-12-101 through 39-12-107, MCA. House Bill 614 allows for greater flexibility in the scope of workforce development services offered to program participants and employers. The amendments require the department to contract with private nonprofit or for-profit entities to provide workforce development services, including education, training, and supportive services. House Bill 614, Section 1. The workforce development services are designed to improve a program participant's employment situation.

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

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

~~(1) "Active participant" means a HELP Act participant that has obtained a reportable service within 90 days.~~

(1) "Contracted agency" means a private or for-profit entity that has entered into a written contract with the state to provide workforce development services pursuant to the HELP Act program.

~~(2) through (5) remain the same.~~

(6) "Program participant" must be an individual who is actively enrolled in the department's HELP-Link workforce development program and is receiving services and assistance from a DLI contracted agency.

~~(6)(7) "Services and assistance" means help from activities, whether delivered in person at a Job Service office or remotely, related to the participant making use of the workforce development program, and in finding suitable employment or related to an employer finding qualified employees.~~

~~(7) "WIOA" means the federal Workforce Innovation and Opportunity Act, 29 USC 3101, et. seq.~~

(8) "Workforce development program" means the full range of assistance and services provided by Job Service offices to job seekers, potential job seekers, and participants in order to allow the individual to obtain long-term, meaningful employment that improves the individual's quality of life to program participants and employers. The programs and services shall help individuals to enter the workforce or obtain better-paying jobs, and the programs and services help employers to obtain and maintain qualified employees.

AUTH: 39-12-107, 53-6-1318, MCA

IMP: 39-12-101, 39-12-102, 39-12-103, MCA

REASON: There is a reasonable necessity to amend this rule and define "contracted agency" because House Bill 614 requires the department to contract with private or for-profit entities to provide workforce development services and assistance to program participants. The amendments to the definitions for "services and assistance" and "workforce development program" allow for greater flexibility in the scope of services offered to program participants and employers, as required by House Bill 614, Section 2. The definition of "program participant" clarifies the statutory definition to be an individual actively receiving services under the program.

24.13.105 WORKFORCE DEVELOPMENT ACTIVITIES FOR HELP ACT PARTICIPANTS (1) DLI delivers HELP Act services and assistance to participants through its ~~Job Service offices~~ contracted agencies.

(a) The types of services and assistance available to participants through contracted agencies generally fall into one of the following four categories:

(i) ~~job search services~~ career services;

(ii) ~~workforce information services~~ training services;

(iii) ~~career guidance services~~ worksite learning services; and

(iv) ~~intensive services~~ supportive services.

(b) Participants may also be eligible for referral to ~~WIOA partners~~ other workforce development programs, qualified training providers, employers, and any other suitable program or service provider.

(2) A participant's initial ~~reportable~~ service must consist of an assessment, ~~performed by a Job Service employee~~. An assessment is a formal evaluation of the participant's:

(a) and (b) remain the same.

(3) After having obtained an assessment, in order to ~~remain an active~~ become a program participant, the individual must ~~access a reportable service, as defined in ARM 24.13.109, at least once every 90 days~~ develop an approved employment goal in a high-wage and in-demand career field.

(4) ~~An active~~ A program participant ~~enrolled in an approved educational or training program is considered to will~~ remain active as long as the individual continues to ~~remain enrolled and actively participating in the educational or training program~~ actively participate in the education, training, or worksite learning activities identified to reach their approved employment goal.

(5) ~~DLI shall promptly report to DPHHS whenever:~~

(a) ~~a participant becomes an active participant; or~~

(b) ~~an active participant loses that status due to that individual's failure to obtain any reportable service for more than 90 days.~~

(6) ~~An individual who has lost the status of being an active participant may regain the active participant status by obtaining an assessment as provided in (2).~~

AUTH: 39-12-107, 53-6-1318, MCA

IMP: 39-12-101, 39-12-103, MCA

REASON: There is a reasonable necessity to amend this rule to clarify and simplify the requirements for a HELP Act participant to access services and assistance from contracted agencies.

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

24.13.109 REPORTABLE SERVICES

AUTH: 39-12-107, 53-6-1318, MCA

IMP: 39-12-101, 39-12-103, MCA

REASON: There is a reasonable necessity to repeal this rule because ARM 24.13.109 no longer applies to the HELP Act program pursuant to House Bill 614. ARM 24.13.109 pertains to the specific services provided to program participants by the department's Job Service offices, and those services are now provided to program participants by contracted agencies under House Bill 614.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to Jessica Westerhold, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail Jessica.Westerhold@mt.gov, and must be received no later than 5:00 p.m., December 6, 2021.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on September 22, 2021, by telephone.

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

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

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

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

Certified to the Secretary of State October 26, 2021.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.21.1003 and repeal of 24.21.415) PROPOSED AMENDMENT AND
pertaining to apprenticeship ratios) REPEAL

TO: All Concerned Persons

1. On December 8, 2021, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82542141727>, Meeting ID: 825 4214 1727, Passcode: 408068; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 825 4214 1727, Passcode: 408068.

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

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 1, 2021, to advise us of the nature of the accommodation that you need. Please contact Jay Reardon, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-3037; or e-mail DLIRatioComments@mt.gov.

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

24.21.1003 APPRENTICE-TO-JOURNEYMAN RATIO (1) The apprentice-to-journeyman ratio may not exceed two apprentices supervised by one journeyman.
~~the following criteria:~~

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

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

(2) through (4) remain the same.

AUTH: 39-6-101, MCA

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

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

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

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

24.21.415 RATIO WAIVER PROCESS

AUTH: 39-6-101, MCA

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

REASON: There is reasonable necessity to repeal this rule based on the amendments proposed to ARM 24.21.1003. Because of the expansion of apprentices to journeyworkers, further waiver is no longer necessary.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jay Reardon, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-3037; or e-mail DLIRatioComments@mt.gov, and must be received no later than 5:00 p.m., December 8, 2021.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

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

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses. The department has determined that the proposed amendment to the apprentice-to-journeyman ratio will have a positive impact on small-business employers that sponsor registered apprentices because a greater number of individuals will be able to enter apprenticeships.

The amendment to the apprentice-to-journeyman ratio is significant for small businesses because the majority of sponsor employers are small-business employers with fewer than five apprentices. Many of these small employers operate in rural areas of the state where it is difficult to recruit journeyworkers to supervise apprentices.

The amendments will allow employers to directly hire a greater number of apprentices, without hiring more journeymen, while still maintaining effective and safe training and supervision. The current ratio of one apprentice to one journeyworker and an additional two journeyworkers required to add an additional apprentice has made it difficult for smaller employers to employ a second apprentice. Small employers, particularly in rural areas, struggle to recruit the required journeyworkers to meet the current ratio requirement. For example, many small employers employ two licensed workers. Under the current rules, employers with two licensed workers can only employ one apprentice because many small employers struggle to recruit and hire a third journeyworker to meet the current ratio requirement. Changing the current ratio to a 2:1 ratio will allow these small employers to hire additional apprentices.

The ratio will ensure new apprentices will continue to get the safe and quality training needed. The new ratio will also ensure a balance between the number of journeyworker mentors employed and required to supervise additional apprentices. As more individuals enter and successfully complete registered apprenticeship programs, Montana will eventually have a greater number of journeyworkers to meet the changing and growing demands of Montana's economy and communities.

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

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

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

Certified to the Secretary of State October 26, 2021.

BEFORE THE BOARD OF BEHAVIORAL HEALTH, BOARD OF MEDICAL
EXAMINERS, BOARD OF NURSING, AND BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I and II and the amendment of	)	PROPOSED ADOPTION AND
ARM 24.219.2301 pertaining to	)	AMENDMENT
requirements for sexual offender)	
evaluation endorsement)	

TO: All Concerned Persons

1. On December 2, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83267920526>
Meeting ID: 832 6792 0526, Passcode: 252197
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 832 6792 0526, Passcode: 252197

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdbbh@mt.gov.

3. GENERAL REASON: The 2021 Montana Legislature enacted Chapter 481, Laws of 2021 (Senate Bill 39), an act generally revising sexual offender evaluation and treatment laws. The bill was signed by the Governor on May 12, 2021, and takes effect January 1, 2022. Licensed clinical social workers (LCSWs), licensed clinical professional counselors (LCPCs), licensed marriage and family therapists (LMFTs), psychiatrists, psychologists, or advanced practice registered nurses with a psychiatric mental health nurse practitioner certification are currently allowed to perform sexual offender evaluations under their existing scopes of practice.

Senate Bill 39 creates a sexual offender treatment evaluator endorsement in

order to maintain standards, consistent with appropriate national standards for evaluation and treatment of sexual offenders, and guidelines for evidence-based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders.

The bill created a subcommittee to draft requirements for sexual offender evaluators. Using the subcommittee's recommendations, the Board of Behavioral Health, Board of Medical Examiners, Board of Nursing, and Board of Psychologists are proposing to adopt NEW RULES I and II to implement Senate Bill 39 by establishing requirements for the endorsement and supervised professional experience necessary for practitioners to qualify for the endorsement. Where additional specific bases for a proposed action exist, the board(s) will identify those reasons immediately following that rule.

4. The proposed new rules are as follows:

NEW RULE I DEFINITIONS (1) "Face-to-face" means supervision which is either:

- (a) in-person; or
- (b) electronically. The transmission must:
 - (i) be two-way;
 - (ii) be interactive;
 - (iii) be real-time;
 - (iv) be simultaneous; and
 - (v) provide for both audio and visual interaction.

(2) "Sexual offender evaluator supervisor" means the licensed clinical social worker (LCSW), licensed clinical professional counselor (LCPC), licensed marriage and family therapist (LMFT), psychiatrist, psychologist, or advanced practice registered nurse with a psychiatric mental health nurse practitioner certification who is qualified to conduct sexual offender evaluations. The supervisor must have:

- (a) a license in good standing; and
- (b) at least three years current ongoing experience in practice as a sexual offender evaluator and treatment provider.

AUTH: 37-1-131, 37-1-139, MCA

IMP: 37-1-131, 37-1-139, MCA

NEW RULE II SEXUAL OFFENDER EVALUATOR LICENSE
ENDORSEMENT (1) Applicants for a sexual offender evaluator endorsement who are licensed as an LCSW, LCPC, LMFT, psychiatrist, psychologist, or advanced practice registered nurse with a psychiatric mental health nurse practitioner certification under ARM Title 24, chapters 156, 159, 189, and 219, shall:

- (a) meet the requirements described in 37-1-139(3)(a) through (c), MCA; and
- (b) be a full or clinical member of the Association for the Treatment of Sexual Abusers (ATSA) or other board-approved national professional organization that meets the requirements in 37-1-139(3)(d), MCA.

(2) The 2000 hours supervised experience required in 37-1-139, MCA, must include:

- (a) supervision by a sexual offender evaluator supervisor;

(b) face-to-face supervision at a ratio of two hours of supervision for each sequential 40 hours of evaluation and treatment of sexual offenders; and

(c) 25 hours of the 400 hours in face-to-face evaluations of sexual offenders or therapy sessions with sexual offenders must be supervised in-person by the supervisor.

AUTH: 37-1-131, 37-1-139, MCA

IMP: 37-1-131, 37-1-139, MCA

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

24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, AND LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES (1) through (2)(m) remain the same.

(n) fail to appropriately supervise a licensure candidate, or a CBHPSS, or individual requiring supervision to perform a sexual offender evaluation under 37-1-139, MCA;

(o) through (4) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-139, 37-1-319, 37-22-201, 37-35-103, MCA

IMP: 37-1-131, 37-1-136, 37-1-139, 37-1-316, 37-1-319, 37-22-201, 37-35-103, 37-38-106, MCA

REASON: The Board of Behavioral Health is amending this rule to clarify that its licensees are also responsible for supervision of individuals who require supervision to perform sexual offender evaluations under 37-1-139, MCA. See also GENERAL REASON. The board is amending the authority and implementation citations to reflect the codified provisions of Senate Bill 39.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdbbh@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

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

8. The boards each maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by these boards. Persons who wish to have their name added to a list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdbbh@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 6, 2021, by email.

10. Regarding the requirements of 2-4-111, MCA, the boards have determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the Board of Behavioral Health has determined that the amendment of ARM 24.219.2301 will not significantly and directly impact small businesses.

Documentation of the boards' above-stated determinations is available upon request to Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdbbh@mt.gov.

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

BOARD OF BEHAVIORAL HEALTH
ELAINE MARONICK, LCPC/LMFT
CHAIRPERSON

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, R.D.
PRESIDENT

BOARD OF NURSING
SARAH SPANGLER, RN
PRESIDENT

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, PH.D
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 26, 2021.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.138.402 fee schedule, 24.138.504) PROPOSED AMENDMENT
approved clinical exam criteria for)
dentists and dental hygienists, and)
24.138.508 dental hygiene local)
anesthetic agent certification)

TO: All Concerned Persons

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

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/87244228772>
Meeting ID: 872 4422 8772, Passcode: 700769
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 872 4422 8772, Passcode: 700769

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry no later than 5:00 p.m., on November 23, 2021, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

<u>24.138.402 FEE SCHEDULE</u> (1) remains the same.	
(2) Credentialing fee for dentists	500 <u>250</u>
(3) through (5) remain the same.	
(6) Active renewal fee for dentists	306 <u>225</u>
(7) Active renewal fee for dental hygienists	140 <u>110</u>
(8) Active renewal fee for denturists	200 <u>150</u>
(9) Inactive renewal fee for dentists	453 <u>112</u>

- (10) Inactive renewal fee for dental hygienists 70 55
(11) Inactive renewal fee for denturists 400 75
(12) through (16) remain the same.

AUTH: 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, 37-29-201, MCA
IMP: 37-1-134, 37-1-141, 37-4-301, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-29-303, MCA

REASON: In providing administrative services to the board, department staff discovered that the board's cash balance is nearing two times its appropriation. Following a fee structure analysis, the board determined it is reasonably necessary to amend this rule and reduce fees to maintain compliance with 17-2-302, MCA. For the current renewal cycle beginning January 1, 2022, all renewal fees will be abated by 50%. Moving forward, the board is reducing renewal fees between 25% to 30%, starting in 2023. Additionally, the board is reducing the dentist credentialing application fee by 50% to align the fee more closely with work involved to process current credentialing applications. The board estimates the decrease in renewal fees will affect approximately 1,882 licensees, both active and inactive:

DENTISTS: 862 Active, 18 Inactive

DENTAL HYGIENISTS: 964 Active, 17 Inactive

DENTURISTS: 21 Active

These changes will result in a revenue reduction of approximately \$199,000 by June 30, 2022. The corresponding reduction in renewal fees permanently by 25% to 30% beginning in fiscal year 2023 will, over five years, reduce the board's cash balance by \$338,000 and leave the board with \$501,400 in ending cash for fiscal year 2026. When weighed against expected expenses, this reduction will place the board in a more stable position to continuously keep one year's worth of cash on hand. The board and department will continue to monitor cash reserves in a fiscally prudent manner while maintaining its current level of operations.

24.138.504 APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS (1) remains the same.

(2) Dental students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020 or in the ~~year-2024~~ years 2021 and 2022 shall be allowed to substitute a board-approved manikin-based operative exam in lieu of the patient-based examinations required in (1)(a) and (1)(b). All remaining non-patient-based requirements shall remain in effect. The exception outlined in this section shall expire December 31, ~~2024~~ 2022.

(3) and (3)(a) remain the same.

(b) Dental hygiene students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020, or in the ~~year-2024~~ years 2021 and 2022, shall be allowed to substitute a board-approved manikin-based examination in lieu of a patient-based clinical examination. The exception outlined in this section shall expire on December 31, ~~2024~~ 2022.

(4) through (6) remain the same.

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

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

REASON: Since this rule was last amended in May 2021, the board received numerous inquiries regarding the lack of consideration for clinical examination candidates who test beyond 2021 due to the pandemic. Similarly, the continued testing progression of the dental industry is away from human-based patient testing. While the board recognizes the challenges of patient-based testing, it concluded that testing of psychomotor skills is a necessary component of producing competent applicants. The board has studied and heard presentations on the sufficiency of manikin-based examinations, tested manikin-based examinations, and reviewed their psychometrics as presented. After considering these factors, the board determined it is reasonably necessary to amend this rule to allow graduates through 2022 to utilize a manikin-based examination while the board further studies the requirements moving forward.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) remains the same.

(2) Application for local anesthetic certification by examination shall ~~be made on an application form and must~~ include the following:

(a) verification of successful passage of a board-approved local anesthetic examination, that includes a written and clinical component, within the last five years;

(b) through (d) remain the same.

(3) Application for a local anesthetic certificate by credentialing shall ~~be made on an application provided by the board and shall~~ include the following:

(a) ~~verification of successful passage of a board-approved local anesthetic examination more than five years ago~~ proof of completion in coursework and training regarding the administration of local anesthetic agents;

(b) through (f) remain the same.

(4) ~~An applicant who wishes to convert an inactive status local anesthesia certification in conjunction with the conversion of an inactive dental hygiene license shall:~~

~~(a) verify passage of a board-approved local anesthetic examination;~~

~~(b) submit an application provided by the board;~~

~~(c) submit a copy of the applicant's current CPR, ACLS, or PALS card;~~

~~(d) copies of any local anesthetic agent license held in other states; and~~

~~(e) written verification from a supervising dentist that the applicant has practiced administering local anesthetic agents within the last five years.~~

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

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

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

REASON: In recent years, the board has seen a higher-than-average number of dental hygienist applicants who are wanting to transfer their prior out-of-state endorsements for local anesthesia when seeking Montana licensure. Current rules require that hygienists have passed a local-anesthesia-specific written and clinical

examination. With the pattern of increased mobility, hygienist candidates are having to test on skills which they have practiced in another state. Regulations across the country vary from requiring an examination to including the ability to administer local anesthesia as inherent to a dental hygiene license. The majority of jurisdictions require some coursework and training to administer these agents. The board concluded it is reasonably necessary to amend this rule to allow applicants to be qualified to administer local anesthetic agents without an express examination. To protect the public, the board is further amending the rule to require education and training in administration in addition to proof of a verifiable pattern of safety when granting this credentialing certificate.

Following staff recommendations, the board is striking (4) regarding the conversion of inactive anesthetic certification to active as unnecessary. The board notes that inactive status is a licensure status for primary licenses to practice and do not apply to endorsements. Additionally, changing from inactive to active licensure status does not require the licensed hygienist to "reprove" the ability to administer local anesthetics. Other changes will streamline and simplify the rule for ease of use.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.504 and 24.138.508 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.402 will significantly and directly impact small businesses. The group of small businesses likely affected are dental offices that have fewer than 50 full-time employees. Based upon its knowledge, the board finds that most, if not all, dental offices that operate in-state qualify as small businesses under this rubric. The board finds that the impact will allow small businesses to maintain excess funds or have cash available which would normally be remitted to the board for renewal fees. The board has not considered any alternative options to the fee reduction as it does not adversely affect licensees.

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

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

BOARD OF DENTISTRY
LESLIE HAYES, DDS
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 26, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.101.413 and the adoption of) PROPOSED AMENDMENT AND
NEW RULES I, II, and III pertaining to) ADOPTION
licensure of genetic counselors)

TO: All Concerned Persons

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

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/85471318220>

Meeting ID: 854 7131 8220, Passcode: 148825

-OR-

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

Meeting ID: 854 7131 8220, Passcode: 148825

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Genetic Counselors Licensing Program no later than 5:00 p.m., on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Genetic Counselors Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or cbaker@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2021 Montana Legislature enacted Chapter 206, Laws of 2021 (House Bill 217), an act requiring licensure of genetic counselors and establishing genetic counselor licensure requirements and scope of practice. The bill was signed by the Governor and became effective on April 16, 2021, and is codified in Title 37, chapter 49, MCA. The department is amending ARM 24.101.413 and adopting NEW RULES I through III to implement the legislation by setting licensure and annual renewal fees, establishing requirements for licensees' continuing education, and setting forth behavior considered as unprofessional conduct for genetic counselors.

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

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (4) remain the same.

(5) The following are renewal dates for the professions and occupations listed:

(a) through (n) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(o)	<u>Genetic Counselors</u>	<u>Genetic Counselor</u>	<u>Annually</u>	<u>April 1</u>

(o) through (al) remain the same but are renumbered (p) through (am).
(6) and (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

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

NEW RULE I FEE SCHEDULE

- | | |
|---|-------|
| (1) Application fee | \$500 |
| (2) Renewal fee | 250 |
| (3) Temporary license | 50 |
| (4) Additional standardized fees are specified in ARM 24.101.403. | |
| (5) All fees are nonrefundable. | |

AUTH: 37-1-134, 37-49-103, 37-49-201, MCA

IMP: 37-1-134, 37-49-103, 37-49-201, MCA

REASON: The department is adopting this new rule to set licensure fees and further implement House Bill 217. The department is required to set fees related to the program area that provide the amount of money needed for the operation of the program's services per 37-1-134, MCA. The legislation requires the department to license and regulate genetic counselors and the proposed fees will enable the department to meet this mandate. The department continuously monitors the budgets and spending of all licensure boards and programs, and will adjust this program's licensure fees through future rulemaking as needed. The department estimates that the proposed genetic counselor fees will affect approximately 108 applicants and renewing licensees for an annual revenue of \$36,900.

NEW RULE II CONTINUING EDUCATION REQUIREMENTS (1) The department will not pre-approve continuing education (CE) programs or sponsors.

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

- (a) directly relate to the scope of practice of genetic counseling as defined in 37-49-202, MCA;
 - (b) review existing concepts and techniques;
 - (c) convey information beyond the basic professional education;
 - (d) update knowledge on the practice and advances in genetic counseling;
 - (e) reinforce professional conduct or ethical obligations of the licensee;
- and/or
- (f) are conducted by an individual or group qualified by practical or academic experience.
- (3) Licensees must obtain 24 hours (60 minutes per hour) of CE annually, prior to renewal.
- (4) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as part of license renewal.
- (5) Continuing education requirements will not apply until after the licensee's first renewal.
- (6) The department may randomly audit up to 50 percent of renewed licensees.
- (7) Licensees must maintain documentation of completed CE for three years and provide documentation to the department upon request.
- (8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.
- (9) Licensees may request exemption from CE requirements due to hardship. Requests will be considered by the department.

AUTH: 37-49-103, MCA

IMP: 37-49-103, MCA

NEW RULE III UNPROFESSIONAL CONDUCT (1) In addition to the conduct specified in 37-1-410, MCA, the department defines unprofessional conduct for genetic counselors as follows:

- (a) violation of any state or federal statute or rule regulating the practice of genetic counseling;
- (b) incompetence, negligence, or use of any procedure in the practice of genetic counseling which creates an unreasonable risk of physical or mental harm or serious financial loss to the client;
- (c) failing to report the unsafe or unlicensed practice of genetic counseling to the department;
- (d) practice beyond the scope of practice of the license per 37-49-202, MCA;
- (e) failing to cooperate with an investigation by or request for information from the department;
- (f) failing to adequately supervise auxiliary staff; and
- (g) practicing genetic counseling while the license is inactive, expired, suspended, or revoked.

AUTH: 37-49-103, MCA

IMP: 37-49-103, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Genetic Counselors Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all program administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Genetic Counselors Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to cbaker@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Program staff attempted to contact the primary bill sponsor by telephone and e-mail on September 20, 2021, and by regular USPS mail on September 24, 2021.

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the department has determined that the adoption of NEW RULES I through III will not significantly and directly impact small businesses.

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

11. Department staff will preside over and conduct this hearing.

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

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

Certified to the Secretary of State October 26, 2021.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.2701 definitions,	)	PROPOSED AMENDMENT,
24.156.2711 ECP licensure	)	ADOPTION, AND REPEAL
qualifications, 24.156.2713 ECP)	
license application, 24.156.2718)	
continued competency requirements;)	
the adoption of NEW RULE I fee)	
schedule; and the repeal of)	
24.156.601, 24.156.631, 24.156.1002,)	
24.156.1302, 24.156.1402,)	
24.156.1618, 24.156.2731 fees, and)	
24.156.2721 final pre-licensing)	
examinations)	

TO: All Concerned Persons

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

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/85661080367>
Meeting ID: 856 6108 0367, Passcode: 403371
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 856 6108 0367, Passcode: 403371

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Samuel Hunthausen, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdmed@mt.gov (board's e-mail).

3. GENERAL REASON: The board determined it is reasonably necessary to amend several rules to eliminate the board's alternative written examination as a pathway to Emergency Care Provider (ECP) licensure and align examination and

continued competency standards with the National Registry of Emergency Medical Technicians (NREMT) requirements. Prompted by licensees' comments and staff recommendations, the board concluded that serious issues exist with the alternative written examination in its current form, including content quality, administration security, and lack of an accommodations process. The alternative written examination currently operates on an unsupported platform/website configured by a third-party vendor not under contract with the state. To address issues with the current examination and continue offering it as an option, the board would need to undertake a complete overhaul of the exam and how it is administered. Such an overhaul would include obtaining a psychometric evaluation of the examination, the cost of which would ultimately be passed on to licensees. To inform its decision, the board conducted a survey of licensees (ECPs, medical directors, and lead instructors) with questions regarding examination and continuing education. The board reviewed the survey results and data gathered by staff, including but not limited to geographic information of licensees utilizing the alternative written examination versus NREMT examinations and testing data. The board determined that elimination of the alternative written examination will not significantly reduce testing access for ECP applicants and will ultimately provide a consistent process and high-quality examination for licensee candidates in Montana. Alignment with this national organization promotes department goals of standardization, consistency, and efficiency gains by reducing state-level duplication of effort already occurring at the national organization. Additionally, alignment with NREMT promotes licensee mobility.

The board is also proposing a broad fee reduction and a fee schedule reorganization. The board's cash balance is in excess of its allowable legislative appropriation and renewal fees have already been 100% abated over the course of two fiscal years. A 25% fee reduction, recommended by the department's fiscal officer, is needed to reduce the risk of sweeping of funds and to more accurately assess application and license fees. Along with the reduction in fees, the board is proposing to repeal the current fee rules as separated by license type, and reorganize all board fees in a single consolidated fee schedule in NEW RULE I. These changes will greatly improve the fees' organization and make the rules more useful and efficient for the public and staff. Consolidation will also make future fee changes simpler and more efficient, as only one rule will require amendment. The board estimates the fee reductions will affect 24,332 licensees and license applicants and will decrease revenue by approximately \$3,825,000 over five years.

Accordingly, the board has determined there is reasonable necessity to generally amend, adopt, and repeal certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.156.2701 DEFINITIONS (1) through (1)(r) remain the same.

~~(s) "Refresher" means a program, training, or course that reviews and documents the knowledge and skills of an ECP's current licensure level.~~

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

AUTH: 37-3-203, 50-6-203, MCA

IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: The use of the terms "refresher" and "continuing education" creates licensee confusion because each term has a distinct meaning in the broader concept of continued competency. Because the National Registry of Emergency Medical Technicians (NREMT) does not refer to these terms separately and to align with proposed changes to ARM 24.156.2718, the board is striking the definition of "refresher."

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) The board shall license an applicant as an ECP at the appropriate licensure level if the applicant:

(a) remains the same.

(b) possesses a current active or inactive NREMT certification equal to or greater than the level applied for, ~~or successfully completes a written and practical third-party examination approved by the board,~~ or provides a current unrestricted substantially equivalent ECP license or certification in another state which has a complaint process;

(c) and (d) remain the same.

(2) If an applicant does not qualify for certification by NREMT, the board or its designee may approve the applicant to undergo an assessment exam administered by NREMT.

AUTH: 37-1-131, 50-6-203, MCA

IMP: 37-1-304, 50-6-203, MCA

REASON: To align licensure requirements with NREMT standards, the board is eliminating the alternative written examination as a licensing pathway from (1)(b). With the exam's elimination, the board determined it is reasonably necessary to establish a licensure avenue for applicants not meeting NREMT requirements and is adding (2) to provide for licensure via passage of an NREMT assessment exam.

24.156.2713 ECP LICENSE APPLICATION (1) An applicant for an initial ECP license, at any level, shall submit an application, the appropriate fees, and:

(a) remains the same.

(b) documentation of a current active or inactive NREMT certification equal to or greater than the level applied for, ~~or the successful completion of a board-approved written and practical third-party examination,~~ or current substantially equivalent licensure in another state.

(2) If an applicant does not qualify for certification by NREMT, the board or its designee may approve the applicant to undergo an assessment exam administered by NREMT.

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

~~(3)~~ (4) A current Montana ECP licensee who is applying for an ECP license at a greater level shall submit an application, the appropriate fees, and documentation of a current active or inactive NREMT certification equal to or greater than the level applied for, ~~or verification of the successful completion of a board-approved written and practical examination,~~ or current substantially equivalent licensure in another state.

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

AUTH: 37-1-131, 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: See REASON for ARM 24.156.2711.

24.156.2718 CONTINUING EDUCATION AND REFRESHER CONTINUED COMPETENCY REQUIREMENTS (1) All licensed ECPs are required to complete ~~continuing education (CE) and refresher~~ continued competency requirements prior to their license expiration date.

~~(a) EMRs must complete an EMR level refresher.~~

~~(b) EMTs must complete 48 hours of CE and an EMT refresher.~~

~~(c) AEMTs must complete 36 hours of CE and an AEMT refresher.~~

~~(d) Paramedics must complete 24 hours of CE and a paramedic refresher.~~

(2) Proof of completion shall be retained by the ECP and submitted to the department upon request in one of the following forms:

(a) a current active or inactive NREMT certification card; or

(b) a certificate of completion issued and signed by the lead instructor and/or medical director of the continued competency training.

~~(2) CE consists of topics contained within the current curriculum of the ECP licensure level.~~

~~(3) ECPs must complete a refresher in which a lead instructor or medical director validates knowledge and skills.~~

~~(a) An ECP may not meet refresher program requirements by combining CE courses;~~

~~(b) The refresher must assess the licensee's competency, demonstrated during the course, to function at the ECP license level in accordance with the scope of education and practice; and~~

~~(c) The refresher may be a course of instruction or a combination of quality improvement and quality assurance activities coordinated by an active local medical director, and the content must be structured to assess competency of the core knowledge and skills for the level of the ECP's license.~~

~~(4) ECPs certified by the NREMT may report completed CE and refresher credits to the NREMT for registration purposes and also to the board to meet, in whole or in part, the requirements of (1), (2), and (3).~~

(5) (3) The lead instructor is responsible for the quality, consistency, and management of the refresher continued competency training at the EMR and EMT levels and shall maintain records of all courses conducted including an agenda and detailed student performances that document the licensee's ability demonstrated during the refresher training.

~~(6)~~ (4) The medical director is responsible for the quality, consistency, and management of the ~~refresher~~ continued competency training at the EMT with endorsement(s), AEMT, and paramedic levels. The medical director may assign duties as appropriate, but retains the overall responsibility for the ~~refresher~~ training.

~~(7)~~ (5) All ECPs shall affirm understanding of their recurring duty to comply with ~~CE~~ continued competency requirements as part of license renewal.

(a) The ECP is responsible for maintaining documentation of completed ~~CE and refresher~~ continued competency training and their medical director's authorization/attestation of continued competence (including endorsement skills) on a board-approved form which shall be made available to the board upon request.

(b) The medical director may require the ECP to complete ~~additional CE hours or~~ training to ensure competency of endorsement skills.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board is amending this rule to also align continuing education (CE) requirements with NREMT standards. A June 2021 survey of medical directors and lead instructors indicated their support for CE requirements to align with NREMT. To ensure continued competency training requirements are the same regardless of whether a licensee is NREMT-certified or not, the board is amending (2) to provide completion options for both NREMT-certified licensees and licensees without the certification. To align with changes proposed to ARM 24.156.2701, the board is eliminating the terms "refresher" and "continuing education" and unifying the requirements under the concept of "continued competency."

5. The proposed new rule is as follows:

NEW RULE I FEE SCHEDULE (1) Initial license application fees:

(a) Physician license application fee	\$375
(b) Physician letter of qualification for interstate compact	225
(c) Resident	75
(d) Podiatrist	375
(e) Podiatrist ankle surgery certification	75
(f) Nutritionist	75
(g) Acupuncturist	75
(h) Physician assistant	375
(i) Emergency medical responder	20
(j) Emergency medical technician	35
(k) Advanced emergency medical technician	55
(l) Paramedic	75
(m) Emergency care provider endorsement—per submission (A single submission may include multiple endorsement applications from a single applicant.)	10
(2) License renewal application fees:	
(a) Physician (active status)	375
(b) Physician (inactive status)	190

(c) Resident	75
(d) Podiatrist (active status)	375
(e) Podiatrist (inactive status)	190
(f) Nutritionist	75
(g) Acupuncturist	75
(h) Physician assistant (active)	190
(i) Physician assistant (inactive)	115
(3) Inactive to active status conversion fees:	
(a) Physician	185
(b) Podiatrist	185
(c) Physician assistant	75
(4) Montana Health Corps Registration	25
(5) Additional standardized fees to be charged are specified in ARM 24.101.403.	
(6) All fees are nonrefundable.	

AUTH: 37-1-134, 37-3-203, 37-3-307, 37-3-308, 37-3-356, 37-3-802, 37-3-804, 37-6-106, 37-13-201, 37-20-202, 37-25-201, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, 37-3-804, 37-6-302, 37-13-302, 37-13-304, 37-20-302, 37-25-302, 50-6-203, MCA

REASON: See GENERAL REASON. To address ongoing questions to licensing staff, the board is clarifying in (1)(m) that ECP endorsement application fees are \$10 per submission, not per endorsement. The board is eliminating the \$25 supervision agreement fee for physician assistants (in ARM 24.156.1618) because a previous rules project replaced the board-member interview with automated educational modules, and the cost to process these applications now is minimal.

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

24.156.601 FEE SCHEDULE

AUTH: 37-1-134, 37-3-203, 37-3-307, 37-3-308, 37-3-356, MCA

IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, MCA

REASON: See REASON for NEW RULE I for the repeal of this rule and ARM 24.156.631, 24.156.1002, 24.156.1302, 24.156.1402, 24.156.1618, and 24.156.2731.

24.156.631 FEES

AUTH: 37-1-134, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-134, 37-3-804, MCA

24.156.1002 FEES

AUTH: 37-1-134, 37-6-106, MCA
IMP: 37-1-134, 37-1-141, 37-6-302, MCA

24.156.1302 FEES

AUTH: 37-1-134, 37-25-201, MCA
IMP: 37-1-134, 37-1-141, 37-25-302, MCA

24.156.1402 FEES

AUTH: 37-1-134, 37-13-201, MCA
IMP: 37-1-134, 37-1-141, 37-13-302, 37-13-304, MCA

24.156.1618 PHYSICIAN ASSISTANT FEES

AUTH: 37-1-134, 37-20-202, MCA
IMP: 37-1-134, 37-1-141, 37-20-302, MCA

24.156.2721 FINAL PRE-LICENSING EXAMINATIONS

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: The board is repealing this rule to align with the proposed elimination of the alternative written examination since all examination qualifications will be addressed in ARM 24.156.2711.

24.156.2731 FEES

AUTH: 37-1-134, 50-6-203, MCA
IMP: 37-1-134, 37-1-141, 50-6-203, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

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

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsmed@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.2701, 24.156.2711, 24.156.2713, and 24.156.2718 will not significantly and directly impact small businesses.

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

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.601, 24.156.631, 24.156.1002, 24.156.1302, 24.156.1402, 24.156.1618, 24.156.2721, and 24.156.2731, will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to dlibsmed@mt.gov.

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

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, R.D.
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 26, 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 37.87.903, 37.87.1801,	)	PROPOSED AMENDMENT
37.87.1802, 37.87.1803,)	
37.106.1955, 37.106.1956,)	
37.106.1960, 37.106.1961, and)	
37.106.1965 pertaining to)	
comprehensive school and)	
community treatment)	

TO: All Concerned Persons

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

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/87296632243>; meeting ID: 872 9663 2243; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 872 9663 2243. Find your local number: <https://mt-gov.zoom.us/j/kuNSGU51N>.

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 no later than 5:00 p.m. on November 17, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH,
AUTHORIZATION REQUIREMENTS (1) remains the same.

~~(2) Medicaid mental health services for youth requiring approval prior to treatment, prior authorization, or continued stay authorization is reimbursed only if the youth has been determined to have a serious emotional disturbance defined in the Manual adopted and incorporated by reference below, which has been verified by the department or its utilization review contractor.~~

(2) The department will reimburse providers of Medicaid mental health youth services if they meet the prior authorization or continued stay review requirements specified in the Children's Mental Health Medicaid Services Provider Manual, referenced in (7).

(3) through (6) remain the same.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Bureau, Medicaid Services Provider Manual (manual), dated ~~January 1, 2021~~ October 1, 2021, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated ~~January 1, 2021~~ October 1, 2021. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx>.

(8) and (9) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1801 COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REFERRALS (1) remains the same.

(2) Youth referred to the CSCT program must be served in sequential order as determined by the priorities below based upon acuity and need, regardless of payer:

(a) and (b) remain the same.

(c) the youth is currently receiving CSCT services and is transitioning to a new school or provider;

(c) through (e) remain the same but are renumbered (d) through (f).

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.1802 COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: CONTRACT REQUIREMENTS (1) remains the same.

(2) The licensed mental health center must ~~identify each school in which CSCT services will be provided, including:~~

~~(a) specific services to be provided;~~

~~(b) staffing by position and minimum qualifications; and~~

(c) provide a description of the mental health services provided by the licensed mental health center during and outside of normal classroom hours.

(3) remains the same.

(4) The school and licensed mental health center must specify a referral process to the CSCT program.

(5) The school and licensed mental health center must specify an enrollment process that:

(a) through (6) remain the same.

(7) The school and licensed mental health center must describe annual training offered to school personnel, parents, and students concerning the following:

(a) through (c) remain the same.

(d) information confidentiality and security requirements under the Family Education Rights and Privacy Act (FERPA), and Privacy and Security Rules issued under the Health Insurance Portability and Accountability Act (HIPPA HIPAA) Privacy and Security, and the Health Information Technology for Economic and Clinical Health Act (HITECH) Act.

(8) The contract must identify program data and information which will be shared between the school district and the licensed mental health center to evaluate program effectiveness to include ARM 37.106.1956~~(9)~~ (10).

(9) The contract ~~must include record keeping and management, billing procedures, and must state which party is~~ identify the responsible party for each requirement specified in this rule.

(10) remains the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.1803 COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REIMBURSEMENT (1) Comprehensive school and community treatment (CSCT) services delivered by a licensed mental health center with an endorsement under ARM 37.106.1955 must be billed under the school district's provider number. ~~Mental health services that are provided concurrently with CSCT are billed under the mental health center's provider number. Outpatient therapy codes may not be billed to Medicaid by CSCT staff concurrent with Medicaid for CSCT. CSCT staff may not bill Medicaid for other mental health center services or outpatient therapy. CSCT staff may only bill Medicaid for CSCT services.~~

(2) remains the same.

~~(3) One team with two full-time employees will not be reimbursed for more than 720 billing units per team per month. Services must be billed in the month the service is provided. The licensed or in-training mental health professional must provide at least 40 percent of the units billed by the team each month. Billing units are calculated based on the sum total of minutes each professional spent with the youth per day.~~

(3) One team with up to three employees will not be reimbursed for more than 360 service days per team per month.

(a) A service day is a minimum of 30 total minutes of core services provided by the CSCT team.

(i) Core services include intake and/or annual assessment, individual therapy, family therapy, group psychotherapy or psychoeducation, behavioral interventions, crisis response during typical working hours, and care coordination.

(ii) Care coordination may only be considered a core service and be billable if two other core services are provided within that week (with a week being the period from Monday to Sunday). Care coordination includes phone calls, treatment team meetings, individualized education program (IEP) meetings, referrals, and school advocacy for youth. Care coordination does not include documentation time.

~~(4) Up to 20 CSCT units ten service days per youth, per state fiscal year, may be billed for a an intervention, assessment, and if necessary, referral to other services. There is no limit on the number of youth that may be served. These units~~

~~must be billed as part of the 720 unit monthly team total. These service days must be billed as part of the 360 service days monthly team total.~~

(5) For a youth to qualify for more than ~~20 units~~ ten service days of CSCT, a full clinical assessment is required, and the youth must meet the SED criteria in ARM 37.87.903(8) identified in the Children's Mental Health Bureau Medicaid Services Provider Manual as referenced in ARM 37.87.903(7).

(6) remains the same.

(7) The school district or the contracted provider must bill for youth not eligible for Medicaid; ~~the~~ The school district may use a sliding-fee schedule.

(8) The school district must meet the ~~certification of match requirements~~ through the intergovernmental transfer (IGT) process.

~~(9) The school district must provide to the department a copy of the certification of match documentation as required by the department, annually.~~

~~(10) Failure to provide documentation to the department in accordance with reporting requirements in (9) may result in:~~

~~(a) suspension of CSCT services or termination of the CSCT program for the following school year; or~~

~~(b) cost recovery.~~

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1955 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) ENDORSEMENT REQUIREMENTS

(1) In addition to the requirements established in this subchapter, a licensed mental health center providing a comprehensive school and community treatment program (CSCT) must have a CSCT program endorsement issued by the department. To receive a CSCT program endorsement, the licensed mental health center must establish to the department's satisfaction that it meets the requirements stated in ~~these program rules~~ ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965.

(2) remains the same.

(3) The licensed mental health center must have a written contract with the school district in accordance with ARM 37.87.1802.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT), SERVICES AND STAFFING

(1) ~~For any youth receiving CSCT services, The~~ the CSCT program must be able to provide the following services, ~~as clinically indicated, to each youth as outlined specified in the~~ that youth's individualized treatment plan (ITP):

(a) individual, group, and family therapy;

(b) remains the same.

(c) other evidence and research-based practices effective in the treatment of youth with a serious emotional disturbance (SED);

(d) through (h) remain the same.

(i) continuous treatment that must be available twelve months of the year. The program must provide a minimum of ~~46 hours~~ four service days per month of CSCT services in summer months. For any youth who does not receive CSCT services in the summer, providers must document in the youth's medical record the reason why the youth did not receive such services, as well as a summary of attempts to engage the youth and family.

(2) CSCT services for youth with ~~serious emotional disturbance (SED)~~ must be provided according to an ~~individualized treatment plan~~ ITP designed by a licensed or in-training mental health professional who is a staff member of a CSCT program team.

(3) and (4) remain the same.

(5) The CSCT program must employ sufficient qualified staff to deliver all CSCT services to the youth as outlined in the ITP for the youth and in accordance with the contract between the school and the licensed mental health center.

(6) The CSCT team may be assigned to provide services in two schools if the CSCT team responds to crisis situations for youth enrolled in CSCT in each school building during typical school hours.

~~(6)~~ (7) The CSCT program must employ or contract with a program supervisor who has daily overall responsibility for the CSCT program and who is knowledgeable about the mental health service and support needs of the youth. The program supervisor may provide direct CSCT services, but this position may not fill the functions of the staff positions described in ~~(6)~~ (8) and ~~(7)~~ (9) for more than ~~three~~ six months.

~~(7)~~ (8) Each CSCT team must include a ~~full-time equivalent~~ mental health professional, who may be a licensed or in-training mental health professional, as defined in ARM 37.87.702(3). In-training mental health professionals must be:

(a) remains the same.

~~(b) licensed by the last day of the calendar year following the state fiscal year (July 1 through June 30) in which supervised hours were completed.~~

(b) supervised according to ARM 24.219.422.

~~(8)~~ (9) Each CSCT team ~~must include a full-time equivalent~~ may include up to two behavioral aides. A behavioral aide must work under the clinical oversight of a licensed mental health professional and provide services for which they have received training that do not duplicate the services of the licensed or in-training mental health professional. All behavioral aides initially employed after July 1, 2013 must have a high school diploma or a GED and at least two years:

(a) through (c) remain the same.

~~(9)~~ (10) The licensed mental health center CSCT program supervisor and an appropriate school district representative must meet regularly, at least ~~every 90 days~~ four times per calendar year, during the time period CSCT services are provided to mutually assess program effectiveness utilizing the following indicators:

(a) through (f) remain the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1960 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, PERSONNEL TRAINING

- (1) remains the same.
- (2) All CSCT program staff are required to receive a minimum of 18 hours of orientation training during the first three months of employment which addresses all of the following:
 - (a) through (d) remain the same.
 - (e) roles of ~~of~~ and responsibilities of CSCT staff in the school setting;
 - (f) through (i) remain the same.
- (3) All CSCT program staff are required to receive a minimum of 18 hours training per year in ~~behavior management strategies that focus on the prevention of behavior problems for topics that support staff competency in working with~~ youth with serious emotional disturbance (SED) to decrease severity of presenting symptoms. Training must include:
 - (a) and (b) remain the same.
 - (c) evidence and research-based ~~behavior~~ therapeutic interventions and practices; ~~and~~
 - (d) progress monitoring techniques to inform treatment decisions; and
 - (e) trauma-informed practices.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1961 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, RECORD REQUIREMENTS

- (1) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, the licensed mental health center's CSCT program must maintain the following records for youth with serious emotional disturbance (SED):
 - ~~(a) a written referral cosigned by the parent(s), legal representative, or guardian, which documents the reason for the referral;~~
 - ~~(b) (a)~~ a signed verification indicating the parent(s), legal representative, or guardian has been informed by the licensed mental health center that Medicaid requires coordination between CSCT, home support services, and outpatient therapy;
 - (c) through (e) remain the same but are renumbered (b) through (d).
 - (f) ~~(e)~~ 90-day treatment plan reviews; ~~and~~
 - ~~(g) (f)~~ discharge plan; and
 - (g) the Comprehensive School and Community Treatment Data Collection Template, that must be completed each March and September for each youth enrolled in CSCT and submitted to the Children's Mental Health Bureau by the licensed mental health center. The department adopts and incorporates by reference the Comprehensive School and Community Treatment Data Collection Template (form), dated November 1, 2021. A copy of this form may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT, 59604-4210 or at found at <https://dphhs.mt.gov/dsd/CMB/>.

(2) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, records for youth referred to CSCT regardless of their diagnosis as described in ARM 37.87.1803(4) must include the following:

~~(a) a written referral, signed by the person referring the youth and by the parent(s), legal representative, or guardian, which documents the reason for the referral;~~

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

(3) Records for youth referred to CSCT and denied acceptance into the program must include ~~the following:~~ documentation detailing the reason for the denial.

~~(a) a written referral, signed by the person referring the youth and by the parent(s), legal representative, or guardian, which documents the reason for the referral;~~

~~(b) documentation detailing the reason for the denial.~~

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1965 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, SPECIAL EDUCATION REQUIREMENTS (1) The licensed mental health center's CSCT program must be coordinated with the ~~special individualized~~ education program (IEP) of the youth, if the youth is identified as a child with a disability and is receiving special education services under the ~~individuals~~ Individuals with disabilities education act Disabilities Education Act (IDEA).

(2) The licensed or in-training mental health professional or behavioral aide, as appropriate, must attend the ~~individualized education plan (IEP)~~ meeting when requested by the parent(s)/legal representative/guardian or the school.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.903, 37.87.1801, 37.87.1802, 37.87.1803, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965.

The following summaries explain programmatic changes and the reasonable necessity for the proposed rule amendments.

Comprehensive School and Community Treatment for Youth with Serious Emotional Disturbances

The department's Children's Mental Health Bureau (CMHB) regularly conducts systematic review of its rules and services to reduce rule duplication, enhance the quality of services provided to youth and families while ensuring the program is

fiscally sound, give licensed mental health centers greater operational flexibilities, standardize assessment tools, implement outcome measurement reporting, and increase clarity in administrative rule.

CMHB worked in collaboration with the Behavioral Health Alliance of Montana (BHAM) and the Comprehensive School and Community Treatment (CSCT) program provider coalition to review the CSCT program for youth with serious emotional disturbance (SED). Based upon this joint review, CMHB proposes to amend the following rules: ARM 37.87.903, 37.87.1801, 37.87.1802, 37.87.1803, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965. The department proposes to amend the Children's Mental Health Bureau Medicaid Services Provider Manual (manual), adopted and incorporated by reference in ARM 37.87.903. The manual can be found at: <https://dphhs.mt.gov/dsd/CMB/Manuals>. The proposed manual amendments will aid implementation of, and align with, the redesigned CSCT program. These proposed changes, including amendments to the manual, will be retroactively dated to October 1, 2021. The proposals to the redesigned program contain the following components:

- a) Medical necessity criteria. The department proposes to use a new evidence-based standardized assessment tool for the CSCT program to determine eligibility for youth to receive services. This provision is found in the manual and completion of the assessment requirement will be effective April 1, 2022.
- b) Referral requirements. The department proposes to adjust the referral requirements to eliminate signed referral documents. It also proposes to adjust the referral requirement criteria for acuity and need to include youth currently receiving CSCT services.
- c) Outcome and program measurements. The department proposes to increase the use of new and existing measurements to inform decision-making and aid in external reporting of CMHB services. These measurements will serve as a tool for continuous program evaluation and improvement.
- d) Reimbursement limits. The department proposes to adjust reimbursement limits of one CSCT team of three members to no more than 360 service days each month.
- e) Service requirements. The department proposes eliminating the requirement for the CSCT clinician to provide 40% of the billable service.
- f) Core service requirements. The department proposes to implement core service requirements for providers to qualify for the daily rate. A youth must receive service from a CSCT provider for a minimum of 30 minutes. Core services include intake and/or annual assessment, individual therapy, family therapy, group psychotherapy or psychoeducation, behavioral interventions, crisis response during typical working hours, and care coordination. Care coordination may only be considered a core service and be billable if two other core services are provided within that week (Monday to Sunday). Care coordination includes phone calls, treatment team meetings, individualized education program (IEP) meetings, referrals, and school advocacy for youth. Care coordination does not include documentation time.

- g) CSCT team structure. The department proposes to increase flexibility in CSCT team structure. One team of up to three staff may provide services at two schools. The CSCT team must consist of one clinician and up to two behavioral aides.
- h) School collaboration. The department proposes to adjust the expectation that mental health center leadership meets with school administration from every 90 days to four times annually. This will increase scheduling flexibility.
- i) Continuous treatment. CSCT services are expected to be available to youth twelve months of the year. The department proposes to change the documentation requirement to include the reasons a youth who is enrolled in CSCT does not receive services during the summer and to include a summary of the licensed mental health center's attempts to engage the youth and family.
- j) Personnel training. The department proposes to adjust training requirements to include trauma-informed practices and topics supportive of staff increasing competency in working with youth with SED.

Home Support Services

The department proposes that CSCT program and Home Support Services (HSS) will be considered duplicative and reimbursement for concurrent CSCT and HSS will not be allowed without prior authorization. This prohibition will begin July 1, 2022. HSS will be provided in the home or community at minimum of 75% of the time.

These changes are found in the manual, dated October 1, 2021, adopted and incorporated by reference in ARM 37.87.903.

Rule Clean Up

The department proposes to eliminate references to repealed rules, update references to definitions, make grammar and punctuation edits, clarify roles and responsibilities, and use clarifying language that accurately reflects current practices. The following rule amendments enact these changes: ARM 37.87.903, 37.87.1802, 37.87.1803, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965.

Fiscal Impact

These proposed rule amendments have estimated costs listed in the table below for the changes related to the Comprehensive School and Community Treatment program. The required state share will be provided by local education agencies through intergovernmental transfer agreements.

The department proposes that the referenced rule amendments are to be retroactively effective to October 1, 2021. The department proposes that the changes related to the requirement to submit outcome measurements in ARM 37.106.1961 will be applied March 1, 2022.

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., December 3, 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, apply and have been fulfilled. The primary bill sponsor was notified by email and mail on October 20, 2021.

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.

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

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

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

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

Certified to the Secretary of State October 26, 2021.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.36.604 pertaining to) AMENDMENT
Montana telecommunications access)
program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rule.

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 November 12, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2020~~ 2021 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2020~~ 2021 annual poverty guidelines for families of various sizes is ~~shown in (2)~~ specified on the Montana Telecommunications Access Program website, effective on January 13, 2021, which rate is adopted and incorporated here by reference. A copy is available at <https://dphhs.mt.gov/detd/mtap/nocostassistiveequipment>, or may be obtained from the Department of Public Health and Human Services, Montana Telecommunications Access Program (MTAP), P.O. Box 4210, Helena MT 59604.

~~(2) 250% of the annual poverty guidelines is as follows:~~

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$31,900
Two	\$43,100

Three	\$54,300
Four	\$65,500
Five	\$76,700
Six	\$87,900
Seven	\$99,100
Eight	\$110,300
Each Additional Person, Add	\$11,200

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

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.36.604 to align the requirements for the Montana Telecommunications Access Program (MTAP) with the 2021 United States Department of Health and Human Services Federal Poverty Level (FPL) index guidelines.

The following describes the purpose and necessity of the proposed rule amendment pertaining to this rule:

ARM 37.36.604

The department is proposing to amend ARM 37.36.604, pertaining to MTAP financial eligibility criteria. This rule sets forth the criteria that allow the department to pay for services being made available to persons who are eligible for MTAP. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2020 United States Department of Health and Human Services poverty guidelines for households. This amendment would update the rule to coincide with 250% of the 2021 FPL.

The rule amendment would revise this level by replacing the year 2020 and revise the text contained in the ARM, removing the income limit calculations table, replacing it to indicate simply that the maximum level for income is 250% of the 2021 United States Department of Health and Human Services poverty guidelines for households, as detailed on the MTAP website, or by contacting MTAP. The detailed income calculations by family size would no longer be published within the rule. Instead, the updated, detailed income calculations by family size would be posted on

the MTAP website, the likeliest place members of the public applying for assistance would look for this information. During the public comment period the proposed rates would be placed on the MTAP website as "proposed," until approved and adopted.

Fiscal Impact

There would be no fiscal impact due to the increase in the FPL. A minimal number of clients that are served by the MTAP exceed the FPL. The majority are well under the FPL. An increase in the FPL would be very minimal and most likely not yield any additional costs to the MTAP program.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Heidi Clark, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 3, 2021. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Heidi Clark at the above address no later than 5:00 p.m., December 3, 2021.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 145 persons based on 1,449 with an open case currently being served by the program.

8. 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.

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

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

/s/ Aleea Sharp

Aleea Sharp
Rule Reviewer

/s/ Adam Meier

Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State October 26, 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 37.81.304 pertaining to the Big) PROPOSED AMENDMENT
Sky Rx benefit)

TO: All Concerned Persons

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

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89466934100>, meeting ID: 894 6693 4100 or

(b) Dial by telephone +1 646 558 8656, meeting ID: 894 6693 4100. Find your local number: <https://mt-gov.zoom.us/u/kb9BY5ti9B>.

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 November 15, 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:

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~\$38.00~~ \$38.90 per month. The benefit amount will not exceed ~~\$38.00~~ \$38.90 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~\$38.00~~ \$38.90 per month.

(b) Big Sky Rx does not pay for the cost of an enrollee's drugs or the cost of an enrollee's deductible, coinsurance, or copayments.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~\$38.00~~ \$38.90, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) Health Resources Division is proposing to amend ARM 37.81.304.

The Big Sky Rx program contributes to the cost of an eligible Montana resident's premium payment in a federally approved Medicare prescription drug plan (PDP). This rule proposal, if adopted, will increase the maximum amount that Big Sky Rx will contribute to pay the eligible enrollee's monthly premium for a PDP program from \$38.00 per month to \$38.90 per month. The department is proposing this change to match the federally established low income subsidy (LIS) monthly benefit benchmark.

Since the inception of Big Sky Rx, the benefit has mirrored the LIS premium benefit benchmark to ensure a reasonable and prudent monthly benefit for enrolled members.

Fiscal Impact

This rule proposal will affect 1,571 Montanans who will see an increase in the amount of monetary assistance from the Big Sky Rx program for their monthly PDP premium. This rule proposal will increase the state special fund spending by \$1,414 per month or \$16,968 on an annual basis.

The department intends to apply these proposed amendments effective to January 1, 2022.

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., December 3, 2021.

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

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

delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

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

/s/ 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 26, 2021.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 38.5.2202 and 38.5.2302) AMENDMENT
pertaining to pipeline safety)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On January 14, 2022, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation 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 Service Regulation no later than 5:00 p.m. on December 22, 2021, to advise us of the nature of the accommodation that you need. Please contact Loryn Johnson, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail loryn.johnson@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before October 30, ~~2020~~ 2021. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2020~~ 2021. A copy of the referenced CFRs is

available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at <https://www.phmsa.dot.gov/pipeline/annotated-regulations/49-cfr-199>.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail loryn.johnson@mt.gov and must be received no later than 5:00 p.m., January 7, 2022.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Loryn Johnson, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, or e-mail loryn.johnson@mt.gov to be received no later than 5:00 p.m., January 7, 2022.

7. If the department 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 2 entities, based on the 27 entities affected.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities,

providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to Loryn Johnson at (406) 444-7618, e-mailed to loryn.johnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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.

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

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
Chair
Public Service Commission

Certified to the Secretary of State October 26, 2021.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 38.5.2102 pertaining to utility	)	AMENDMENT
electricity voltage)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 14, 2022, the Department of Public Service Regulation proposes to amend the above-stated rule.

2. The Department of Public Service Regulation 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 Service Regulation no later than 5:00 p.m. on December 22, 2021, to advise us of the nature of the accommodation that you need. Please contact Loryn Johnson, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail loryn.johnson@mt.gov.

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

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in American National Standards Institute (ANSI) C84.1 ~~2016~~ 2020. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, Operations, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

(2) This rule shall not apply:

- (a) to transmission systems not used to directly serve customers;
- (b) where customers specifically request a voltage other than standard nominal system voltages as specified in ANSI C84.1; or
- (c) in instances where voltage is in excess of 34,500 volts.

AUTH: 69-3-103, MCA
IMP: 69-3-108, MCA

REASON: Amendment of ARM 38.5.2102 is necessary to allow the department to administer the most recent version of the ANSI's nominal voltage and permissible range of variation standards.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail loryn.johnson@mt.gov and must be received no later than 5:00 p.m., January 7, 2022.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Loryn Johnson, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, or e-mail loryn.johnson@mt.gov to be received no later than 5:00 p.m., January 7, 2022.

7. If the department 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 one entity, based on the two entities affected.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to Loryn Johnson at (406) 444-7618, e-mailed to loryn.johnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
Chair
Department of Public Service Regulation

Certified to the Secretary of State October 26, 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 XIII pertaining to the	)	PROPOSED ADOPTION
implementation of compliance and)	
enforcement requirements of the)	
Montana Marijuana Regulation and)	
Taxation Act and local-option)	
marijuana excise taxation)	

TO: All Concerned Persons

1. On November 30, 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 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 November 12, 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. The department proposes New Rules I through XII to implement necessary compliance and enforcement portions of the Act. The proposed new rules provide a uniform system for license and licensed premises compliance and enforcement within the authority of the department under the Act, which recognize the due process rights afforded to licensees under the Act, and provide for the impartial resolution of marijuana matter disputes between the department and licensees. New Rule XIII is proposed in this rulemaking to provide necessary guidance for localities and affected dispensaries of the department's proposed procedures and requirements for a local-option marijuana excise tax, authorized under Sections 94 through 98, HB 701 - codified as 16-12-309 through 16-12-317, MCA.

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 MARIJUANA DISPENSARY - POINT-OF-SALE SYSTEM

REQUIRED (1) A marijuana dispensary licensee must utilize a computer-based point-of-sale system when selling marijuana or marijuana products to a consumer or a registered cardholder. This point-of-sale system must accurately capture the following information for every transaction:

- (a) date of the sale;
- (b) name and type of product sold;
- (c) product category used in the seed-to-sale tracking system;
- (d) unit price of the marijuana or marijuana product that was sold;
- (e) quantity of marijuana or marijuana product sold;
- (f) amount and type of discounts applied, if applicable;
- (g) total amount of the sale;
- (h) tax collected - by type, rate, and amount;
- (i) registered cardholder number, if applicable; and
- (j) the identity of the employee who completed the transaction.

(2) The marijuana dispensary's point-of-sale system must be capable of interfacing with the seed-to-sale tracking system, and it must capture, in a readily accessible format, and in real time, the data described in (1)(a) through (j).

(3) A marijuana dispensary licensee must not retain any metadata captured by its point-of-sale system in accordance with 16-12-104, MCA.

(4) A licensed marijuana dispensary must have the required point-of-sale system in place and operational by April 1, 2022.

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-112, 16-12-210, 16-12-224, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule I to establish the requirement of a computer-based point-of-sale system and the information that a marijuana dispensary must capture for every purchase transaction.

The proposed rule requires a licensee to input inventory tracking data to evidence compliance with the retail sales restrictions described in 16-12-207, MCA; for inspection and information reporting purposes as required under 16-12-210, MCA; and to meet the public policy goals of the Act regarding the legal amounts of marijuana and marijuana products sold to consumers and registered cardholders in Montana.

NEW RULE II LICENSED PREMISES – MANDATORY SIGNAGE

(1) A marijuana business licensee must conspicuously display and make available its site identification certificate at each licensed premises.

(2) All marijuana business licensees, except for marijuana dispensaries, must conspicuously post a notice at each entry to a licensed premises that contains all of the following: "Persons under twenty-one years of age not permitted on these premises without a valid worker permit."

(3) All marijuana dispensaries must conspicuously post a notice or notices at each entry to the licensed premises that contains all of the following language:

(a) "Persons under twenty-one years of age not permitted on these premises without a valid registry identification card or valid worker permit. Registered cardholders under the age of 18 must be accompanied by a legal guardian."

(b) "No on-site consumption of marijuana or marijuana products." and

(c) "No on-site opening of marijuana or marijuana products."

(4) A marijuana business licensee that is not permitted to sell marijuana or marijuana products to adult use consumers, or a marijuana business licensee that elects not to sell marijuana or marijuana products to adult use consumers, must conspicuously post a notice at the entry to the licensed premises visible from outside that contains all of the following language: "This dispensary is licensed for medical marijuana sales only. No sales will be permitted without a valid registry identification card."

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-112, 16-12-203, 16-12-207, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule II to establish mandatory signage requirements for all marijuana businesses and to provide for license-specific variation.

The proposed signage requirements are authorized under the department's rulemaking authority for security and operating requirements for all licensees under the Act and are a compilation, such as the purpose of the Act found in 16-12-101(2)(d), MCA (to prevent the distribution of marijuana sold under this chapter to persons under 21 years of age). The basis and necessity for the requirements in proposed (2) and (3)(a) can be found in 16-12-207, MCA. The requirement in proposed (4) is necessary to clarify the operating conditions for a non-former medical marijuana licensee.

NEW RULE III LICENSED PREMISES – SECURITY REQUIREMENTS

(1) All licensees must have a written, proactive security plan maintained on the licensed premises that safeguards against theft, diversion, or tampering of marijuana or marijuana products both on the licensed premises and during transit, if applicable. The security plan must, at a minimum, contain the following policies or procedures of how a licensee:

(a) restricts access to the areas of the licensed premises containing marijuana or marijuana products to authorized persons only;

(b) provides for identification of authorized persons to be in the areas of the marijuana business that contain marijuana or marijuana products; and

(c) provides electronic monitoring of the licensed premises.

(2) A licensed premises must have only one single secure entrance to the building or licensed premises for public ingress and egress.

(3) A licensed premises must have a security alarm system on all perimeter entry points and perimeter windows, as applicable.

(4) A licensed premises must have a video monitoring system with cameras that:

- (a) have a minimum digital resolution of 640 x 470 pixels or pixel equivalent for analog;
 - (b) record continuously twenty-four hours per day at a minimum of ten frames per second;
 - (c) are placed to allow for optimal identification of any person and activities in limited access areas; and
 - (d) are placed to record all entrances and exits to an indoor facility from both indoor and outdoor vantage points.
- (5) The video monitoring system described in (4) must also:
- (a) include a recording storage device secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect against employee tampering or criminal theft;
 - (b) keep all recordings for a minimum of 90 days; and
 - (c) record images with clear and accurate date and time display.
- (6) All monitoring system videos are subject to inspection by the department and must be copied and provided to the department upon request.
- (7) Sections (3) through (6) will not be required until April 1, 2022.

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-112, 16-12-202, 16-12-207, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule III to implement the portions of the Act which require minimum premises security systems of all marijuana businesses.

Section 16-12-101, MCA, lists a purpose of the Act is to ensure the security of a licensed premises. Section 16-12-112, MCA, also authorizes the department to adopt rules in connection with safety and security requirements for licensees.

The department proposes (1) to require all licensees adopt a written security plan that details the licensee's efforts to prevent loss of marijuana and marijuana products and deter unauthorized entrance. The requirement implements the security measures described throughout the Act, but are specifically mentioned in 16-12-207 and 16-12-222, MCA.

Similarly to proposed (1), proposed (2) reiterates the premises requirement for a single, secured entrance found in 16-12-207(9), MCA, and clarifies that it is for public ingress and egress.

Section (3) is proposed to require licensees to install security alarm systems which are an extension of electronic monitoring of a licensed premises.

Section 16-12-207(10), MCA, also requires that each marijuana business install a video monitoring system that must, at a minimum, allow for the transmission and storage, by digital means, of a video feed that displays the interior and exterior of the marijuana business. The department proposes to adopt these requirements in proposed (4) through (6).

Section (7) proposes a deferred date of requirement for (3) through (6) to provide licensees sufficient time to bring a licensed premises into compliance.

NEW RULE IV VIOLATIONS, PROCEDURES, AGGRAVATING AND MITIGATING CIRCUMSTANCES

(1) Evidence of violation by a licensee, a licensee's agent, or an employee of a licensee of any of the provisions of the marijuana laws is sufficient grounds for a warning, reprimand, suspension, revocation, and/or the assessment of a civil penalty in accordance with 16-12-109, MCA.

(2) Whenever the department seeks to impose a reprimand, suspension, revocation, and/or the assessment of a civil penalty in accordance with 16-12-109, MCA, the department shall serve a licensee with a notice of proposed department action. The notice of proposed department action shall, at a minimum:

- (a) state the allegations;
- (b) identify dates or approximate dates of the alleged incident;
- (c) cite the specific statute, rule, or local ordinance that the alleged incident violates;
- (d) list each alleged violation as a separate count;
- (e) identify the penalty that the department seeks to impose; and
- (f) provide the licensee with appeal rights, including the right to request an administrative hearing before the department's Office of Dispute Resolution.

(3) Notwithstanding the provisions of (2)(f), whenever the department proposes revocation of a marijuana testing laboratory license, that proposed department action is subject to judicial review in accordance with 16-12-202(10), MCA.

(4) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time, or revocation. In addition to those identified in 16-12-109, MCA, aggravating circumstances include, but are not limited to:

- (a) no effort on the part of a licensee to prevent a violation from occurring;
- (b) a licensee's failure to report a violation at the time of renewal;
- (c) involvement of a licensee in the violation;
- (d) repeated violations for sales to underage or intoxicated persons;
- (e) providing marijuana or marijuana products to a person under 18 years of age that is not a registered cardholder;
- (f) lack of cooperation by a licensee in an investigation;
- (g) a violation's significant negative effect on the health and welfare of the community in which a licensee operates; and
- (h) prior violations of the marijuana laws.

(5) Mitigating circumstances may result in the adjustment of monetary penalties, amount of suspension time, or in a determination not to revoke. In addition to those identified in 16-12-109, MCA, mitigating circumstances include, but are not limited to:

- (a) the admissions of a licensee regarding violations of the marijuana laws prior to the department commencing investigation of the licensee;
 - (b) the existence of written policies that govern the conduct of a licensee's employees; or
 - (c) three or more years without a violation of the marijuana laws.
- (6) Ignorance of the law is not considered a mitigating circumstance.
- (7) In the event a reprimand is issued:

- (a) the incident shall be considered a prior violation; and
- (b) the department shall assess a civil penalty, described in [NEW RULE VIII].

AUTH: 16-12-112, MCA

IMP: 16-12-109, 16-12-112, 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IV to provide license violation and department procedures, including the department's consideration of aggravating and mitigating circumstances.

Section (1) provides the types of violation penalties that are described in 16-12-109, MCA, and clarifies that violations are considered based on the evidence.

Section (2) is proposed and necessary as guidance to describe that the department will issue a notice of proposed department action (PDA) and the subsections of (2) contain the elements of a PDA.

Proposed (3) reflects the statutory appeal rights exception for a marijuana testing laboratory, and that an adverse department action is subject to judicial review.

Sections (4) through (6) are necessary guidance for licensees and the department and describe the general criteria that are applied to violation matters, and when aggravating or mitigating circumstances will be considered. In particular, (4)(e) is a standalone aggravating circumstance because public safety policies of the Act address sales to minors under 18 years of age more harshly than sales to minors between 18 and 21 years of age.

Section (7) provides a simple process that describes the procedural aspects of how the department proposes to resolve violations through a licensee reprimand and provides a necessary cross reference to the civil penalties described in NEW RULE VIII which are related to the issuance of a reprimand in a violation.

NEW RULE V SUSPENSION AND REVOCATION OF A LICENSE (1) The department may suspend a license for any period of time not to exceed one year.

(2) The department shall revoke the license or licenses of a licensee that commits the offenses stated in 16-12-109(5), MCA, and for a marijuana testing laboratory, the offenses stated in 16-12-202(9), MCA. The department may revoke the license or licenses of a licensee that commits other violations of the marijuana laws.

(3) When determining the length of suspension or whether to revoke a license or licenses, the department shall consider aggravating and mitigating circumstances and the severity of the violation or violations as set forth in [NEW RULE IV].

(4) A license suspension shall be effective at each licensed premises that is the subject of the violation or violations resulting in the suspension.

(5) During a suspension, a licensee and its employees may not operate the licensed premises that is subject to the suspension. The suspended licensee may not sell, deliver, service, remove, transport, or receive marijuana or marijuana products or otherwise engage in business from the licensed premises. The

department may negotiate terms with a licensee to prevent the potential loss of marijuana or marijuana products during a suspension.

(6) During a suspension, a licensee and its employees must obey the marijuana laws, including compliance with the tax and reporting laws provided in 15-64-102 through 15-64-106, MCA.

(7) A suspended licensed premises remains subject to inspection under 16-12-210, MCA.

(8) If a license is due for renewal during a suspension, a licensee must submit a renewal application including payment of applicable fees to avoid lapse of the license. The department shall not approve a renewal application with respect to the suspended licensed premises until the suspension has expired.

(9) If the department receives an application for renewal during a suspension, the time allowances in 16-12-104, MCA, will not begin with respect to the suspended licensed premises until the suspension expires.

(10) A suspension does not alter a license's renewal date.

(11) The department shall inspect all suspended licensed premises before a licensee can resume operations.

(12) When a license has been revoked, the department shall not accept an application from the person or persons qualified for licensure pursuant to 16-12-109(6), MCA, for three years from the date of revocation. After the three-year moratorium, an application will only be accepted if the applicant demonstrates to the department that sufficient steps have been taken to prevent future violations of the marijuana laws.

AUTH: 16-12-112, 16-12-210, MCA

IMP: 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule V to describe the process when the department pursues either the suspension or revocation of a license as the penalty for license violation(s).

Section (1) contains the authorization in 16-12-210, MCA, that a suspension of a license can be for a period of up to one year. Section (2) is proposed to recognize and affirm the statutory offenses involved in license revocations and reserves the department's right to pursue revocation for other violations of the marijuana laws.

Section (3) affirms that aggravating and mitigating circumstances and the severity of the violation are considerations in determining a suspension like other proposed penalties. Section (4) is necessary to describe what suspension means for licensees with multiple licensed premises. Section (5) provides necessary guidance regarding operational restrictions for a licensee during any suspension, and (6) and (7) require continued compliance of the marijuana laws and tax reporting laws by a licensee during the suspension and confirm the opportunity for inspection during the inspection.

Proposed (8) through (10) are necessary to address logistics of license suspensions during a license renewal period. Section (11) requires inspection of a licensed premises at the conclusion of a suspension to ensure that the licensee has

cured the violation(s) that gave rise to the suspension or to confirm that the licensee is otherwise in full compliance with the marijuana laws. Section (12) is proposed as necessary reiteration of the statutory application moratorium for applicants whose license has been revoked by the department. The reference in rule is intended to provide licensees with improved understanding of the subject matter.

NEW RULE VI SERVICE OF NOTICES (1) A notice of proposed department action issued pursuant to 16-12-112, MCA, shall be served upon the licensee by sending a copy of the notice to the licensee by electronic means to the email address on file with the department.

(2) Service shall be considered complete upon transmission but is not effective if the department learns that the notice did not reach the licensee, in which case the department will proceed with service of notice provided in (3).

(3) If a licensee has previously opted out of receiving department communications by electronic means, the notice shall be served by sending a copy of the notice to the licensee by certified mail to the mailing address on file with the department. Whenever the department serves a notice via certified mail:

(a) service shall be considered complete three days after mailing the notice;
(b) service shall not be considered incomplete because of refusal to accept delivery of the notice.

(4) A licensee must respond to the department in writing within 20 days of service of the notice of proposed department action. Failure to respond will result in enforcement of the administration action proposed in the notice.

AUTH: 16-12-112, MCA
IMP: 2-4-601, 16-12-112, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VI to inform marijuana licensees of its method of service of notices, such as proposed department actions (PDAs) used in adverse licensing matters (i.e., violations). Section 16-12-112(1)(f), MCA, allows the department to prescribe the manner of giving and serving notices. Section 2-4-601, MCA, requires reasonable notice for a licensee to respond to a proposed adverse action notice.

Sections (1) and (2) are necessary to prescribe that the service of department notices shall be by electronic means and when delivery is considered complete. Section (3) describes service when the licensee has opted out of electronic communications.

Section 2-4-601, MCA, requires that reasonable notice be provided to parties against whom administrative action is proposed. The department considers 20 days to be reasonable notice and proposes that time period in (4). Section (4) also provides information to a licensee of the consequences for failure to respond to the department's notice.

NEW RULE VII SUSPENSION OR REVOCATION OF WORKER PERMITS

(1) Whenever the department seeks to suspend or revoke the permit of any marijuana worker, the department shall serve the marijuana worker with a notice of

proposed department action, as provided in [NEW RULE IV]. The notice of proposed department action shall, at a minimum:

- (a) identify dates or approximate dates of the alleged incident;
- (b) cite the specific statute, rule, or local ordinance that the alleged incident violates;
- (c) list each alleged violation as a separate count;
- (d) identify which penalty that the department seeks to impose; and
- (e) provide the marijuana worker with appeal rights, including the right to request an administrative hearing before the department's Office of Dispute Resolution.

(2) The following are grounds for suspension or revocation of a worker permit:

- (a) conviction, guilty plea, or plea of no contest to a criminal offense within three years of the application or renewal;
- (b) conviction, guilty plea, or plea of no contest to a citation for selling or dispensing alcohol or tobacco products to a minor;
- (c) conviction, guilty plea, or plea of no contest to violating a marijuana law of any other state; or
- (d) violation of any provision of the marijuana laws.

(3) The department shall revoke a marijuana worker permit if the worker knowingly sells, delivers, transfers, or makes available marijuana or a marijuana product to a person under 21 years of age. This section does not apply to sales, deliveries, or transfers to registered cardholders.

AUTH: 16-12-112, MCA

IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VII to provide marijuana worker permit violation and department procedures.

Section (1) provides the department's authority to suspend or revoke a marijuana worker permit under 16-12-109, MCA, and describes that the department will issue a notice of proposed department action (PDA) and the subsections of (1) contain the elements of a PDA.

Section (2) is proposed and necessary as guidance to the department's implementation of 16-12-226, MCA.

Proposed (3) provides guidance to marijuana workers that unlawful sales of marijuana or a marijuana product to a person under 21 years of age will subject the marijuana worker's permit to revocation pursuant to 16-12-109(5)(f), MCA.

NEW RULE VIII CIVIL PENALTIES (1) When determining the amount of civil penalty imposed pursuant to 16-12-109, MCA, and rules of the department, the department shall consider aggravating and mitigating circumstances and the severity of the violation or violations as set forth in [NEW RULE IV].

(2) Upon reprimand or suspension of a license, the department shall also impose a civil penalty of not less than \$100 and not more than \$3,000 per violation.

(3) If a civil penalty is imposed in conjunction with a suspension, the licensee may not resume operations until it has paid the penalty in full.

(4) Failure to pay a civil penalty shall be considered a violation of department rule and could subject the licensee to further administrative proceedings.

AUTH: 16-12-112, MCA

IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VIII to describe those instances when payment of a civil penalty shall be imposed by the department on a licensee in addition to the reprimand or suspension of license. Section (1) is necessary guidance for licensees and the department and describes the general criteria that are applied to a violation matter when civil penalties are pursued by the department and when aggravating or mitigating circumstances will be considered.

The penalty amounts in proposed (2) are authorized under 16-12-109, MCA, and are necessary to include in the implementation of this rule.

Sections (3) and (4) are proposed and provide necessary compliance measures to ensure a licensee's payment of a civil penalty.

NEW RULE IX NOTICE POSTING PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any marijuana business license is suspended or revoked by the department, the department shall provide a written notice to the licensee and require the licensee to post the notice on the inside of the licensed premises so that it can be seen from the outside. The notice shall state, for the benefit of the public, that the license has been suspended or revoked. The notice must identify the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice must be dated and signed. In the case of a license suspension, the notice must be posted at all times during the suspension. In the case of a revocation, the notice must be posted on the licensed premises for ten days.

(2) If a notice is removed or caused to be removed by a licensee or its employee or agent during a suspension, the license shall be subject to revocation. A licensee or its employees may not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than what is stated on the notice.

(3) The license or licenses suspended will be held by the department during the period of suspension.

AUTH: 16-12-112, MCA

IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IX to provide required department procedures pertaining to the public notice of a licensee's suspension or revocation. Similar to alcoholic beverage or gambling

operator license suspensions or revocations, the department believes New Rule IX is necessary and advisable for public notification through posting of a notice of suspension or revocation on the licensee's place of business. If public notice of a licensee's suspension or revocation were absent, the public would not know if the licensee with whom they are conducting business is in good standing with the department or the reasons why the license has been suspended or revoked.

NEW RULE X INSPECTIONS (1) Subject to the authority and restrictions under 16-12-210, MCA, the department may conduct inspections to determine compliance with the marijuana laws.

(2) The department may conduct the following types of inspections:

- (a) initial application;
- (b) renewal application;
- (c) licensure level increase;
- (d) complaint;
- (e) deficiency follow-up; and
- (f) suspension expiration.

(3) A licensee and its employees must cooperate with the department during an inspection. A licensee must allow inspectors full access to the licensed premises, provide requested copies of documents or videos, and allow inspectors to complete an inspection. Failure on the part of a licensee to cooperate could result in denial, reprimand, suspension, or revocation of a license.

(4) If a department inspection reveals that an applicant or licensee is not in compliance with the marijuana laws, the department shall:

- (a) issue a deficiency report pursuant to [NEW RULE XI] to notify the applicant or licensee of the specific deficiencies or errors; or
- (b) issue a notice of proposed department action.

AUTH: 16-12-112, 16-12-224, MCA

IMP: 16-12-101, 16-12-202, 16-12-203, 16-12-204, 16-12-208, 16-12-210, 16-12-223, 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 fulfill the purpose of the Act to " . . . establish inspection requirements for licensees. . ." See 16-12-101(2)(h), MCA. The department is proposing general inspections requirements that are authorized under the Act and which are described in the implementing statutes for the rule.

Section (1) describes that the department inspections are inspections of a licensee or licensee's premises to determine compliance with the marijuana laws. Section (2) is necessary to describe the types of inspections authorized by the department. Section (3) requires licensing compliance, through a degree of cooperation, when a department inspector presents themselves. Section (3) defines what cooperation is for the purpose of this rule, the lack of which may constitute a violation against the license. Lastly, proposed (4) provides procedural context for licensees as to possible next steps after inspection reveals noncompliance with the marijuana laws.

NEW RULE XI DEFICIENCY REPORTS (1) The department may issue a deficiency report to a licensee whenever a department inspection or compliance audit reveals a licensee is in violation of the marijuana laws. The purpose of the deficiency report is to afford licensees with an opportunity to cure deficiencies and avoid administrative proceedings before the department's Office of Dispute Resolution.

(2) A deficiency report shall, at a minimum:

- (a) identify the date of the inspection;
- (b) identify the name of the inspector;
- (c) identify the deficiencies discovered during the inspection; and
- (d) cite the specific statute, rule, or local ordinance that the deficiency

violates.

(3) A licensee shall have ten days from the date of the deficiency report to cure any deficiencies.

(a) If a licensee can show proof of having cured the deficiencies through photographs, document submissions, or through other correspondence, the licensee shall submit the proof to the department.

(b) If an inspection is required to determine whether a licensee has cured deficiencies, the licensee shall contact the department to schedule a follow-up inspection within ten days from the date of the deficiency report.

(4) If a licensee cures the identified deficiencies, the department will send the licensee a deficiency resolution letter which informs the licensee that the department will close out the deficiency and take no further action on the deficiency report.

(5) If a licensee fails to respond to a deficiency report within ten days, the department may issue a notice of proposed department action.

(6) Nothing in this rule prevents the department from proceeding immediately to administrative proceedings without issuing a deficiency report.

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XI to formalize a prior informal Department of Public Health and Human Services marijuana program procedure regarding deficient licensee inspections. As stated in (1), the purpose of the deficiency report procedure - and of the rule - is to afford licensees with an opportunity to cure deficiencies and avoid more formal corrective proceedings with the department. Because the procedure was widely supported by licensees and inspectors, the department proposes formal adoption of the procedure through rulemaking.

Section (2) is necessary to describe what minimum information a deficiency report shall contain. Without this necessary information, a licensee will not know which deficiencies have been discovered during the inspection.

Section (3) provides a proposed amount of time for the licensee to cure the stated deficiencies. The department contends that ten days is sufficient time to cure the types of deficiencies that are covered under this type of a report.

Section (4) describes what occurs when a licensee has cured the deficiencies stated in their report and that the department will close the matter.

In the event the deficiency is greater in scope, is more serious, or the licensee fails to respond to the deficiency report, the department proposes in (5) that it may proceed with a notice of proposed department action, or in (6), that the department reserves the right to immediately proceed to administrative proceedings against the license.

NEW RULE XII GENERAL LICENSEE REQUIREMENTS (1) A licensee must ensure that all employees wear a department-issued worker permit in a clearly visible manner on the outermost layer of clothing while working on behalf of the licensee. A licensee is responsible for the security of all marijuana and marijuana products on a licensed premises, during transit, and under the supervision of the licensee or its employee until the marijuana or marijuana product is sold.

(2) A licensee is responsible for ensuring the department has a current and working email address and a current and valid mailing address on file to receive department correspondence.

(3) A licensee is responsible for providing the department with its hours of operation for each licensed premises. A licensee or its employee must be on-site during hours of operation and must make the licensed premises available to department inspectors during those hours.

(4) A licensee must use a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101 whenever marijuana is:

- (a) packaged for sale by weight;
- (b) bought and sold by weight; and
- (c) weighed for entry into the seed-to-sale tracking system.

(5) A licensee must establish and maintain and make available for department inspection at all licensed premises written emergency procedures to be followed in case of a fire, chemical spill, or other emergency.

(6) A licensee must maintain and make available for department inspection at all licensed premises the following documentation or information in a single binder, file, or other organized and readily accessible format:

- (a) proof that any signage at the licensed premises complies with local jurisdiction sign ordinances and regulations;
- (b) proof that licensees and employees of licensees are current on the required trainings;
- (c) the emergency procedures required by (5);
- (d) the written security plan required by [NEW RULE III(1)];
- (e) for marijuana manufacturer licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE II(16)]; and
- (f) for marijuana cultivator licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE III(8)].

AUTH: 16-12-112, MCA

IMP: 16-12-112, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XII to provide general licensee requirements guidance that applies to all marijuana business licensees, excepting those items in (6)(e) and (f) which specifically cross reference manufacturers and cultivators.

The adoption of New Rule XII provides all licensees, in a single rule, with a requirements and documentation inventory that corresponds to operational compliance under the marijuana laws.

Sections (1) through (3) are necessary extensions of operational and security authority of the department under 16-12-112, MCA.

Section (4) requires conforming weights and measures devices under the authority of the Department of Labor and Industry whenever the measurement of marijuana is weight-based, such as described in (4)(a) through (c). The requirement for licensed weighing machines is routine for consumer protection because it ensures greater accuracy in the measurement.

Sections (5) and (6) represent the documents and disclosures that a licensee is most often requested to produce by a department inspector or local government official. Department notification of these requirements in the rule is necessary and advisable.

NEW RULE XIII LOCAL-OPTION MARIJUANA EXCISE TAX; NOTIFICATION REQUIREMENTS OF A LOCALITY; AFFECTED DISPENSARY REPORTING AND TAX PAYMENT REQUIREMENTS (1) If a locality adopts a local-option marijuana excise tax pursuant to 16-12-309 through 16-12-317, MCA, the taxes are imposed on the purchaser, as defined in 15-64-101(5), MCA, and must be collected by an affected dispensary at the time of sale. For the purpose of this rule, an "affected dispensary" means a dispensary located within the jurisdiction of a locality with a local-option marijuana excise tax.

(2) A locality is required to notify the department of the adoption of a local-option marijuana excise tax at least 90 days prior to its effective date.

(a) If the locality complies with this requirement, then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, and the locality notified the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation date is December 31, 2022.

(b) If a locality fails to comply with this requirement, then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the subsequent calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, but the locality did not notify the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation is March 30, 2023.

(3) How, or whether, a locality fulfills (2) does not change an affected dispensary's obligation to collect a local-option marijuana excise tax from all purchasers as of the effective date of the tax.

(4) When filing a quarterly report pursuant to 15-64-102(4), MCA, and submitting payment of quarterly taxes pursuant to 15-64-102(5), MCA, an affected dispensary must also specify the local-option marijuana excise tax rate the dispensary applied to its sales during the subject calendar quarter together with the total dollar amount of local-option taxes that were collected.

(5) A local-option marijuana excise tax and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(6) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state the local-option marijuana excise tax provided in 16-12-309 through -16-12-317, MCA, and this rule, who fails to pay the tax is liable to the state for the taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements or pay taxes due required by statute and this rule;

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(7) In determining which corporate officer is liable, the department may consider any other available information and is not limited to this rule to establish individual liability.

(8) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity.

(9) The periods of limitations and procedures relating to deficiency assessments, estimating taxes, refunds, and collection of delinquent local-option

marijuana excise taxes are the same as those provided in 15-64-104 through 15-64-106, and 15-64-110, MCA.

(10) An affected dispensary which does not file a timely report or does not pay all local-option marijuana excise taxes when due, as required by statute and this rule, is subject to the penalty and interest provisions contained in 15-1-216, MCA.

(11) In addition to any other remedy, the department may collect delinquent local-option marijuana excise taxes in accordance with the procedures set forth in ARM 42.2.520. An affected dispensary has the right to a review of the tax liability prior to any offset by the department.

(12) If all or any part of the local-option marijuana excise taxes imposed by 16-12-309 through 16-12-317, MCA, are not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7, MCA.

AUTH: 15-1-201, 16-12-312, MCA

IMP: 15-64-104, 15-64-105, 15-64-106, 16-12-309, 16-12-310, 16-12-311, 16-12-312, 16-12-317, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XIII to implement the department's administration of a local-option marijuana excise tax. Section 16-12-312, MCA, requires the department to adopt rules to ensure that the local-option marijuana excise tax is timely collected by the affected dispensary and remitted to the agency.

New Rule XIII links the collection, remittance, and payment of local-option marijuana excise tax to the other marijuana taxes that an affected dispensary will be collecting and does so by adopting a quarterly reporting and remittance schedule. An affected dispensary will, therefore, be remitting local-option taxes to the department at the same time, and on the same form as the other marijuana taxes. New Rule XIII also provides the administrative procedures governing the local-option excise tax, identifies the responsible parties, and explains the implications for failing to comply with these regulatory requirements. For consistency purposes, these procedures mirror those that exist for the other marijuana taxes imposed on the business.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 6, 2021.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which

includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Hopkins, was contacted by email on October 26, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules may significantly and directly impact small businesses, but any such 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 26, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.4.803 and 42.4.804 pertaining to innovative educational program donations to school districts and student scholarship organizations (SSO))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT
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TO: All Concerned Persons

1. On November 29, 2021, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and 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 November 12, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

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

(1) "School district," for the purposes of this rule, means a Montana public elementary school district or public high school district, or any of the three state-funded public schools: Montana School for the Deaf and Blind, the Department of Corrections – adult school, and the Department of Corrections – youth school.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I to implement statutory changes enacted by the 67th Montana Legislature under House Bill 279 (HB 279). HB 279 amended 15-30-3110, MCA, to include school districts as eligible recipients for innovative educational program donations. The department must provide a definition for "school district" for these rules which is applied somewhat differently than the term found in Title 20, MCA. The definition will provide persons applying for the educational tax credits with appropriate context and scope of applicability.

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

42.4.803 SCHOOL DISTRICT AND STUDENT SCHOLARSHIP ORGANIZATION (SSO) REQUIREMENTS AND PREAPPROVAL PROCESS

~~(1) An organization seeking approval as a student scholarship organization shall complete and submit to the department an online application prior to accepting donations. This application is located on the department's web site at svc.mt.gov/dor/educationdonations. The student scholarship organization shall include the following information on the application:~~

~~(a) the student scholarship organization's name, address, and federal employer identification number;~~

~~(b) the student scholarship organization's representative's name, title, phone number, and e-mail address; and~~

~~(c) a list of all qualified education providers who may receive scholarships from the student scholarship organization on behalf of students.~~

~~(2) A student scholarship organization may provide scholarships only to an eligible student who attends a Montana school or is taught by a qualified education provider in Montana.~~

~~(3) Pursuant to 15-30-3103, MCA, a minimum of 90 percent of all contributions received by a student scholarship organization, after the cost of the fiscal review in 15-30-3105, MCA, must be awarded as scholarships within the three calendar years following the year of the contributions. For example, if a student scholarship organization received \$105,000 in contributions in 2017 and the cost of the fiscal review is \$5,000, the student scholarship organization must award at least \$90,000 of those contributions as scholarships before the end of 2020.~~

(1) Prior to registering a donation with the department, a school district or SSO shall submit a complete application to the department. The application is located on the department's website at the education donations portal. The application must include the following information:

(a) the school district or SSO name, address, and federal employer identification number; and

(b) the school district or SSO donation manager's name, title, phone number, and e-mail address.

(2) A school district or SSO must register each donation, upon receipt, in the department's registration system. Preapproval of the amount of donation eligible for the credit will be provided at the time the school district or SSO registers the donation in the department's registration system.

(3) With respect to the aggregate limit of tax credits allowed for a year, the priority of donations is based upon the date stamp issued by the department's registration system when a school district or SSO completes registration of the donation. Donations made in excess of the aggregate limits and credit cap, which is the amount of the credit provided under 15-30-3110 and 15-30-3111, MCA, will not be eligible for the tax credit.

(4) The department will certify to a school district or SSO the amount of credit available to the taxpayer when the school district or SSO completes the registration

of the donation in the department's registration system.

AUTH: 15-1-201, 15-30-3114, MCA

IMP: 15-30-3102, 15-30-3103, 15-30-3105, 15-30-3106, MCA

REASONABLE NECESSITY: As described in the statement of reasonable necessity for New Rule I, the department also proposes to amend ARM 42.4.803 to implement HB 279. To implement HB 279 in this rule, the department proposes to strike the existing provisions in current (1) through (3) to reflect the new donation preapproval and registration process. In proposed (1), the department would require a school district or student scholarship organization (SSO) to apply for recognition with the department prior to registering a prospective donation. Proposed (1)(a) and (b) detail the registration sought by the department from a school district or SSO.

Proposed (2) and (3) describe the preapproval procedure for the credit and donation registration system, how the department will determine priority for donations, and the certification that the department will provide to a school district or SSO upon registration of the donation. Proposed (4) provides procedural guidance as to what occurs after the school district or SSO completes the registration of the donation.

42.4.804 CREDIT LIMITATIONS AND CLAIMS (1) A taxpayer may claim a credit for contributions made in cash to an innovative educational program a school district provided for in 20-9-901, MCA, and/or a student scholarship organizations (SSO), provided for in ~~15-30-3104~~ 15-30-3110, MCA. A contribution made in cash means:

- (a) U.S. currency;
- (b) a personal check;
- (c) cashier's check;
- (d) money order;
- (e) bank draft; or
- (f) traveler's check.

(2) The maximum credit that may be claimed in a tax year ~~by a taxpayer by~~ an individual taxpayer or a corporation for allowable contributions to:

- (a) innovative education programs a school district is \$150 \$200,000; and
 - (b) student scholarship organizations an SSO is \$150 \$200,000.
- (3) and (4) remain the same.

AUTH: 15-1-201, 15-30-3114, MCA

IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: As described in the statement of reasonable necessity for New Rule I and ARM 42.4.803, the department also proposes to amend ARM 42.4.804 to implement HB 279. Section 15-30-3102(2), MCA, was amended to define a "donation" as a gift of cash. Proposed (1) enumerates those items included within the definition of cash to provide direction on the types of acceptable donor payments. In addition, HB 279 amended 15-30-3110 and 15-30-3111, MCA, to increase the credit per person for donations made to a school district

and/or an SSO from \$150 to \$200,000. The change proposed in (2) is to clarify that an individual or corporation cannot use a pass-through entity to reserve or claim more than \$200,000 of credit for a donation to a school district or SSO. The increased limit is reflected in proposed (2)(a) and (b).

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than December 6, 2021.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on October 20, 2021.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart
David R. Stewart, authorized signor
for the Department of Revenue

Certified to the Secretary of State October 26, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.39.106, 42.39.107,	)	PROPOSED AMENDMENT AND
42.39.117, 42.39.118, 42.39.202,	)	REPEAL
42.39.203, 42.39.310, 42.39.311,)	
42.39.312 and the repeal of ARM)	
42.39.103, 42.39.108, 42.39.111,)	
42.39.113, 42.39.114, 42.39.119,)	
42.39.201, 42.39.301, 42.39.302,)	
42.39.305, 42.39.306, and 42.39.313)	
pertaining to medical marijuana)	
program rules and the)	
implementation of the Montana)	
Marijuana Regulation and Taxation)	
Act)	

TO: All Concerned Persons

1. On November 30, 2021, at 11:30 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 amendment and repeal 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 November 12, 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, codified at 16-12-101, *et. seq.*, MCA (MRTA), and transfers substantive portions of the Montana Medical Marijuana Act, formerly in Title 50, chapter 46, part 3, MCA, into the MRTA.

The department proposes to amend and repeal the above-described rules, as applicable, to reflect the substantive changes made to the marijuana statutes, to implement the repeal of the Montana Medical Marijuana Act, and to remove redundant or superfluous provisions from what is found in the MRTA or the department's other rules, including those rules pending adoption in the department's concurrent rulemaking under MAR Notice Nos. 42-1033 and 42-1040. The

department also proposes to amend rule sections for brevity and content organization and to improve the general readability of the rules.

Based on the statutory transfer and repeal described above, it is also necessary for the department to update internal cross references, where necessary, and amend the authorizing and implementing authority statutes to those in the MRTA for the remaining rules to comply with 2-4-305, MCA.

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

42.39.106 REGISTERED CARDHOLDER APPLICATION PROCESS (1) An applicant must be a resident of the State of Montana ~~under 1-1-215, MCA.~~

(2) and (3) remain the same.

(4) The registry identification card expires one year from the date of issuance ~~with the exception of the following:~~

~~(a) unless the physician statement provides a written certification for a shorter period of time; or,~~

~~(b) a registered cardholder changes provider or marijuana-infused products provider.~~

~~(5) Renewal applications must be submitted within 30 calendar days prior to the expiration date of the license. A physician statement must be dated within 60 days of the application date. The department shall deny an application submitted with a physician statement dated more than 60 days from the application date.~~

(6) remains the same.

(7) A registered cardholder who submits a renewal application less than 30 days prior to the registry identification card's expiration date assumes the risk and possibility of the card expiring until the department processes and approves the renewal application.

~~(7) (8)~~ A custodial parent or legal guardian may submit an application for a minor under ~~50-46-307~~ 16-12-508, MCA.

AUTH: ~~50-46-344, 16-12-112, MCA~~

IMP: ~~50-46-303, 50-46-307, 50-46-310, 50-46-344~~ 16-12-112, 16-12-503, 16-12-508, 16-12-509, MCA

42.39.107 LICENSE AND ENDORSEMENT APPLICATION PROCESS

(1) An applicant must be a resident of the State of Montana ~~under 1-1-215, MCA.~~

(2) remains the same.

~~(3) A complete application must include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.~~

~~(4) Applicants include, but are not limited to:~~

~~(a) any individual or legal entity who holds or controls an interest, ownership, or partnership in the business or entity;~~

~~(b) all directors; and~~

~~(c) principal officers of corporate applicants.~~

~~(5)~~ (3) The licenses will expire one year from the date of issuance, except for marijuana transporter licenses which expire two years from the date of issuance.

~~(6)~~ (4) Renewal applications must be submitted at least 30 calendar 60 days prior to the expiration date of the license.

~~(7)~~ (5) The department will approve or deny an a new application within 30 calendar 120 days of receiving a complete application and will approve or deny a renewal application within 60 days of receiving a complete application. An application is considered complete when the applicant or licensee, as applicable, has provided all statements, forms, diagrams, operation plans, and other applicable documents required in the application and has paid the nonrefundable processing fee pursuant to [MAR Notice No. 42-1033, NEW RULE I(2)] and has paid the remaining balance of the license fee upon notification by the department of its pending approval.

~~(6)~~ If a renewal application is received less than 60 days prior to license expiration, the department will process the application, but the licensee assumes the risk and possibility of having to suspend operations until the department processes and approves the renewal application.

~~(8)~~ remains the same but is renumbered (7).

~~(9)~~ (8) Prior to issuing a license or endorsement, the department will inspect the proposed premises to determine if the applicant complies with these rules and Montana statute the marijuana laws.

~~(10)~~ remains the same but is renumbered (9).

~~(11)~~ If a renewal application is received within 30 days of expiration, the department may process the application.

~~(12)~~ (10) The department will not consider a renewal applications received more than 30 days after the license or endorsement expiration date, in which case the license will lapse.

~~(11)~~ The department will not amend or extend a license's expiration date unless the licensee can demonstrate that its failure to timely submit a renewal application was due to circumstances beyond its control.

~~(13)~~ An applicant or licensee may request a chemical manufacturing endorsement or dispensary license upon submission of an initial application or at any time following licensure.

~~(14)~~ Chemical manufacturing endorsements and dispensary licenses issued under this rule will expire the same date of the provider license or marijuana-infused product provider license.

~~(15)~~ (12) A licensee:

~~(a)~~ may not operate until on or after the effective date of the license,; and

~~(b)~~ must display proof of licensure in a prominent place on the registered premises.

~~(16)~~ A license or endorsement may not be sold or transferred.

~~(17)~~ (13) Any denial under this part these rules is subject to judicial review a contested case hearing before the department's Office of Dispute Resolution, as provided for under ARM 42.2.621.

AUTH: ~~50-46-344, 16-12-112, MCA~~

IMP: ~~50-46-303, 50-46-308, 50-46-309, 50-46-344, 16-12-112, 16-12-201, 16-~~

12-203, 16-12-503, MCA

42.39.117 DENIAL OF REGISTRY IDENTIFICATION CARD APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD (1) The department, after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

- (a) remains the same.
 - (b) the department determines the information provided in the application was inaccurate, misleading, or falsified;
 - (c) remains the same.
 - (d) the applicant or registered cardholder does not have, or no longer has, a debilitating medical condition as defined in ~~50-46-302~~ 16-12-102, MCA;
 - (e) and (f) remain the same.
 - ~~(g) the applicant or registered cardholder has been convicted of driving under the influence of alcohol or drugs under 50-46-320, MCA;~~
 - ~~(h) (g)~~ the applicant or registered cardholder is found to be in violation of ~~50-46-330~~ 16-12-523, MCA;
 - ~~(i) the department is notified in writing by a property owner revoking permission under 50-46-307, MCA;~~
 - (j) and (k) remain the same but are renumbered (h) and (i).
 - ~~(l) (j)~~ the cardholder violates the daily possession or purchase limitations contained in ~~50-46-319~~ 16-12-515, MCA; or
 - ~~(m) (k)~~ the registered cardholder is found to be in violation of any provision under Title ~~50~~ 16, chapter ~~46~~ 12, part ~~3~~ 5, MCA.
- (2) remains the same.

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: 16-12-108, 16-12-112, 16-12-203, 16-12-503, 16-12-515, 45-9-203, 50-46-303, 50-46-308, 50-46-319, 50-46-320, 50-46-344, 61-11-101, MCA

42.39.118 LEGAL PROTECTIONS—ALLOWABLE AMOUNTS ~~(1) A registered cardholder who has not elected to obtain marijuana or marijuana-infused products through the system of licensed providers may possess up to 16 ounces of usable marijuana at their registered physical address reported on their registry identification card and 1 usable ounce at any location other than the registered physical address reported on their registry identification card.~~

~~(2) (1)~~ A registered cardholder may submit a petition for an increase in the monthly purchase limits defined in ~~50-46-319~~ 16-12-505, MCA, on a form approved by the department and submitted through the licensing system.

(a) remains the same.

(b) The department may approve increases to the monthly purchase limits up to a maximum of 8 ounces of usable marijuana or the equivalent in marijuana-infused products as described in ~~(3)~~ (2).

~~(3) (2)~~ Usable marijuana may be in the form of flower, or ~~marijuana-infused products, or concentrates.~~ The following conversion shall be used to determine the allowable amounts of non-flower marijuana:

(a) remains the same.

(b) A registered cardholder may purchase or possess any combination of marijuana flower, ~~or marijuana-infused products, and marijuana concentrate~~ if the total calculated conversion is equal to or less than the legal purchase or possession amount.

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344~~ 16-12-112, 16-12-207, 16-12-210, 16-12-301, 16-12-503, 16-12-515, MCA

42.39.202 INVENTORY SEED-TO-SALE TRACKING SYSTEM USER REQUIREMENTS (1) A licensee must have a department inventory seed-to-sale tracking system account activated and functional prior to operating or exercising any privileges of the license and must maintain an active account while licensed.

(2) Additional licensees or licensee employees may be authorized to obtain inventory seed-to-sale tracking system user accounts.

(3) To obtain and maintain an inventory a seed-to-sale tracking system user account, a licensee or licensee employee must successfully complete all required department inventory seed-to-sale tracking system training.

(4) An individual entering data into the inventory seed-to-sale tracking system may only use that individual's inventory seed-to-sale tracking system account.

(5) A licensee must ensure:

(a) all inventory seed-to-sale tracking system users are up to date on inventory seed-to-sale tracking system user training requirements; and

(b) any data that is entered into the inventory seed-to-sale tracking system in error is corrected.

(6) A licensee and any designated inventory seed-to-sale tracking system user must enter data into the inventory seed-to-sale tracking system that accounts for all inventory seed-to-sale tracking activities.

(7) A licensee is accountable for all actions inventory seed-to-sale tracking system users take while logged into the inventory seed-to-sale tracking system.

(8) A licensee is responsible for the accuracy of all information entered into the inventory seed-to-sale tracking system.

(9) Nothing in this rule prohibits a licensee from using secondary separate software applications to collect information to be used by the business, including secondary inventory tracking or point-of-sale systems.

(10) If a licensee uses a separate software application that links to the inventory seed-to-sale tracking system it must get approval from the inventory seed-to-sale tracking system vendor contracting with the department and the software application must:

(a) accurately transfer all relevant inventory tracking system data to and from the inventory seed-to-sale tracking system; and

(b) preserve original inventory seed-to-sale tracking system data when transferred to and from a secondary application.

(11) If a licensee loses access to the inventory seed-to-sale tracking system, the licensee must keep and maintain comprehensive records detailing all tracking seed-to-sale inventory activities that were conducted during the loss of access.

(12) Once access is restored, all inventory seed-to-sale tracking activities that occurred during the loss of access must be entered into the inventory seed-to-sale tracking system.

(13) A licensee must document when access to the inventory seed-to-sale tracking system was lost and when it was restored.

(14) All compliance notifications from the inventory seed-to-sale tracking system must be resolved in a timely fashion.

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329, 16-12-105, 16-12-112, 16-12-203~~, MCA

42.39.203 INVENTORY SEED-TO-SALE TRACKING AND RECONCILIATION (1) A licensee must use the department's ~~selected~~ inventory seed-to-sale tracking system as the primary inventory and record keeping system.

(2) Each individual marijuana plant that reaches a height of twelve inches must be issued a unique identification number in the inventory seed-to-sale tracking system, which follows the plant through all phases of production and final sale to a registered cardholder.

(3) All marijuana items, test batches, harvest lots, and process lots must be issued a unique identification number in the inventory seed-to-sale tracking system.

(4) through (6) remain the same.

(7) Licensees must use unique identification tags provided by the department purchased from the seed-to-sale tracking system vendor.

(8) All on-premises and in-transit marijuana item inventories must be reconciled in the inventory seed-to-sale tracking system at the close of business each day.

(9) For each marijuana sale or transfer to a registered cardholder, the licensee or ~~licensee~~ its employee must:

(a) verify the registered cardholder's eligibility and daily and monthly purchase limits: and

(i) ~~A licensee may not complete a sale that exceeds a registered cardholder's daily or monthly purchase limit.~~

(b) record in the seed-to-sale tracking system at the time of sale or transfer:

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

(iii) (c) the date of the sale or transfer to a registered cardholder customer.

(10) Licensees must record in the seed-to-sale tracking system:

(a) through (c) remain the same.

(d) weight and disposal of post-harvest waste materials, per the requirements described in ARM 42.39.310;

(e) through (13) remain the same.

~~(14) All transport manifests must be generated by the seed-to-sale tracking system and contain all the information required by these rules.~~

~~(15) A receiving location must document in the seed-to-sale tracking system any marijuana items received and any discrepancies between the quantity specified in the transport manifest and the quantities received.~~

AUTH: 50-46-344 16-12-112, MCA

IMP: ~~50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329 16-12-105, 16-12-108, 16-12-112, 16-12-203, 16-12-209, 16-12-210, 16-12-515~~, MCA

42.39.310 WASTE MANAGEMENT (1) and (2) remain the same.

~~(3) A licensee must render marijuana plant waste unusable by:~~

~~(a) grinding or otherwise rendering the waste unrecognizable and mixing it with at least 50 percent nonmarijuana waste by volume before disposal; or~~

~~(b) grinding, compacting, or chopping the waste into pieces smaller than three inches.~~

~~(4) A licensee may create compostable mixed waste for compost feedstock or another organic waste, such as an anaerobic digester, by mixing marijuana plant waste with food waste, yard waste, or vegetable based grease or oils.~~

~~(5) A licensee may create noncompostable mixed waste to be disposed in a landfill or another disposal method, such as an incinerator, by mixing marijuana plant waste with paper waste, cardboard waste, plastic waste, or soil.~~

~~(6) remains the same but is renumbered (3).~~

(4) The allowable method to render a marijuana item unusable is by grinding (for solids) and incorporating or absorbing (for liquids) the marijuana item with other ground materials so the resulting mixture is undesirable, unrecognizable, unfit for human use, and incapable of growth or germination. For whole marijuana plants, the resulting mixture must be at least 50 percent nonmarijuana waste by volume.

(5) For purposes of this rule, "use" includes, but is not limited to, ingestion, inhalation, topical application, processing, or remediation.

(6) Nonhazardous marijuana waste shall be disposed of as follows:

<u>Marijuana Item</u>	<u>Destruction Method</u>	<u>Disposal Method</u>
<u>Marijuana plants</u>	<u>Mix with yard debris, wood chips, sawdust, soil, manure, vegetable-based grease or oils, other wastes</u>	<u>Compost or anaerobic digester, if available, off site</u>
<u>Usable marijuana</u>	<u>Mix with yard debris, wood chips, sawdust, soil, manure, vegetable-based grease or oils, other wastes</u>	<u>Landfill, transfer station, or incinerator, if composing not available or feasible</u>
<u>Liquid concentrate, extracts, or infused products</u>	<u>Absorb in cat litter, slack lime, soil, or similar substance</u>	<u>Landfill, transfer station, or incinerator</u>
<u>Solid concentrate, extracts, or infused products</u>	<u>Mix with soil, slack lime, garbage, or similar substance</u>	<u>Landfill, transfer station, or incinerator</u>

(7) Marijuana testing laboratories, marijuana manufacturers, and other licensees that generate hazardous waste shall follow all applicable rules and

regulations for the disposal of hazardous waste, including ARM 17.53.105 and 17.53.113. Licensees need to contact the Department of Environmental Quality Hazardous Waste Program for assistance.

~~(7)~~ (8) A licensee must maintain accurate and comprehensive records regarding waste material in the seed-to-sale tracking system that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana to include:

- (a) ~~items~~ what was disposed;
- (b) remains the same.
- (c) date disposed; and
- ~~(d) disposal method;~~
- ~~(e)~~ (d) reason for the disposal; and
- ~~(f) identity of the individual who disposed the waste; and~~
- ~~(g) record of the destination of marijuana waste rendered unusable.~~
- (8) remains the same but is renumbered (9).

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-303, 50-46-308, 50-46-311~~ 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

42.39.311 REPORTING REQUIREMENTS (1) A registered cardholder must notify the department within ten ~~calendar~~ days of any changes in the following:

- (a) remains the same.
- (b) referral physician; or
- ~~(c) provider or marijuana-infused products provider; or~~
- (d) remains the same but is renumbered (c).

~~(2) A registered cardholder that is their own provider, must notify the department ten calendar days prior to the change in location of plants or seedlings.~~

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

~~(4)~~ (3) A licensee must notify the department within ~~30 calendar~~ ten days of any changes in the following:

(a) anyone identified as an applicant or controlling beneficial owner or anyone with a financial interest in the license;

- (b) operating hours;

(b) and (c) remain the same but are renumbered (c) and (d).

~~(5)~~ (4) A licensee who wishes to change the location of a registered licensed premises must submit a completed application for the new premises including all required forms, documents, and fees.

~~(6)~~ (5) A licensee who intends to make any material or substantial changes to the registered licensed premises must submit the changes to the department for approval prior to making any such changes. Material or substantial changes include:

(a) any increase or decrease in the total physical size or capacity of the registered licensed premises;

- (b) and (c) remain the same.

~~(7)~~ (6) A licensee must notify the department as soon as reasonably practical but in no case more than 24 hours following the theft of marijuana items or money from the registered licensed premises.

AUTH: ~~50-46-344~~ 16-12-112, 16-12-533, MCA

IMP: ~~50-46-303, 50-46-307, 50-46-308, 50-46-311~~ 16-12-112, 16-12-202, 16-12-203, 16-12-503, 16-12-508, 16-12-533, MCA

42.39.312 MARIJUANA ITEM RECALLS ~~(1) The department may require a licensee to recall any marijuana item that the licensee has sold or transferred to a registered cardholder that poses a risk to public health and safety.~~

~~(2) A recall may be based on evidence that a usable marijuana item is contaminated or otherwise unfit for human use, consumption, or application.~~

~~(3) If the department determines that a recall is required, the licensee must notify the registered cardholder or cardholders to whom the marijuana item was sold and destroy the recalled product.~~

(1) For purposes of this rule, the following definitions apply:

(a) "affected licensee" means a licensee whose marijuana or marijuana products are subject to a recall. More than one licensee may be an affected licensee in a recall;

(b) "affected product" means marijuana or a marijuana product subject to a recall.

(2) A recall is required when marijuana or marijuana products pose a risk to public health and safety. A recall shall be based on evidence that marijuana or a marijuana product is contaminated or otherwise unfit for human use, consumption, or application.

(3) A licensee must develop a recall plan that establishes the procedures the licensee will follow in the event of a recall of its product or products. A recall plan must, at a minimum:

(a) designate a member of the licensee's staff who serves as the licensee's recall coordinator;

(b) establish procedures for identifying and isolating product to prevent or minimize its distribution to customers;

(c) establish procedures to retrieve and destroy product; and

(d) establish a communications plan to notify those affected by the recall, including:

(i) how the affected licensee will notify registered cardholders and other licensees in possession of affected product; and

(ii) the use of a press release and other appropriate notifications to ensure customers are notified of the recall and affected product information.

(4) If the department or the Department of Public Health and Human Services determines that a recall is required, an affected licensee shall:

(a) immediately notify registered cardholders and other licensees that received the affected product;

(b) immediately issue a press release or other appropriate public notification to inform customers of the recall and identifying information about the affected product recalled;

(c) provide the department with a copy of the press release or other appropriate public notification in (4)(b);

(d) post on its website, if applicable, information about the recall and the affected product; and

(e) perform a causation analysis to determine the issue or issues leading to the recall and provide to the department a corrective action report and preventative action report, as both are defined by the Department of Public Health and Human Services, which details how the affected licensee plans to correct and prevent future recalls

(5) An affected licensee must coordinate with the department for destruction of the affected product and allow the department to oversee the destruction.

(6) An affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must periodically report to the department on the progress of the recall efforts.

(7) If an affected licensee determines that a recall is required, it must immediately notify the department. The affected licensee must then follow the procedures established in (4) through (6).

(8) If the department determines that a recall is successful, and the risk to public health and safety is no longer present, the department shall notify the affected licensee and close the recall.

(9) The department shall maintain a marijuana recall page on its website of all current recalls.

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-326~~ 16-12-105, 16-12-112, 16-12-209, MCA

5. The department proposes to repeal the following rules:

42.39.103 PROOF OF MONTANA RESIDENCY

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

42.39.108 FEES

AUTH: 50-46-344, MCA

IMP: 50-46-344, MCA

42.39.111 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

42.39.113 MARIJUANA EMPLOYEE PERMIT

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

42.39.114 TRANSPORTATION AND DELIVERY OF MARIJUANA ITEMS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329,
MCA

42.39.119 DENIAL OR REVOCATION OF APPLICATION, LICENSE, OR
ENDORSEMENT

AUTH: 50-46-344, MCA

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

42.39.201 PRODUCING MARIJUANA-INFUSED PRODUCTS,
CONCENTRATES, AND EXTRACTS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-328, 50-46-329, 50-46-330,
MCA

42.39.301 LABELING OF MARIJUANA ITEMS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-326, MCA

42.39.302 PACKAGING FOR SALE TO CONSUMER

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-326, MCA

42.39.305 QUALITY ASSURANCE TESTING SAMPLE REQUIREMENTS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, 50-46-329, MCA

42.39.306 QUALITY ASSURANCE TESTING REQUIREMENTS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, MCA

42.39.313 INSPECTIONS

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-312, 50-46-319, 50-46-328, 50-
46-329, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 6, 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 of HB 701, Representative Hopkins, was contacted by email on October 26, 2021.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules may significantly and directly impact small businesses, but any such 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 26, 2021.

BEFORE THE BURIAL PRESERVATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
2.65.306 pertaining to permits for)
scientific analysis)

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 10, 2021, the Department of Administration published MAR Notice No. 2-65-620 pertaining to the proposed amendment of the above-stated rule at page 1092 of the 2021 Montana Administrative Register, Issue Number 17.
2. The department has amended the above-stated rule as proposed.
3. No comments and testimony were received.

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

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

Certified to the Secretary of State October 26, 2021.

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

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

TO: All Concerned Persons

1. On September 10, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-21-378 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1098 of the 2021 Montana Administrative Register, Issue Number 17.

2. The department held a public hearing in Helena on October 12, 2021, over the Zoom videoconference and telephonic platform at which members of the public commented. Written comments were received during the public comment period.

3. The department has thoroughly considered the comments made to MAR Notice No. 24-21-378. The department has determined that it is in the best interest of all parties to proceed only with the amendments to ARM 24.21.102 and adoption of New Rules I through IV that pertain to department recognition of pre-apprenticeship programs. The department shall submit a new proposal notice amending the apprenticeship-to-journeyworker ratio and variances in ARM 24.21.1003; therefore, no comments pertaining to apprenticeship-to-journeyworker ratio and variances are addressed herein.

4. A summary of the comments and the department's responses to comments pertaining to the adoption of the pre-apprenticeship program rules are as follows:

COMMENT 1: A commenter proposed that a sponsor employer should not be allowed to request a 30-day extension of the time that a pre-apprentice may work in a calendar year before the pre-apprentice counts towards the apprentice-to-journeyworker ratio under ARM 24.21.1003.

RESPONSE 1: The department acknowledges the comment. The department determines that this is a reasonable change to the rules to ensure quality training and safety on the job site for all parties. New Rule III (24.21.1207) is amended below.

COMMENT 2: A commenter proposed that participants in the pre-apprenticeship program should be paid pursuant to 39-6-108, MCA, apprentice wage rate.

RESPONSE 2: The department acknowledges the comment. The apprentice wage rate set by 39-6-108, MCA, is only applicable to "an apprentice employed for construction services, as defined in 18-2-104;" 39-6-108(1), MCA. "'Construction services' means work performed by an individual in building construction, heavy construction, highway construction, and remodeling work . . . The term does not include . . . engineering, superintendence, management, office, or clerical work on a public works contract[.]" 18-2-104(3)(a) through (b)(i), MCA. The apprentice wage rate set by 39-6-108(1), MCA, also does not apply to "[w]ages paid under an individual's written apprenticeship agreement registered with the department as of October 1, 2006[.]" 39-6-108(3), MCA.

Many sponsor employers in the department's Registered Apprenticeship Program are not engaged in construction services, and 39-6-108, MCA, does not apply to occupations outside construction services. As of October 2021, registered apprentices are working in occupations including nursing assistants, medical records specialists, medical transcriptionists, health technologists, phlebotomists, childcare workers, bookkeepers, computer-support specialists, computer programmers, accounting and auditing clerks, shoe and leather workers, health education specialists, interior designers, cooks and restaurant workers, beer brewers, paralegals, legal assistants, butchers and meat cutters, musicians and singers, and travel agents. The department seeks to maintain flexibility in the type of workforce training programs and occupations that may develop pre-apprenticeship programs. Because the wages paid to pre-apprentices are not all subject to the requirements of 39-6-108, MCA, the department shall not include this requirement in rule.

Wages for pre-apprentices shall be established by department policy. When reviewing a pre-apprenticeship program for recognition, the department shall review the pre-apprenticeship wage rate in relation to the occupation's established wage scales, applicable laws, rules, and industry standards.

COMMENT 3: A commenter proposed that a sponsor employer for a pre-apprenticeship program must have at least a 60% completion rate of all past and current apprentices to qualify as a sponsor employer for pre-apprenticeship programs.

RESPONSE 3: The department acknowledges the comment. The department seeks to maintain flexibility in the type of workforce training programs and occupations that may develop pre-apprenticeship programs. To maintain this flexibility, the department stated in NEW RULE II (ARM 24.21.1203(1)) that "[t]he department may consider any relevant information when reviewing the program's recognition application." This information may include information maintained by the department, such as a sponsor employer's completion rate of past and current apprentices. The department shall not require sponsor employers to demonstrate specific past completion rates for apprentices due to the wide variety of occupations that participate in the department's Registered Apprenticeship Program.

COMMENT 4: A commenter proposed that participants in a pre-apprenticeship program shall be issued a card stating the name of the sponsor employer and the start dates and end dates of the pre-apprenticeship program.

RESPONSE 4: The department acknowledges the comment. Due to the wide variety of occupations and programs involved in the department's Registered Apprenticeship Program, the department shall consider the types of documentation necessary for pre-apprentices as a matter of department policy. The department shall issue appropriate documentation specific to each type of occupation and workforce training program seeking recognition of a pre-apprenticeship program.

5. The department has adopted New Rule I (24.21.1201), New Rule II (24.21.1203), and New Rule IV (24.21.1209) as proposed.

6. The department has amended ARM 24.21.102 and New Rule III (24.21.1207) with the following changes, stricken matter interlined, new matter underlined:

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

(1) and (2) remain as proposed.

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

(4) through (8) remain as proposed but are renumbered (3) through (7).

AUTH: 39-6-101, MCA

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

REASON: There is a reasonable necessity to remove the definition for "apprentice-to-journey worker occupations" from the proposed amendments to ARM 24.21.102 because the definition does not apply to New Rules I through IV, department recognition of pre-apprenticeship programs. The definitions for "Apprenticeship articulation agreement" in ARM 24.21.102(2) and "Pre-apprenticeship" in ARM 24.21.102(4) remain as proposed.

NEW RULE III (24.21.1207) PROGRAM RECOGNITION AND APPRENTICESHIP ARTICULATION AGREEMENT (1) through (2)(b) remain as proposed.

(c) the sponsor employer may employ one pre-apprentice, who shall not be counted towards the traditional apprentice ratio under ARM 24.21.1003, for a period of not more than 100 days from January 1 through December 31 of a single calendar year. ~~A sponsor employer may ask the department for an extension of employment~~

~~of the pre-apprentice of no more than 30 days without having the pre-apprentice count under ARM 24.21.1003.~~

AUTH: 39-6-101, MCA

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

REASON: There is a reasonable necessity to amend the new rule to ensure quality training and safety for all parties, including pre-apprentices, apprentices, and journeyworkers in all occupations. Allowing a pre-apprentice 100 days to work for a sponsor employer in a calendar year before that pre-apprentice counts towards the apprentice-to-journeyworker ratio in ARM 24.21.1003 is adequate time to allow the pre-apprentice exposure to the occupation. One hundred days of work per calendar year also allows a pre-apprentice to work the majority of traditional academic breaks, including summer and winter, if applicable to that occupation.

/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 26, 2021.

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

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

TO: All Concerned Persons

1. On September 10, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-26-377 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1105 of the 2021 Montana Administrative Register, Issue Number 17.
2. The department held a public hearing in Helena on October 5, 2021, over the Zoom videoconference and telephonic platform at which no members of the public commented. No written comments were received during the public comment period.
3. The department has amended ARM 24.26.254 and 24.26.1002 as proposed.
4. The department has repealed ARM 24.26.301, 24.26.302, 24.26.303, 24.26.304, 24.26.401, 24.26.402, 24.26.403, and 24.26.404 as proposed.

/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 26, 2021.

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

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

TO: All Concerned Persons

1. On September 10, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-122-2 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1113 of the 2021 Montana Administrative Register, Issue Number 17.

2. The department held a public hearing in Helena on October 4, 2021, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were received during the public comment period.

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

COMMENT 1: One commenter questioned whether the licensing exams would take place online or in-person, and how often the exams will be offered. The commenter also questioned whether a boiler class would be required to qualify for licensure.

RESPONSE 1: The department did not propose amendments to the rule regarding examinations, ARM 24.122.510, which applies to all types of boiler operating engineers licenses. As a matter of department policy and practice, the exams are offered on an as-needed basis at approved testing locations and applicants must be physically present to sit for the paper exam.

Completion of a boiler course is not a requirement to qualify for any type of licensure under 50-74-304, MCA, but does reduce the hours of experience required to qualify for licensure. Also, completion of a boiler course is included in the alternative means of licensure for limited low-pressure engineers in 50-74-304(8), MCA, and low-pressure engineers, agricultural-class engineers, and third-class engineers pursuant to 50-74-304(7), MCA.

4. The department has amended ARM 24.122.405, 24.122.505, 24.301.710, and 24.301.714 as proposed.

/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 26, 2021.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.126.910 impairment evaluator	)	REPEAL
standards, and the repeal of)	
24.126.415 participation in disaster)	
and emergency care -- liability of)	
chiropractor and 24.126.501)	
applications)	

TO: All Concerned Persons

1. On June 25, 2021, the Board of Chiropractors (board) published MAR Notice No. 24-126-38 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 736 of the 2021 Montana Administrative Register, Issue No. 12.

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

3. The board has amended ARM 24.126.910 as proposed.

4. The board has repealed ARM 24.126.415 and 24.126.501 as proposed.

BOARD OF CHIROPRACTORS
MARCUS NYNAS, DC
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 26, 2021.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.90.409 pertaining to severe)
and disabling mental illness)

TO: All Concerned Persons

1. On September 10, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-958 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1124 of the 2021 Montana Administrative Register, Issue Number 17.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. The department intends to apply these rule amendments retroactively to October 9, 2021. A retroactive application of the rule amendments does not result in a negative impact to any affected party.

/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 26, 2021.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 38.3.201, 38.3.603, 38.3.702,	)	REPEAL
38.3.703, 38.3.705, 38.3.706,)	
38.3.707, 38.3.805, 38.3.1502,)	
38.3.1503, 38.3.1504, 38.3.2001,)	
38.3.2402, 38.3.2403, 38.3.2404, and)	
38.3.3306, and the repeal of ARM)	
38.3.1101, 38.3.1505, 38.3.2011, and)	
38.3.3305 pertaining to Montana's)	
Motor Carrier Act)	

TO: All Concerned Persons

1. On August 27, 2021, the Department of Public Service Regulation published MAR Notice No. 38-3-249 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1037 of the 2021 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 38.3.201, 38.3.603, 38.3.702, 38.3.703, 38.3.705, 38.3.707, 38.3.805, 38.3.1502, 38.3.1503, 38.3.1504, 38.3.2001, 38.3.2402, 38.3.2403, 38.3.2404, and 38.3.3306, as proposed, for the reasons stated in the initial notice.

3. The department has amended ARM 38.3.706 as proposed, for the reasons stated in the initial notice, but with a typographical correction in (2)(a)(iv), new matter underlined, deleted matter interlined:

38.3.706 ENDORSEMENTS (1) through (2)(a)(iii) remain as proposed.

(iv) except any class A motor carrier, other than as provided in ~~(a)~~ (a)(i), operating under a certificate of public convenience and necessity or certificate of compliance authorizing passenger operations only within a particular city or 10-mile radius is required to carry a minimum of \$500,000 insurance regardless of size of vehicle used;

(v) through (3) remain as proposed.

4. The department has repealed ARM 38.3.1101, 38.3.1505, 38.3.2011, and 38.3.3305 as proposed, for the reasons stated in the initial notice.

5. On September 21, 2021, the department held a virtual public hearing on the proposed amendment and repeal, and received no public comment or testimony by the September 24, 2021, deadline.

/s/ LUCAS HAMILTON
Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN
James Brown
Chair
Public Service Commission

Certified to the Secretary of State on October 26, 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 May 14, 2021, through October 22, 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.

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