MONTANA ADMINISTRATIVE REGISTER

2017 ISSUE NO. 21
NOVEMBER 9, 2017
PAGES 1993-2110

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9000.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.11.630 pertaining to wake restrictions on Broadwater Bay of the Missouri River	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 5, 2017, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed amendment of the above-stated rule.

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 department no later than November 24, 2017, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

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

12.11.630 MISSOURI RIVER (1) In Broadwater County the Missouri River is closed to all swimming, boating, sailing and floating in the following areas:

(a) between Toston dam and 300 feet downstream of the dam; and

(b) the reservoir between the Toston dam and the boat barrier.

(2) In Cascade County ~~The following areas of~~ the Missouri River ~~are closed to use of any motor-propelled watercraft~~:

~~(a) in Cascade County;~~

(a)~~(i)~~ is closed to the use of motorized watercraft ~~that portion of the Missouri River~~ from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle; and

~~(ii) that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.~~

(b) is limited to a controlled no wake speed, as defined in ARM 12.11.101, 200 feet from the western shore as buoyed from the Warden Bridge on 10th Avenue to the Burlington Northern Railway Bridge No. 119.4 from May 1 to September 30.

AUTH: ~~23-1-106,~~ 87-1-303, MCA
IMP: ~~23-1-106,~~ 87-1-303, MCA

REASON: On November 10, 1983, the commission proposed restricting motorized use on the Missouri River from the Warden Bridge on 10th Avenue to Oddfellows Park at Broadwater Bay to, "preclude the use of motor boats in an area that is designed to facilitate floaters who do not use motors." Also, at that time, the department anticipated "that the use of motors at an area designated for floaters would create a hazardous situation." Historically, the department has not designated or posted this area for nonmotorized or float use only.

The commission is proposing to amend the rule to establish a seasonal 200 foot no wake zone on the western shoreline between the Warden Bridge and the Burlington Northern Railway Bridge No. 119.4 to protect private and public property and remove the obsolete language in ARM 12.11.630(2)(a)(ii) regarding no motorized use as posted. The department coordinated with the City of Great Falls and landowners on the shoreline to develop the rule language proposed by the commission.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Broadwater Bay Wake Zone, Department of Fish, Wildlife and Parks, 1600 Giant Springs Road, Great Falls, MT, 59405; or e-mail fwpr4publiccom@mt.gov, and must be received no later than December 8, 2017.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

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

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

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

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer
Department of Fish, Wildlife and Parks

/s/ Dan Vermillion
Dan Vermillion
Chair
Fish and Wildlife Commission

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIV pertaining to Wind Generation Facility Decommissioning and Bonding	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION (ENERGY)

TO: All Concerned Persons

1. On November 29, 2017, at 2:00 p.m., in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the department will hold a public hearing to consider the proposed adoption of the above-stated rules. Before the hearing, on the same day, at 1:00 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., November 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

NEW RULE I DEFINITIONS In this subchapter, the following definitions apply:

(1) "Abandon" or "abandonment" means generating 10 percent or less of the cumulative nameplate capacity of the facility's turbines each month for 12 consecutive months.

(2) "Board" means the Board of Environmental Review as defined in 75-26-301, MCA.

(3) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the department, executed by the owner and supported by the deposit with the department of cash, negotiable bonds of the United States (not treasury certificates), state or municipalities of the United States, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States or other surety acceptable to the department.

(4) "Commenced commercial operation" means the date the turbine commissioning completion certification is signed for the specific turbine whose nameplate rated capacity first brings the facility's cumulative nameplate rated generating capacity to 25 megawatts or more.

(5) "Decommission" or "decommissioning" has the meaning as defined in 75-26-301, MCA.

(6) "Department" means the Department of Environmental Quality as defined in 75-26-301, MCA.

(7) "Landowner" means the person or persons who hold legal title to the property.

(8) "Owner" has the meaning as defined in 75-26-301, MCA.

(9) "Owns a 10 percent or greater share of the wind generation facility" means at commencement of commercial operation and thereafter, having ownership of 10 percent or greater in capital stock of the corporation that owns the facility or having a 10 percent or greater ownership interest in a partnership, or limited liability corporation that owns the facility.

(10) "Person" has the meaning as defined in 75-26-301, MCA.

(11) "Repurposed" has the meaning as defined in 75-26-301, MCA.

(12) "Significant investment" means a capital equipment investment of 50 percent or greater of the initial capital equipment investment. The equipment project must be completed in three years or less. Should a facility remove all wind turbines and existing pads and install new wind turbines on new pads, the facility is a new facility and not a repurposed facility.

(13) "Surety bond" means an indemnity agreement in a certain sum, payable to the department, executed by the owner which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.

(14) "Wind generation facility" or "facility" has the meaning as defined in 75-26-301, MCA.

AUTH: 75-26-310, MCA
IMP: 75-26-301, 304, MCA

REASON: The proposed New Rule I is a set of definitions that are necessary to clarify the meaning of specific terms used by the new rules and set by statute.

New Rule I(1) defines the terms "abandon" and "abandonment" to clarify when an owner is no longer productively operating a wind generation facility. This is a triggering event to require an owner to commence decommissioning. The 10 percent of the cumulative nameplate capacity of the facility's turbines threshold is well below the typical 40 percent capacity factor of wind generating facilities. Since there is seasonal variation of electric generation from facilities, requiring a facility to be at or below a 10 percent capacity factor for each of 12 consecutive months will differentiate the facilities that are no longer being maintained for optimal commercial operations from those experiencing unseasonably low winds or temporary repair concerns.

In New Rule I(3), the term "collateral bond" is defined to ensure the owner has secured an acceptable form of collateral that ensures that funding would be available if the state of Montana must perform the decommissioning of the facility. This definition is taken from the department's reclamation rules and reflects the requirements that have been determined to be acceptable bonding mechanisms under state and federal reclamation laws.

New Rule I(4) defines the term "commenced commercial operation" that establishes the date from which an owner in 15 or 16 years must have bonding secured, per75-26-304(6), MCA. The department is proposing to set the date as to when the facility first operates with a nameplate capacity sufficient to meet the minimum threshold to make it subject to Title 75, chapter 26, part 3, MCA, and to

ensure the bonding period does not commence until the facility is covered under the statute.

In New Rule I(7), the term "landowner" is defined to include the title holder(s) to the property. That is the commonly accepted meaning of the term, and it is this person or persons who control the property.

In New Rule I(9), the definition of "owns a 10 percent or greater share of the wind generation facility" is proposed to make clear how the department will apply the statute that exempts facilities from bonding if they meet this ownership requirement. The definition requires the landowner to own shares continuously from the time the facility commences commercial operation to ensure the exemption is available to those landowners who initially have a vested interest in the wind generation facility, while precluding scenarios that allow owners to avoid bonding by selling or giving landowners shares of the facility in the final years before bonding is required. This definition ensures the intent of the legislation is maintained which is to have bonding on wind generation facilities for decommissioning at the end of their useful life.

In New Rule I(12), "significant investment" is defined because it is necessary for facilities to have a definition established so they know when improvements made to their facility can qualify them to have a bond released for five years. The department is proposing to allow an owner up to three years to complete a significant investment project because a large facility may have many turbines requiring upgrades and three years allows the facility to avoid working during poor weather conditions. The department is proposing that a project of significant investment is a capital equipment investment equal to half or more of the initial capital equipment investment costs of the wind turbines and have the impact of extending the useful life of the equipment replaced such that the owner will once again have the facility bonded before it reaches the end of its useful life.

This definition also provides clarity for situations when an owner choses to rebuild all the wind turbines at the facility on new foundations with new towers and new turbine equipment after removing all existing foundations, towers and turbines, such that the wind generation facility is really a new facility on the same location, and only using existing ancillary infrastructure from the previous facility. This scenario would allow the facility to wait 15 years from its new commencement of commercial operation to be bonded.

In New Rule I(13), "surety bond" is defined to provide criteria to ensure that the owner secures an acceptable form of surety bond that ensures funding would be available if the state of Montana must decommission the facility. This definition is taken from the department's reclamation rules and reflects the requirements that have been determined to be acceptable bonding mechanisms under state and federal reclamation laws.

NEW RULE II OWNER RESPONSIBILITIES (1) An owner is responsible for decommissioning its facility and for all costs associated with decommissioning. Decommissioning must be completed within 24 months of abandonment, or according to a reasonable alternative schedule proposed by the owner and approved by the department upon a showing of good cause for the extension.

(2) The owner of a facility must notify the department in writing within 30 days of abandonment.

(3) An owner shall notify the department in writing within 30 days after beginning onsite decommissioning activities.

(4) The owner of a wind generation facility that commenced commercial operation on or before July 1, 2018, shall submit in writing the following to the department on or before July 1, 2018, although the department is not required to review these initial decommissioning plans and information or set a bond amount at this time:

(a) the date that the facility commenced commercial operation; and

(b) a decommissioning plan in accordance with the requirements of [New Rule III].

(5) The owner of a facility that commences commercial operation after July 1, 2018, shall submit to the department the information required in (2) within six months of commencing commercial operation. The department is not required to review these initial submissions, or set bond amounts at this time.

(6) The owner of a facility shall submit an updated decommissioning plan 12 months before a bond is required by [New Rule V](2) or (3), and 12 months before a bond is reviewed by the department in [New Rule VIII](2). Updated plans must include an updated cost estimate and address expansions and modification, if any. Within 90 days of receipt, the department shall notify the owner of any deficiencies in the decommissioning plan. Within 90 days of receiving the deficiency notice, the owner shall address all deficiencies and resubmit the decommissioning plan.

(7) The owner shall allow access in a timely manner and accompany the department for an inspection of the facility to verify the adequacy of a new or updated decommissioning plan for purposes of determining the bond amount. The department shall propose the scope and schedule of any such inspection at least two weeks in advance of the inspection. Department representatives shall comply with site safety and general access restrictions while at the facility.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule II(1) establishes that owners are responsible for decommissioning any wind generating facility they build and the rule sets a time limit for completing the decommissioning activities. The department has determined that most facilities can be decommissioned within 24 months. The proposed rule allows the department to set another deadline if the owner demonstrates good cause. For example, 24 months may not be adequate for decommissioning for reasons beyond the control of the owner or the owner may be engaged in negotiations to sell the facility to a person who wishes to operate it.

New Rule II(2) is necessary for the department to receive notification which establishes the date for decommissioning a facility within 24 months. The facility will have experienced 12 months of low to no operation before the facility is deemed abandoned and then the facility will still have 30 more days which should be ample time to send the department the required written notification.

New Rule II(3) is a notification requirement that is necessary for the department to be aware of decommissioning activities by an owner. The facility may start decommissioning prior to abandonment and this notification could be the only

notification to the department. This rule creates the opportunity for the department to have knowledge of the decommissioning activities before the owner may request release of the bond. Early communication can facilitate the parties reaching the intended goal of ensuring the most efficient decommissioning activities and release of bond monies.

New Rule II(4) places in the rule the requirements contained in 75-26-304, MCA. It establishes when and what information an owner of existing facilities shall submit to the department. This information is necessary because it will both establish the date for when an owner must have a bond in place and the information submitted is essential for determining the bond amount.

New Rule II(5) requires facilities built after July 1, 2018, to submit the same information as required in New Rule II(4) for facilities built before July 1, 2018. The requirement is proposed for the same reasons as the requirement is imposed for facilities subject to New Rule II(4).

New Rule II(6) ensures the department receives updated decommissioning plans reflecting any changes, including expansions, to facilities and economic changes that should be considered by the department when setting bond amounts.

New Rule II(7) ensures the department can access a site for purposes of verifying information an owner submits in their decommissioning plan and ensures that the determined bond amount accurately reflects the site characteristics and other facility components.

NEW RULE III DECOMMISSIONING PLAN (1) A decommissioning plan must include:

(a) a commitment to remove all aboveground wind turbines and towers;

(b) as-built plans, including general structural and electrical information, relative to the calculation of the bond for all facilities and all disturbances associated with the facility. The as-built plans must include an affidavit signed by an owner or any person authorized to act on the owner's behalf attesting to the completeness and accuracy of the as-built plans or be certified by a professional engineer that the as-built plans are complete and accurate;

(c) any agreement(s) signed by all landowners and facility owners providing for alternative reclamation or the non-removal of buildings, cabling, electrical components, roads or any associated facilities;

(d) a description of the manner in which the facility will be decommissioned and a proposed decommissioning schedule, which, except as provided in (1)(c), must include:

(i) dismantling and removal of all overhead electrical transmission lines and structures, transformers, buildings, and all other ancillary equipment and debris from operation of the facility;

(ii) removal of all underground cables and pipelines to a depth of 24 inches or deeper if necessary for the post operation land use;

(iii) removal of wind turbine foundations and other concrete foundations and slabs to a minimum depth of 48 inches below natural grade or deeper if required for the post operation land use;

(iv) reclamation of the facility site to the approximate original surface topography that existed prior to the start of construction of the facility with grading,

topsoil application over the disturbed areas at a depth similar to that in existence prior to the disturbance, and reseeding to achieve the same utility as the surrounding area at the time of decommissioning to prevent adverse hydrological effects;

(v) repair and reconstruction from damage to public roads, culverts and natural drainage ways resulting directly from operation of or decommissioning of the facility; and

(vi) removal and grading all access roads;

(e) a detailed estimate of the current salvageable value of the facility by an evaluator who is not an employee of the owner; and

(f) an estimate of all other expenses related to decommissioning that are the responsibility of the owner.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: This rule ensures that all necessary information to estimate the bond amount is included in the decommissioning plan. The rule also establishes what infrastructure must be removed when decommissioning a facility. It is essential for the department to obtain as-built plans should the department be required to complete the decommissioning. Not only do the as-built plans ensure a safe decommissioning event, but the plans would ensure all underground infrastructure and cables are removed. The decommissioning plan is the only resource for the department to learn about what landowners want remaining after the end of the facility's useful life. Information in the plan allows the owner to bond for only decommissioning of infrastructure to be removed. This rule also establishes standard depths to which foundations and underground cables should be removed so as not to interfere with future land use activities.

NEW RULE IV DETERMINATION OF BOND AMOUNT (1) The department shall set the bond amount at the estimated amount for the department to perform the decommissioning and reclamation work required of an owner.

(2) The bond amount must be based on:

(a) estimated costs submitted by the owner in accordance with [New Rule III] with such costs estimated by using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department;

(b) estimated costs to the department that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the facility after its abandonment by the owner to perform decommissioning and reclamation work;

(c) estimated costs to the department that may arise from management and maintenance of the facility upon owner insolvency or abandonment, until full bond liquidation can be effected; and

(d) other cost information as may be required by or available to the department.

(3) In determining the amount of a bond required in accordance with [New Rule V], the department shall consider:

(a) the character and nature of the site where the facility is located; and

(b) the current market salvage value of the wind generation facility, as determined by an evaluator who is not an employee of the owner.

(4) The line items in the bond calculations are estimates only and are not limits on spending of any part of the bond to complete any particular task subsequent to forfeiture of the bond or settlement in the context of bond forfeiture proceedings.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: For New Rule IV(1), 75-26-304, MCA, requires that the department set a bond amount for each facility and this rule establishes that ability.

New Rule IV(2) and (3) establish acceptable resources that must be used to determine the necessary bond amount for each facility. Section 75-26-304(4), MCA, requires the department to consider the character and nature of the site along with salvage costs to establish the bond amount as stated in these rules.

New Rule IV(4) gives the department the necessary flexibility to use the bond monies as needed to complete decommissioning activities without restricting the use to only the amount determined for each activity within the cost estimate of the decommissioning plan. This is necessary because the cost of each activity cannot be predicted with absolute certainty.

NEW RULE V BONDING DEADLINE (1) Except as provided in (3) and (4), and in accordance with [New Rule VI], the owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in [New Rule IX] and in a sum determined by the department in accordance with [New Rule IV], conditioned on the faithful decommissioning of the facility.

(2) Except as provided in (3) and (4):

(a) if a wind generation facility commenced commercial operation on or before January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 16th year after commencing commercial operation; or

(b) if a wind generation facility commenced commercial operation after January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of commencing commercial operation.

(3) If a wind generation facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond and any existing bond must be released until the repurposed facility reaches its fifth year of operation. The owner shall submit all revised information required in [New Rule II](4)(b) within six months of finishing repurposing activities. Within five years of repurposing a facility, the facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in [New Rule IX] and in a sum determined by the department in accordance with [New Rule IV], conditioned on the faithful decommissioning of the facility.

(4) The owner is exempt from the requirements of this rule if:

(a) the owner posts a bond with a federal agency, with a state agency for the lease of state land, or with a tribal, county, or local government; or

(b) a private landowner on whose land the wind generation facility is located owns a 10 percent or greater share of the wind generation facility, as determined by the department.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule V(1) is required by statute in 75-26-304(5), MCA, which establishes that a bond shall be payable to the state of Montana so it can be used by the department if the department must decommission the facility.

New Rule V(2) is required by statute in 75-26-304(6), MCA, and establishes the date when a facility must have its bonding in place.

New Rule V(3) is required by statute in 75-26-304(7), MCA, to allow a repurposed facility a five-year reprieve from bonding.

New Rule V(4) is required by statute in 75-26-304(8), MCA, to allow for specific situations when facilities are exempt from bonding.

NEW RULE VI PENALTIES FOR FAILURE TO SUBMIT BOND (1) If an owner does not submit the full bond amount required by the department within the timeframe required by [New Rule V], the department may assess an administrative penalty in an amount provided in 75-26-304(9)(a), MCA.

(2) An owner may appeal the department's penalty assessment to the board within 20 days after receipt of written notice of the penalty.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule VI places in rule the enforcement provisions contained in 75-26-304(9), MCA. It is proposed to provide the public with notice of the statutory provisions.

NEW RULE VII REPLACEMENT OF BOND (1) If the owner transfers ownership to a successor owner, the department shall release the bond posted by the owner in accordance with this rule within 90 calendar days if the successor owner posts a bond with the department in an amount equal to, or greater than, the bond posted by the incumbent owner.

(2) The owner must receive approval from the department prior to replacing any bond.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule VII is proposed to place in rule the requirements of 75-26-304(10), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule VII(2) is necessary to allow for the flexibility to replace a bond upon approval of the department, because bond replacement can occur for varying reasons such as a change of ownership, a change in the bond instrument itself, or a change in the bonding company. The proposed rule requires department approval to ensure that the replacement bonds meet the requirements of these rules.

NEW RULE VIII ADJUSTMENT OF BOND AMOUNT (1) Once every five years an owner may request a reduction of the required bond amount upon submission of evidence to the department proving that decommissioning work, reclamation, or other circumstances will reduce the maximum estimated cost to the department to complete decommissioning and therefore warrant a reduction of the bond amount.

(2) The department shall review each decommissioning plan and bond amount every five years. The department may increase the amount of the bond if the facility has expanded or the cost to decommission a facility otherwise increases. The department shall notify the owner of any proposed bond increase and provide the owner an opportunity for an informal conference on the proposal. The owner shall increase the bond within 90 days of receiving the department's revised bond amount.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule VIII(1) places in the rule the provisions of 75-26-304(11), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule VIII(2) is necessary for the department to ensure the bond amount is adequate to complete decommissioning of a facility with regard to expansions or changing economic conditions.

NEW RULE IX FORM OF BOND (1) The form for the bond must be as provided by the department. The department shall allow for a surety bond or a collateral bond.

(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single facility, must extend to the entire facility.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule IX(1) is necessary to ensure that the bond instrument used is adequate to provide funding when needed. Other bond instruments such as self or parent guarantee bonding are not sufficiently reliable. New Rule IX(2) is proposed to ensure that the department has adequate funds to decommission facilities. Allowing bond increments to apply to certain portions of the facility could provide inadequate funding if estimates are inaccurate with regard to portions of the facility. Allowing use of all bond increments to all portions of the facility will offer greater flexibility as needed.

NEW RULE X SURETY BONDS (1) Surety bonds are subject to the following requirements:

(a) the department may not accept a surety bond in excess of 10 percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

(b) the department may not accept a surety bond from a surety company for any owner in excess of three times the surety's maximum single obligation;

(c) the department may not accept a surety bond from a surety company for any owner unless that surety is registered with the Montana state auditor and is listed in the United States Department of the Treasury Circular 570 as revised;

(d) a power of attorney must be attached to the surety bond;

(e) the surety bond must provide a requirement and a mechanism for the surety company to give prompt notice to the department and the owner of:

(i) any action alleging bankruptcy or insolvency of the surety or violation that would result in suspension or revocation of the license of the surety;

(ii) cancellation by the owner; and

(iii) cancellation or pending cancellation by the surety; and

(f) upon a determination by the department that a surety is unable to comply with the terms of the bond, the owner of a facility must be deemed to be without bond coverage. The owner shall replace the bond coverage within 90 days of notice from the department.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule X establishes the criteria for an acceptable surety bond, so that the bond is not subject to undue risk from a surety company that could prevent full payment of the bond if needed for decommissioning. The rule establishes required notifications from the surety company to the department should the bond be jeopardized. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for acceptable bonds under state and federal reclamation laws.

NEW RULE XI LETTERS OF CREDIT (1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) the letter must be issued by a bank organized or authorized to do business in the United States;

(b) the letter must be irrevocable prior to the release by the department;

(c) the letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with [New Rule XIV];

(d) the letter of credit must provide that, upon expiration, if the department has not notified the bank in writing that a substitute bond has been provided or is not required, the bank shall immediately pay the department the full amount of the letter less any previous drafts;

(e) the letter must not be for an amount in excess of 10 percent of the bank's

capital surplus account as shown on a balance sheet certified by a certified public accountant;

(f) the amount of the letter of credit may not exceed three times the bank's maximum single obligation; and

(g) the bank's qualifications must be reviewed by the department yearly prior to the time the letter of credit is renewed. If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the owner and specify a reasonable period, not to exceed 90 days, to replace bond coverage.

AUTH: 75-26-310, MCA
IMP: 75-26-304, MCA

REASON: New Rule XI(1)(a) through (f) establishes the bond criteria for an acceptable letter of credit, so that the bond is not subject to undue risk from a bank or person that could prevent full payment of the bond should the department need to use the bond for decommissioning. New Rule XI(1)(g) is necessary for the department to have the ability to require an owner to obtain new bonding if the bank issuing the letter of credit may not be able to fulfill the obligation. Without this rule, the department may not have sufficient bonding available should the department be required to decommission the facility. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for acceptable letters of credit under state and federal reclamation laws.

NEW RULE XII CERTIFICATES OF DEPOSIT (1) The department may accept as bond an assignment of a certificate of deposit from a single institution in a denomination not in excess of $250,000, or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC), whichever is less. The department may not accept a combination of certificates of deposit from a facility in excess of that limit from a single institution.

(2) The department may only accept automatically renewable certificates of deposit issued by a bank insured by the FDIC or a credit union insured by the National Credit Union Administration (NCAU).

(3) The department shall require the owner to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by [New Rules IV and VIII].

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank or credit union issuing the certificate. The certificate of deposit assignment must expressly prohibit the owner from withdrawing funds until the department has released the assignment.

(5) The department shall require banks or credit unions issuing these certificates to waive all rights of setoff or liens against these certificates.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: New Rule XII is necessary for the department to have the ability to allow an owner to use a certificate of deposit. The requirements are taken from the department's reclamation rules, and they reflect the requirements that have been determined necessary for certificate of deposit assignments under state and federal reclamation laws.

NEW RULE XIII FORFEITURE OF BOND (1) The department may forfeit any or all bonds deposited for an entire facility. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single owner must extend to the owner's entire facility.

(2) A written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, is a final decision by the department.

AUTH: 75-26-310, MCA
IMP: 75-26-309, MCA

REASON: New Rule XIII(1) and (2) give the department the authority to forfeit any and all bonds as it deems necessary to decommission an abandoned facility that an owner is not decommissioning. This rule establishes language in a bond that gives the department full control of using a bond for decommissioning without concurrence from an owner. This is necessary for the department to perform the decommissioning required by the statute.

NEW RULE XIV RELEASE OF BOND; USE OF BOND BY DEPARTMENT

(1) The department shall release a bond if the department is satisfied that an owner has properly decommissioned a facility in accordance with the decommissioning plan or as otherwise agreed to by the department in consultation with the land owner.

(2) At any time, an owner or any person authorized to act on behalf of the facility may petition the department for release of the bond or a portion thereof, and the department shall reply with a determination within 90 days unless the weather does not permit access to the facility or a representative of the owner is not available within the 90-day period. The owner must allow and accompany the department in an inspection of the facility to verify the adequacy of decommissioning and reclamation proposed for bond release.

(3) An owner shall commence decommissioning and reclamation activities within 90 days of abandonment, unless the owner receives department approval of an alternative written plan for decommissioning and reclamation.

(4) The department may forfeit a bond in part or in full if the department finds that the owner fails to decommission the facility in accordance with the decommissioning plan and has not commenced action to rectify deficiencies within 90 days after notification by the department.

(5) Upon bond forfeiture for an abandoned facility, the department, with staff, equipment, and material under its control or by contract with others, may take any

necessary action to decommission the facility.

(6) Before decommissioning is considered complete, each owner shall file a map with the local county recorder showing the location of any remaining wind turbine foundation and its depth. A copy of the map and associated documents shall be sent to the department.

AUTH: 75-26-310, MCA
IMP: 75-26-308, 75-26-309, MCA

REASON: New Rule XIV(1) places into the rules the provisions of 75-26-309(1)(a), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(2) places into the rules the provision of 75-26-309(1)(b), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(3) is necessary for the department to be certain that owners commence decommissioning and remediation activities timely, while allowing the department flexibility to allow reasonable decommissioning that differs from the plan.

New Rule XIV(4) places into the rules the provision of 75-26,309(2), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(5) places into the rules the provisions of 75-26-309(2), MCA. It is proposed to provide the public with notice of the statutory provisions.

New Rule XIV(6) makes a public record of all concrete foundations not removed during decommissioning so that future projects on the property can consider the impact of the remaining foundations.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., December 7, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Sandy Scherer, Legal Secretary, Department of Environmental Quality,

1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Julie Ackerlund, Air Quality Planner for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The department notified the primary sponsor of Chapter 247, Laws of 2017, by sending him a letter on September 1, 2017.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: */s/ Tom Livers*
TOM LIVERS
Director

Certified to the Secretary of State, October 30, 2017.

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

In the matter of the amendment of ARM 24.17.127, pertaining to prevailing wage rates for public works projects	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 1, 2017, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 28, 2017, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MSmith3@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2017~~ 2018 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2017~~ 2018 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2017~~ 2018 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2017~~ 2018 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. Copies of the proposed 2018 publications, identified as "preliminary building construction rates," "preliminary highway construction rates," "preliminary heavy construction rates," and "preliminary nonconstruction rates" are available and can be accessed online at: http://erd.dli.mt.gov/labor-standards.

5. A printed version of the proposed 2018 publications is also available by contacting Mike Smith at the address and e-mail listed in paragraph 2 of this notice.

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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1503, Helena, MT 59620-1503; fax (406) 444-7071; or e-mailed to MSmith3@mt.gov, and must be received no later than 5:00 p.m., December 8, 2017.

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as published in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail 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 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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all, small businesses (those with less than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but the rule only affects those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader	/s/ Galen Hollenbaugh
Mark Cadwallader	Galen Hollenbaugh, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.85.105 pertaining to updating Medicaid fee schedules with Medicare rates and updating effective dates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 5, 2017, at 1:00 p.m., the Department of Public Health and Human Services 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 of 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 15, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

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

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 80 Federal Register 220, page 70886 (November 16, 2015) effective January 1, 2016 which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2017~~ January 1, 2018 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2017~~ January 1, 2018. The conversion factor for physician services is $37.89. The conversion factor for allied

services is $25.38. The conversion factor for mental health services is $24.90. The conversion factor for anesthesia services is $29.76.

(c) through (i) remain the same.

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

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2017~~ January 1, 2018.

(d) and (e) remain the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective July 1, 2016:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~$2.00~~ $3.41 and the maximum is $15.00;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~$2.00~~ $3.41 and the maximum is $13.00; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~$2.00~~ $3.41 and the maximum is $11.00.

(g) and (h) remain the same.

~~(i) The out-of-state providers will be assigned a $3.50 dispensing fee.~~

(j) and (k) remain the same, but are renumbered (i) and (j).

~~(l)~~ (k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2017~~ January 1, 2018, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2017~~ January 1, 2018. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2015~~ January 1, 2018.

(m) through (q) remain the same, but are renumbered (l) through (p).

~~(r)~~ (q) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM ~~37.85.610~~ 37.86.610, are effective January 1, 2017.

~~(s)~~ (r) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~January 1, 2017~~ January 1, 2018.

~~(t)~~ (s) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2016~~ January 1, 2018.

~~(u)~~ (t) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2017~~ January 1, 2018.

~~(v)~~ (u) The Federal Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for education health services, as provided in ARM 37.86.4412, is effective ~~January 1, 2017~~ July 1, 2017.

(w) and (x) remain the same, but are renumbered (v) and (w).

(4) through (6) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules to January 1, 2018.

The following introductory explanation represents the reasonable necessity for the proposed changes in this Montana Administrative Register (MAR) notice to the rule.

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

The rule amendment is necessary so that the Montana Medicaid program can adopt updates to procedure codes that the federal Medicare program will enact in January 2018. The federal Medicare program's updates include new code additions, code deletions, and changes to existing code descriptions. Medicare enacts routine updates every January, and Montana Medicaid, which uses Medicare procedure codes for billing, must adopt the changes for the state program.

The following describes in detail the proposed amendments that will be made to ARM 37.85.105.

ARM 37.85.105(2)(a)

The department is proposing to adopt new Medicare codes that are effective on January 1, 2018, and will amend the effective date for procedure codes that are reimbursed using the relative value units from the Medicare Physician Fee Schedule in place from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(2)(b)

The department is proposing to amend the effective date for RBRVS fee schedules from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(c)

The department is proposing to amend the effective date for the hearing aid services fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(f)(i), (ii), and (iii)

After negotiations with the Centers for Medicare and Medicaid (CMS) regarding the Pharmacy State Plan, the department agreed to update the outpatient drug reimbursement for dispensing fee ranges to reflect the revisions made to the Pharmacy State Plan.

As a result of negotiations with CMS, the department will reimburse Montana Medicaid enrolled pharmacies that do not return the annual dispensing fee survey the department's lowest calculated cost to dispense for that year. Thus, the department is revising the minimum dispensing fee amount to reflect the lowest calculated cost to dispense.

ARM 37.85.105(3)(i)

After negotiation with CMS regarding the Pharmacy State Plan, the department agreed to remove the reference to a separate out-of-state dispensing fee.

ARM 37.85.105(3)(k)

The department is proposing to amend the effective date of the Region D Supplier Manual from July 1, 2017, to January 1, 2018. The department is amending the effective date of local coverage determinations (LCDs), national coverage determinations (NCDs) as provided in ARM 37.86.1802 from July 1, 2015, to January 1, 2018.

The department is proposing to adopt the Calendar Year 2018 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule in order to comply with the 21 Century Cures Act (Act) signed December 13, 2016, by President Obama. Beginning January 1, 2018, the Act requires that all State Medicaid programs make no fee for service payments for Durable Medical Equipment that exceed the DMEPOS fee schedule amount, including, as applicable, those items included under a competitive acquisition program as described at 42 USC 1395w–3.

ARM 37.85.105(3)(q)

The department proposes to delete the reference to ARM 37.85.610 because that rule does not exist and replace it with the correct rule for occupational therapists, physical therapists, and speech therapists, ARM 37.86.610.

ARM 37.85.105(3)(r)

The department is proposing to amend the effective date for the optometric fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(s)

The department is proposing to amend the effective date for the chiropractic fee schedule from July 1, 2016, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(t)

The department is proposing to amend the effective date for the lab and imaging fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(u)

The department is proposing to amend the Federal Qualified Health Center and Rural Health Clinic (FQHC/RHC) education health services fee schedule from January 1, 2017, to July 1, 2017, to align with the State Plan. The retroactive date will not have a negative impact to providers.

Fiscal Impact

The following table displays the provider groups affected, the number of providers by type, and the fiscal impact to State general funds for SFY 2018 and SFY 2019 for the proposed amendments.

Provider Type	SFY 2018 Budget Impact (State Funds)	SFY 2018 Budget Impact (Federal Funds)	Total	Providers Affected
Durable Medical Equipment	($535.849)	($1,015,538)	($1,551,387)	442
Hearing Aid	$1,557	$2,951	$4,508	34
Optometric/ Optician	$31,924	$60,502	$92,426	228
Pharmacy	$181,726	$344, 4047	$526,133	417

Provider Type	SFY 2019 Budget Impact (State Funds)	SFY 2019 Budget Impact (Federal Funds)	Total	Providers Affected
Durable Medical Equipment	$73,461	$142,727	$216,188	442
Hearing Aid	$1,555	$3,021	$4,576	34
Optometric/	$31,878	$61,925	$93,813	228

Optician Pharmacy	$178,780	$347,353	$526,133	417

5. With the exception of the FQHC and RHC fee schedules in (3)(u), the proposed rule amendments will be effective January 1, 2018. The FQHC and RHC fee schedules in (3)(u) will be effective retroactively to July 1, 2017. There is no adverse impact to providers for this retroactive effective date.

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: Kenneth Mordan, 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 7, 2017.

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

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 6 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 significantly and directly impact providers referred to in the above table, some of which meet the definition of small businesses in 2-4-102(13), MCA. The proposed amendments are required by CMS and therefore, there are no alternative methods available to implement the proposed rule amendments that would minimize or eliminate potential negative impacts on small businesses.

11. 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/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.86.104 pertaining to physician-related services manual	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2017, at 1:30 p.m., the Department of Public Health and Human Service will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of 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 13, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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:

37.86.104 PHYSICIAN SERVICES, REQUIREMENTS (1) through (11) remain the same.

(12) The department adopts and incorporates by reference the Physician-Related Services Manual governing the administration of the Physician program dated ~~November 1, 2016~~ December 1, 2017. The Physician-Related Services Manual is available for public viewing at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and at the department's web site at http://medicaidprovider.mt.gov.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.104 to adopt the recent update to the Physician-Related Services Manual, dated December 26, 2017 (Manual). The department updated the Manual to comply with standards set by Section 508 of the Rehabilitation Act of 1973, which requires certain governmental entities to provide software and website accessibility

to people with disabilities. To that end, the department made more than 7,500 formatting and editing changes to the proposed Manual, which is accessed through the department's website described in (12) of the rule. In addition, the department added to the Manual sections for mobile imaging and direct-entry midwife, which are new provider types, which the department adopted in MAR Notice Nos. 37-777 and 37-794, respectively. The new Manual also includes updates to the claim processing procedures to reflect current practice.

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: Kenneth Mordan, 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 7, 2017.

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. The department has determined that the proposed amendment is not appropriate for performance-based measurement and therefore is not subject to the requirement of 53-6-196, MCA.

11. The proposed amendment will not change a monetary amount a person shall pay or will receive, and therefore 2-4-302(1)(c), MCA, is not applicable. Also, the department has determined the proposed amendment will not affect the state general fund or state revenue.

12. The department intends to apply this rule amendment retroactively to December 1, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

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

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.51.102, 37.51.306, 37.95.102, 37.95.140, 37.95.160, 37.95.184, and the repeal of ARM 37.51.307 pertaining to revisions in immunization requirements for attendance in child care facilities and in foster homes	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 4, 2017, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 24, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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:

37.51.102 YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

(1) "ACIP" means the Advisory Committee on Immunization Practices of the U.S. Public Health Service.

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

(3) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

(4) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.

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

(8) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.

(9) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.

(5) through (7) remain the same, but are renumbered (10) through (12).

(13) "Td vaccine" means a booster vaccine containing a combination of tetanus and diphtheria toxoids.

(14) "Tdap vaccine" means a booster vaccine containing a combination tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

37.51.306 YOUTH FOSTER HOMES: ~~PRESCHOOL AGE CHILD~~ IMMUNIZATION REQUIREMENTS (1) All children residing in the foster home other than the foster child ~~under five years of age~~ shall be immunized against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis, tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B according to the following schedule:

Total Immunizations Required, By Age

Age	Number Doses - Vaccine Type
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine~~, administered no~~

	~~earlier than 12 months of age~~ *~~1~~ 3 or 4 dose<u>s</u> of Hib vaccine ~~given after 12 or 15 months of age~~ <u>2 doses of Hep B vaccine</u> <u>*4 doses of PCV vaccine</u>
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose <u>of</u> MMR vaccine~~, administered no earlier than 12 months of age~~ *~~1~~ 3 or 4 dose<u>s</u> of Hib vaccine ~~given after 12 or 15 months of age~~ <u>3 doses of Hep B vaccine</u> <u>*4 doses of PCV vaccine</u>
<u>By 6 years of age</u>	<u>3 doses of polio vaccine, one given after the 4th birthday</u> <u>4 doses of DTP vaccine, one given after the 4th birthday</u> <u>2 doses of varicella vaccine</u> <u>2 doses of MMR vaccine</u> <u>3 doses of Hep B vaccine</u>
<u>By 11 years of age</u>	<u>3 doses of polio vaccine, one given after the 4th birthday</u> <u>1 dose of Tdap vaccine</u> <u>2 doses of varicella vaccine</u> <u>2 doses of MMR vaccine</u> <u>3 doses of Hep B vaccine</u>

(*) varies depending on vaccine type used <u>or the ACIP catch-up schedule</u>.

~~(2) If the child is at least 12 months old but less than 60 months of age and has not received any Hib vaccine, the child must receive a dose.~~

~~(3) Documentation of each required vaccination must include the date of birth and the month, day, and year of each vaccination.~~

~~(4)~~ <u>(2)</u> Hib <u>and PCV</u> vaccine<u>s</u> ~~is~~ <u>are</u> not required or recommended for children five years of age and older.

~~(5)~~ <u>(3)</u> Doses of MMR <u>and varicella</u> vaccine<u>s</u>, to be acceptable under this rule, must be given no earlier than 12 months of age. A child who received a dose prior to 12 months of age must be revaccinated~~.~~ <u>; however, vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks.</u>

<u>(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:</u>

(a) a child less than seven years of age must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the fourth birthday;

(b) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempt the child from pertussis vaccination; and

(c) a child seven years old or older who has not completed the requirement in (1) must receive additional doses of Tdap vaccine or Td vaccine to become current in accordance with the ACIP schedule.

(5) Immunization history may be recorded on the certificate of immunization form (HES-101) provided by the department or on a physician- or clinic-provided immunization record, which must include:

(a) the name of the physician or clinic;

(b) the name and birth date of the child; and

(c) the date and type of immunization.

(6) The immunization information is to be kept on file in both the foster home and the licensing file.

(7) A child residing in the foster home other than the foster child is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, and medical exemption documentation must include:

(a) which specific immunization is contraindicated;

(b) the period of time during which the immunization is contraindicated;

(c) the reasons for the medical contraindication; and

(d) when deemed necessary by a physician, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-735, MCA

37.95.102 DEFINITIONS (1) "ACIP" means the Advisory Committee on Immunization Practices of the U.S. Public Health Service.

(1) through (15) remain the same, but are renumbered (2) through (16).

(17) "Hep B vaccine" means a vaccine containing Hepatitis B vaccine.

(16) through (25) remain the same, but are renumbered (18) through (27).

(28) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.

(26) through (53) remain the same, but are renumbered (29) through (56).

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.140 IMMUNIZATION (1) Before a child ~~under the age of five~~ may attend a Montana day care facility, that facility must be provided with the documentation required by ~~(4)~~ (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with ~~(9)~~ (7):

Age at Entry	Number of Doses-Vaccine Type
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine ~~administered no earlier than 12 months of age~~ *~~1~~ 3 or 4 doses of Hib vaccine ~~given after 12 or 15 months of age~~ 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine ~~administered no earlier than 12 months of age~~

	*~~1~~ 3 or 4 doses of Hib vaccine ~~given after 12 or 15 months of age~~ 3 doses of Hep B vaccine *4 doses of PCV vaccine
By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By 11 years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch up schedule.

(2) ~~If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.~~ Hib and PCV vaccines are not required or recommended for children five years of age and older.

(3) ~~DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempts the child from pertussis vaccination.~~ Doses of MMR and varicella vaccines, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated; however, vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks.

(4) ~~Before a child between the ages of five and 12 may attend a day care facility providing care to school aged children, that facility must be provided with documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whopping cough), tetanus, and Haemophiles influenza type B, unless the child qualifies for conditional attendance in accordance with (9).~~

~~Vaccine~~	~~Dosages Required by Age~~
~~Polio~~	~~Each child must receive at least three doses of polio vaccine, one of which is administered after age four.~~

~~DTP or DTaP~~	~~Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus and pertussis) vaccines by age four and one dose of DTaP after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven.~~ ~~Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the day care age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td.~~
~~Td~~	~~Each child in the day care must receive a Td tetanus diphtheria vaccine intended for children younger than seven years of age booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.~~

Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) a child less than seven years of age must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the fourth birthday;

(b) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempt the child from pertussis vaccination; and

(c) a child seven years old or older who has not completed the requirement in (1) must receive additional doses of Tdap vaccine or Td vaccine to become current in accordance with the ACIP schedule.

(5) ~~Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date~~

~~of birth, the name of each vaccine provided, and the month, day and year of each vaccination.~~

Immunization history must be recorded on the Montana certificate of immunization form (HES-101) provided by the department or on a physician- or clinic-provided immunization record, which must include:

(a) the name of the physician or clinic;

(b) the name and birth date of the child; and

(c) the date and type of immunization.

(6) remains the same.

~~(7) Hib vaccine is not required or recommended for children five years of age and older.~~

~~(8) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated, before attending a day care facility.~~

~~(9)~~ (7) A child may initially conditionally attend a day care facility if:

(a) remains the same.

(b) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (~~HP~~ES-101); and

(c) remains the same.

(10) remains the same, but is renumbered (8).

~~(11)~~ (9) The day care facility must maintain a written record of immunization status of each staff member, enrolled child, and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

~~(12) A child seeking to attend a day care facility is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.~~

~~(13)~~ (10) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement. A claim of exemption on religious grounds must be notarized and maintained on an Affidavit of Exemption on Religious Grounds form (HES-113) provided by the department.

~~(14) The department adopts and incorporates by reference ARM 37.114.715, which sets the requirements for a medical exemption from vaccination. A copy of ARM 37.114.715 may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 202951, Helena, MT 59620-2951.~~

(11) A child is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the

physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, and medical exemption documentation must include:

(a) which specific immunization is contraindicated;

(b) the period of time during which the immunization is contraindicated;

(c) the reasons for the medical contraindication; and

(d) when deemed necessary by a physician, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

37.95.160 DAY CARE FACILITIES: STAFF RECORDS (1) The provider shall maintain records regarding each care-giver which include:

(a) through (c) remain the same.

(d) immunization records that establish compliance with ARM ~~37.95.140~~ 37.95.184.

(2) remains the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.184 DAY CARE FACILITIES: HEALTH HABITS (1) remains the same.

(2) Every employee, volunteer, or resident at a day care facility must:

(a) and (b) remain the same.

(c) provide documentation of ~~complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the ten years prior to commencing work, volunteering, or residing at the day care facility~~ at least one dose of Tdap vaccine, and for all adults born in 1957 or after, one dose of MMR vaccine unless they have a medical contraindication to the vaccines or laboratory evidence of immunity to each of the three diseases.

(3) remains the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

4. The department proposes to repeal the following rule:

37.51.307 YOUTH FOSTER HOMES: SCHOOL AGED CHILD IMMUNIZATION REQUIREMENTS found on page 37-11538 of the Administrative Rules of Montana.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 20-5-403, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services, Montana Immunization Program (department), is proposing amendments to ARM 37.51.102, 37.51.306, 37.95.102, 37.95.140, 37.95.160, and 37.95.184. The department is also proposing the repeal of ARM 37.51.307. The following describes the purpose and necessity of the proposed rule amendments and repeal.

ARM 37.51.102 and ARM 37.95.102

The proposed addition of several definitions to these rules is necessary to provide explanation of acronyms used in subsequent immunization-related rules, but that are not defined in statute. The addition of these definitions is also consistent with the department's statutory obligations under the administrative procedures act for providing clear and understandable rules.

Developed by staff of the Centers for Disease Control and Prevention, ACIP Work Groups, and others, the acronyms are intended to provide a uniform approach to vaccine references. Uniform vaccine references allow health care providers to quickly and accurately interpret immunization histories. The proposed definitions allow a reader to connect a vaccine acronym and a disease that the rules require a child residing in a youth foster home to be immunized against.

ARM 37.51.306 and ARM 37.95.140

The proposed amendments to these rules are necessary to accomplish two purposes: 1) to bring immunization standards for children residing in youth foster homes or attending Montana day care facilities in line with current ACIP recommendations; and 2) to provide for a standardized method of record keeping for the immunization histories of those children.

Based upon disease epidemiology and burden, vaccine efficacy and effectiveness, vaccine safety, economic analyses and implementation, ACIP develops uniform guidance on the use of vaccines for effective control of vaccine-preventable diseases in the civilian population of the United States. ACIP routinely updates specific recommendations, and revises the general recommendations on immunization every three to five years. However, the department's most recent revision of these rules is from 2006. Inconsistency between the two can lead to confusion for parents and healthcare providers who vaccinate patients, and reduce the efficacy of efforts to prevent vaccine-preventable diseases.

Standardized methods of immunization record keeping are necessary because consistent and accurate records prevent duplicate immunizations and reduce inconveniences such as rescheduled appointments due to the unavailability of accurate immunization histories. This revision is also necessary so that records of immunizations administered under the rule remain consistent with advancements in medical records technology.

ARM 37.95.160

The proposed amendment to this rule is necessary to correct an erroneous cross-reference. ARM 37.95.184 sets forth the substantive immunization or evidence of immunity requirements for staff members at a day care facility, whereas ARM 37.95.140 is a more general requirement that documentation be kept of the immunization status of staff members, enrolled children, and children of staff members who reside at the day care facility. Because ARM 37.95.160 solely pertains to staff member records and not enrolled children or children of staff members, the cross-reference to ARM 37.95.184 is more appropriate.

ARM 37.95.184

The proposed amendment to this rule is necessary to bring immunization standards for staff members at Montana day care facilities in line with current ACIP recommendations, and to provide for exceptions where vaccination is medically contraindicated or where there is evidence of immunity to each of the three listed diseases. Inconsistency between the rules and ACIP recommendations can lead to unnecessary immunization and conflict with prevailing medical standards of care.

ARM 37.51.307

The department proposes the repeal of this rule because the proposed amendments to ARM 37.51.306 collapse an unnecessary distinction in the rules between preschool aged and school aged children. As amended, proposed ARM 37.51.306 will reflect proper immunization requirements for both groups, and provides for consistency with the department's statutory obligations under the administrative procedures act for periodic rule review and for providing clear and understandable rules.

FISCAL IMPACT

The rule change may affect all parents of children attending a licensed child care facility. The children may be required to have a doctor's visit and update their vaccination status. The fiscal impact to these parents should be minimal due to the fact that vaccines are considered to be preventative care and covered fully under insurance. Additionally, the federally funded Vaccines for Children (VFC) program is in place to provide vaccines without cost to those who would normally not be vaccinated due to inability to pay.

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: Kenneth Mordan, 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 12, 2017.

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

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 6 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 and repeal of the above-referenced rules will not significantly and directly impact small businesses.

11. 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.

12. The department intends to make these rules effective June 1, 2018.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Shannon McDonald for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.40.422 pertaining to direct care wage effective dates	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2017, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of 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 17, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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:

37.40.422 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the ~~period January 1, 2017 through December 31, 2017~~ calendar year January through December, swing-bed hospitals must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum amounts paid for all direct care and ancillary services workers that will receive the benefit of a direct care and ancillary workers' wage and benefit increase.

(2) remains the same.

(3) The department will pay Medicaid certified swing-bed hospitals located in Montana, in accordance with this rule, lump sum payments in addition to the reimbursement rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in swing-bed hospitals.

(a) The department will determine lump sum payments January 1~~, 2017~~ of the calendar year, and again six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.40.422.

ARM 37.40.422

The Medicaid adjustment for swing bed direct care wages is calculated annually. Previously the department changed the calendar year referenced in ARM 37.40.422 each year. We are deleting the reference to the year so this change will not have to be made for every new calendar year.

Fiscal Impact

There are 44 hospitals/critical access hospitals (CAH) Medicaid swing bed providers. Fifteen of the providers will participate in the FY 2018 Direct Care Wage payment in the amount of $409,586. The swing bed direct care wage payments for SFY 2018 are to sustain the payments from SFY 2017.

5. The department intends to adopt these rule amendments effective January 1, 2018.

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: Kenneth Mordan, 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 7, 2017.

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

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 6 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/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer

/s/ Shannon McDonald for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the adoption of New Rules I through XX, the amendment of ARM 37.107.110, 37.107.111, 37.107.115, 37.107.117, 37.107.119, 37.107.127, and 37.107.128 and the repeal of ARM 37.107.113, 37.107.116, 37.107.121, 37.107.123, 37.107.125, 37.107.129, 37.107.132, 37.107.133, 37.107.135 pertaining to the Montana medical marijuana program	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 30, 2017, at 1:00 p.m., the Department of Public Health and Human Services 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, amendment, repeal of 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 13, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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 adopted provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules is to establish requirements for implementing the Montana Medical Marijuana Act. These rules outline requirements for registered cardholders, providers, marijuana-infused product providers, dispensaries, chemical manufacturing endorsements, marijuana quality assurance testing, testing laboratories, and inventory tracking system.

AUTH: 50-46-344, MCA
IMP: 50-46-301, 50-46-303, MCA

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

(a) the applicant did not provide the information required in the application;

(b) the department determines the information provided in the application was inaccurate, misleading, or falsified;

(c) the applicant did not submit the required fee with application;

(d) the applicant is not a resident of the State of Montana as defined in 1-1-215, MCA;

(e) the department is notified in writing by a landlord revoking permission under 50-46-308, MCA;

(f) the applicant or licensee is found to be in violation of 50-46-308, 50-46-311, and 50-46-312, MCA;

(g) a provider or marijuana-infused product provider has been convicted of driving under the influence of alcohol or drugs under 50-46-320, MCA;

(h) a provider or marijuana-infused product provider is found to be in violation of 50-46-320(8), MCA;

(i) the applicant or licensee is found to be in violation of 50-46-330, MCA;

(j) the applicant or licensee did not report changes to the department in accordance with [NEW RULE XIX];

(k) the licensee is no longer named as a provider or marijuana-infused product provider by a registered cardholder;

(l) the applicant is not in substantial compliance with any other licensing requirements established by this chapter; or

(m) the applicant or licensee is found to be in violation of any provision under Title 50, chapter 46, part 3, MCA.

(2) Any denial or revocation under this part is subject to judicial review.

(3) A person whose application has been denied or a current licensee whose license has been revoked may not reapply for at least six months from the date of denial or revocation.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-329, 50-46-330, MCA

NEW RULE III MARIJUANA EMPLOYEE PERMIT (1) A marijuana employee permit is required for any employee of a licensee prior to working.

(2) The marijuana employee permit must always be carried when performing work on behalf of a licensee.

(3) A marijuana employee permit will not be issued to any individual that has been convicted of a drug offense.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, MCA

NEW RULE IV PROOF OF MONTANA RESIDENCY (1) If an applicant does not have a valid Montana driver license or Montana identification card, the applicant must submit documentation that shows the applicant is a resident of Montana, such as a current lease agreement or current utility bill that has the applicant's name and address.

(2) Montana residency must be maintained by registered cardholders and licensees.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, MCA

NEW RULE V MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) A licensee must clearly identify all limited access areas at a registered premises.

(2) All licensee employees must wear a badge or clothing that easily identifies the individual as an employee.

(3) A licensee must maintain a daily log of all visitor activity to a limited access area on a registered premises. The log must contain the visitor's first and last name and date of visit.

(4) Visitors must be accompanied by a licensee or licensee employee at all times.

(5) A licensee must post signs in a conspicuous location where the signs can be easily read by individuals on the registered premises that read:

(a) "No Minors Permitted Anywhere on This Premises";

(b) "No On-Site Consumption of Marijuana"; and

(c) At all areas of ingress or egress to a limited access area a sign that reads: "Do Not Enter – Limited Access Area – Access Limited to Authorized Personnel and Escorted Visitors."

(6) A licensee may have 50 square feet of canopy space per registered cardholder:

(a) square footage of canopy space is measured horizontally starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space;

(b) a licensee may designate multiple grow canopy areas at a registered premises but those spaces must be separated by a physical boundary such as an interior wall or by at least eight feet of open space;

(c) total canopy size is calculated by multiplying 50 square feet of canopy by the number of registered cardholders; and

(d) a licensee must not exceed the total canopy allowed by the department for cultivation of marijuana.

(7) A licensee is responsible for the security of all marijuana items on a registered premises, in transit, and under the supervision of any licensee or licensee employee until the marijuana item is sold.

(8) A licensee must have a written security plan maintained on the registered premises that adequately safeguards against theft, diversion, or tampering of marijuana items both on the registered premises and during transit.

(9) Commercial grade, nonresidential door locks must be installed on every external door and gate of a registered premises.

(10) A licensee must ensure general sanitary requirements are met on a registered premises to include:

(a) adequate and convenient hand-washing facilities;

(b) proper and timely removal of all litter and waste;

(c) adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;

(d) prohibiting a licensee or licensee employee with a communicable disease, open or draining skin lesions, or any illness accompanied by diarrhea or vomiting from working on a registered premises until the condition is corrected if the individual has a reasonable possibility of contacting marijuana items; and

(e) licensee or licensee employees wash hands thoroughly before starting work, prior to having contact with a marijuana item, and at any other time when the hands may have become soiled or contaminated.

(11) On-site consumption of intoxicants by any individual is strictly prohibited.

(12) A licensee must establish written standard operating procedures to produce marijuana and maintain them on the registered premises. The standard operating procedures must include:

(a) when and how all pesticides or other chemicals are to be applied during the production process;

(b) water usage and waste water disposal;

(c) the waste disposal plan; and

(d) any other written procedures as required by the department.

(13) If a licensee makes a material change to its standard operating procedures it must document the change and revise its standard operating procedures accordingly.

(14) A licensee must use a standardized scale whenever marijuana items are:

(a) packaged for sale by weight;

(b) bought and sold by weight; and

(c) weighed for entry into the inventory tracking system.

(15) A licensee must maintain the following records in either paper or electronic form on the registered premises for at least three years:

(a) financial records that clearly reflect all financial transactions; and

(b) all licensee employee training and payroll records.

(16) A licensee must establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergency at all registered premises.

(17) In addition to other records required by these rules, a licensee must maintain on the registered premises:

(a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana;

(b) the original label or a copy thereof for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana; and

(c) a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana.

(18) The licensee must maintain documentation of meeting all local jurisdiction requirements such as licensing, fire, health, and safety.

(19) A licensee may not:

(a) give marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or game of skill, or competition of any kind;

(b) sell or transfer to a registered cardholder any marijuana item through a drive-up window; or

(c) treat or otherwise alter usable marijuana, consisting of dried leaves and flowers, with the intent of altering the color, appearance, weight, or smell.

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

NEW RULE VI PRODUCING MARIJUANA-INFUSED PRODUCTS, CONCENTRATES, AND EXTRACTS (1) To produce marijuana-infused products or engage in chemical manufacturing, a licensee must:

(a) ensure the registered premises and equipment are maintained in a clean and sanitary condition for product preparation purposes;

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

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

(d) conduct necessary safety checks prior to commencing processing; and

(e) create written detailed operating procedures for:

(i) cleaning all equipment, counters, and surfaces thoroughly;

(ii) proper handling and storage of any solvent, gas, or other chemical used in processing or on the registered premises;

(iii) proper disposal of any waste produced during processing;

(iv) training licensee employees on how to use the system and handle and store the solvents and gases safely; and

(v) any other written procedures required by the department.

(2) A licensee with a chemical manufacturing endorsement must:

(a) only use hydrocarbon-based solvents that are at least 99 percent purity;

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

(c) work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present;

(d) use only potable water and ice made from potable water in processing;

(e) process in a fully enclosed room;

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

(g) have equipment and facilities used in processing approved for use by the local fire code official;

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

(i) have all applicable material safety data sheets readily available; and

(j) establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergencies at all registered premises.

(3) A licensee with a chemical manufacturing endorsement may use:

(a) a mechanical extraction process;

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

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

(i) does not involve the use of heat over 180 degrees fahrenheit; and

(ii) uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch.

(4) A licensee with a chemical manufacturing endorsement may not use:

(a) class I solvents;

(b) pressurized canned flammable fuel intended for use in camp stoves, handheld torch devices, refillable cigarette lighters, and similar products; or

(c) denatured alcohol.

(5) A licensee may not treat or otherwise alter a marijuana item with any noncannabinoid additive that would increase potency, toxicity, or addictive potential that would create an unsafe combination with other psychoactive substances.

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

NEW RULE VII LABELING OF MARIJUANA ITEMS (1) Prior to marijuana items being sold or transferred to a registered cardholder the container holding the usable marijuana items must have a label that has the following information:

(a) licensee business or trade name and licensee registration number;

(b) date of harvest of marijuana or date the marijuana item was manufactured;

(c) name of strain or marijuana item (common or usual name);

(d) net weight or volume in U.S. customary and metric units;

(e) concentration by weight or volume of THC, THCA, CBD, and CBDA;

(f) amount suggested for use by the registered cardholder at any one time; and

(g) unique identification number.

(2) Labels must include a consumer warning that states:

(a) "For use by Montana Medical Marijuana Program registered cardholders only. Keep out of reach of children.";

(b) "It is illegal to drive a motor vehicle while under the influence of marijuana."; and

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

(3) If the marijuana item has passed required testing, the licensee must include on the label: "This Product Has Been Tested and Meets the Quality Assurance Requirements of the State of Montana."

(4) Licensees with ten or fewer registered cardholders who are not required to submit marijuana items for testing and have not submitted marijuana items for testing must include on the label: "This Product Has Not Been Tested for compliance with Quality Assurance Requirements of the State of Montana."

(5) Additional labeling requirements for marijuana topicals, ointments, suppositories, and other marijuana products not intended to be administered orally must include:

(a) "DO NOT EAT" in bold capital letters; and

(b) a list of ingredients in descending order or predominance by weight or volume used to process the product.

(6) Additional labeling requirements for edible marijuana products and tinctures must include:

(a) "BE CAUTIOUS" in bold capital letters, followed by "This product can take up to two hours or more to take effect";

(b) if the marijuana item is perishable, a statement that the marijuana item must be refrigerated or kept frozen;

(c) list of potential major food allergens;

(d) a "contains" statement to summarize the major food allergen information at the end of or immediately adjacent to the ingredient list; or

(e) a statement of the appropriate major food allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen.

(7) Additional labeling requirements for marijuana concentrates and extracts must include:

(a) "DO NOT EAT" in bold capital letters;

(b) extraction method and solvent.

(8) Labels required by these rules must:

(a) be placed on the container and on any packaging, that is used to display marijuana items for sale or transfer to a registered cardholder;

(b) be in no smaller than eight point Times New Roman, Helvetica, or Arial font;

(c) be in English; and

(d) be unobstructed and conspicuous.

(9) Marijuana items may have one or more labels affixed to the container or packaging if necessary.

(10) Licensees may use a peel-back or accordion label with the required information if the peel-back or accordion label can be easily identified by a registered cardholder as containing important information.

(11) A label may not:

(a) contain any untruthful or misleading statements; or

(b) be attractive to minors.

(12) If a marijuana item is placed in a package that is being reused, the old label or labels must be removed and it must have a new label or labels.

(13) Exit packaging must contain a label that reads: "Keep out of the reach of children."

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-326, MCA

NEW RULE VIII PACKAGING FOR SALE TO CONSUMER (1) Containers or packaging for usable marijuana items must protect the product from contamination and must not impart any toxic or deleterious substance to the product.

(2) Marijuana items for final sale to a consumer must be:

(a) packaged in a container that is child-resistant as certified by a qualified third-party child-resistant package testing firm; or

(b) placed within an exit package that is certified by a qualified third-party child-resistant package testing firm prior to final sale to consumer; and

(c) packaged in a container or placed in an exit package that is capable of being resealed and made child resistant again after it has been opened if the item is designed for multiple use; and

(d) labeled in accordance with [NEW RULE VII].

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-326, MCA

NEW RULE IX QUALITY ASSURANCE TESTING SAMPLE REQUIREMENTS (1) A licensee must separate each harvest lot of usable marijuana into no larger than five-pound test batches.

(2) A licensee must separate each process lot of a marijuana-infused product into no larger than 5,000 unit-of-sale test batches.

(3) A process lot is considered a test batch for marijuana concentrates and extracts.

(4) Usable marijuana consisting of dried leaves and flowers may only be sampled after it is cured.

(5) Sufficient sample increments must be taken for analysis of all required tests and the quality control performed by the testing laboratory for these tests.

(6) A licensee must provide a laboratory the following documentation at the time of testing:

(a) the unique identification number;

(b) licensee business or trade name and licensee registration number;

(c) the date the sample was collected;

(d) the weight of the sample; and

(e) whether the tests being requested are:

(i) compliance tests;

(ii) quality control or research and development tests;

(iii) being re-sampled because of a failed test; or

(iv) being retested after undergoing remediation or sterilization.

(7) Following samples being taken from a harvest or process lot, a licensee must label each test batch with:

(a) the name and accreditation number of the laboratory responsible for the testing;

(b) the sample unique identification numbers supplied by the laboratory personnel;

(c) the date the samples were taken; and

(d) in bold capital letters, no smaller than 12-point font, "PRODUCT NOT TESTED."

(8) The licensee must store and secure the test batch in a manner that prevents the product from being tampered with or sold or transferred to a registered cardholder prior to test results being reported.

(9) If the marijuana item is being resampled after a failed test the licensee must provide the secondary laboratory with documentation of the failed test.

(10) A licensee may only order tests for marijuana items the licensee has produced or processed.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, 50-46-329, MCA

NEW RULE X QUALITY ASSURANCE TESTING REQUIREMENTS

(1) A licensee must submit for testing every test batch from a harvest lot of marijuana and process lots of marijuana-infused product, extracts, and concentrates intended for use by a registered cardholder prior to selling or transferring the marijuana item to a registered cardholder.

(2) Usable marijuana lots consisting of dried leaves and flowers must be tested for the following:

(a) cannabinoid profile;
(b) moisture analysis;
(c) foreign matter screening;
(d) microbiological screening;
(e) heavy metals screening; and
(f) pesticides screening.

(3) Marijuana concentrate and extract lots must be tested for the following:

(a) cannabinoid profile;
(b) microbiological screening;
(c) heavy metals screening;
(d) residual solvents screening; and
(e) pesticides screening.

(4) Marijuana-infused products must be tested for the following:

(a) cannabinoid profile.

(5) The cannabinoid profile for each sample must include:

(a) THCA;
(b) THC;
(c) Total THC;
(d) CBDA;
(e) CBD; and
(f) Total CBD.

(6) The sample and related lot or test batch fail quality assurance testing for moisture analysis if the results exceed the following limits:

(a) water activity rate of more than 0.65 a_w; and
(b) moisture content more than fifteen percent.

(7) The sample and related lot or test batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:

(a) two percent of stems 3mm or more in diameter; and
(b) five percent of seeds or other foreign matter.

(8) The sample and related lot or test batch fail quality assurance testing for microbiological screening if the results exceed the following limits:

(a) Salmonella: 10 CFU/g;

(b) E. Coli: 10 CFU/g;

(c) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg; and

(d) Ochratoxin A: 20 µg/kg of substance.

(9) A sample and related lot or test batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below.

Residual Solvents	
Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

* And isomers thereof.

** Usually 60% m-xylene, 14% p-xylene, 9% o-xylene with 17% ethyl benzene.

(10) A sample and related lot or test batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Heavy Metals		
	Limits; Unprocessed/Dry Flower	Limits; Extract
Inorganic arsenic	2.0 µg/g	1 µg/g
Cadmium	0.82 µg/g	4.1 µg/g
Lead	1.2 µg/g	6.0 µg/g
Mercury	0.4 µg/g	2.0 µg/g

(11) A sample and related lot or test batch fail quality assurance testing for pesticides if the results exceed the limits provided in the table below.

Pesticides			
Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm; Unprocessed/Dry Flower	Action Level ppm; Extract
Abamectin	71751-41-2	0.5	2.5
Acephate	30560-19-1	0.4	2
Acequinocyl	57960-19-7	2	10
Acetamiprid	135410-20-7	0.2	1
Aldicarb	116-06-3	0.4	2
Azoxystrobin	131860-33-8	0.2	1
Bifenazate	149877-41-8	0.2	1
Bifenthrin	82657-04-3	0.2	1
Boscalid	188425-85-6	0.4	2
Carbaryl	63-25-2	0.2	1
Carbofuran	1563-66-2	0.2	1
Chlorantraniliprole	500008-45-7	0.2	1
Chlorfenapyr	122453-73-0	1	5
Chlorpyrifos	2921-88-2	0.2	1
Clofentezine	74115-24-5	0.2	1
Cyfluthrin	68359-37-5	1	5
Cypermethrin	52315-07-8	1	5
Daminozide	1596-84-5	1	5
DDVP (Dichlorvos)	62-73-7	0.1	0.5
Diazinon	333-41-5	0.2	1
Dimethoate	60-51-5	0.2	1
Ethoprophos	13194-48-4	0.2	1
Etofenprox	80844-07-1	0.4	2
Etoxazole	153233-91-1	0.2	1
Fenoxycarb	72490-01-8	0.2	1
Fenpyroximate	134098-61-6	0.4	2
Fipronil	120068-37-3	0.4	2
Flonicamid	158062-67-0	1	5
Fludioxonil	131341-86-1	0.4	2
Hexythiazox	78587-05-0	1	5
Imazalil	35554-44-0	0.2	1
Imidacloprid	138261-41-3	0.4	2
Kresoxim-methyl	143390-89-0	0.4	2
Malathion	121-75-5	0.2	1

Metalaxyl	57837-19-1	0.2	1
Methiocarb	2032-65-7	0.2	1
Methomyl	16752-77-5	0.4	2
Methyl parathion	298-00-0	0.2	1
MGK-264	113-48-4	0.2	1
Myclobutanil	88671-89-0	0.2	0.6
Naled	300-76-5	0.5	2.5
Oxamyl	23135-22-0	1	5
Paclobutrazol	76738-62-0	0.4	2
Permethrins	52645-53-1	0.2	1
Phosmet	732-11-6	0.2	1
Piperonyl_butoxide	51-03-6	2	10
Prallethrin	23031-36-9	0.2	1
Propiconazole	60207-90-1	0.4	2
Propoxur	114-26-1	0.2	1
Pyrethrins†	8003-34-7	1	5
Pyridaben	96489-71-3	0.2	1
Spinosad	168316-95-8	0.2	1
Spiromesifen	283594-90-1	0.2	1
Spirotetramat	203313-25-1	0.2	1
Spiroxamine	118134-30-8	0.4	2
Tebuconazole	80443-41-0	0.4	2
Thiacloprid	111988-49-9	0.2	1
Thiamethoxam	153719-23-4	0.2	1
Trifloxystrobin	141517-21-7	0.2	1

* Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).
† Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1 and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively).

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, MCA

NEW RULE XI FAILED TEST SAMPLES (1) If a sample fails any initial test, the laboratory that did the testing must reanalyze the sample.

(2) A licensee must request a reanalysis within seven calendar days of receiving notice from the laboratory of any failed testing.

(3) The reanalysis must be completed by the laboratory within 30 days of receiving the request from the licensee.

(4) If the sample passes reanalysis, a second laboratory must sample the test batch and confirm the results for the test batch to pass testing.

(5) The licensee is responsible for the costs of reanalysis.

(6) A licensee is not permitted to sell or transfer to a registered cardholder, marijuana items that have failed a test.

(7) Failed harvests, lots, or test batches may be remediated so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

(8) Remediation methods used on the marijuana item must be disclosed to the department.

(9) No remediated harvests, lots, or test batches may be sold until the completion and successful passage of quality assurance testing as required in these rules and Montana statute.

(10) If a sample fails and cannot be remediated or sterilized the test batch must be destroyed.

(11) A licensee must document all sampling, testing, sterilization, remediation and destruction that are a result of failing a test under these rules.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, MCA

NEW RULE XII MARIJUANA TESTING LABORATORY LICENSEE REQUIREMENTS (1) A licensed marijuana testing laboratory may:

(a) obtain samples of marijuana items from licensees for testing as provided in these rules;

(b) transport and dispose of samples as provided in these rules; and

(c) perform testing on marijuana items in a manner consistent with the laboratory's accreditation.

(2) A licensed laboratory may return a marijuana item obtained for purposes of testing to the licensee. The return of such marijuana items must be documented.

(3) A laboratory must document the following:

(a) receipt of samples for testing;

(b) size of the sample;

(c) licensee from whom the sample was obtained;

(d) date the sample was collected;

(e) tests performed on samples;

(f) date testing was performed;

(g) results of all testing performed; and

(h) disposition of any testing sample material.

(4) A licensee must clearly identify all limited access areas at the premises.

(5) All licensee employees must wear a badge or clothing that easily identifies the individual as an employee.

(6) A licensee must maintain a daily log of all visitor activity to a limited access area on a registered premises. The log must contain the first and last name the date they visited.

(7) Visitors must be accompanied by a licensee or licensee employee at all times.

(8) A licensee is responsible for the security of all marijuana items on the premises, in transit, and under the supervision of any licensee or licensee employee.

(9) A licensee must have a written security plan maintained on the premises that adequately safeguards against theft, diversion, or tampering of marijuana items both on the premises and during transit.

(10) Commercial grade, nonresidential door locks must be installed on every external door, and gate if applicable, of premises.

(11) A licensee must ensure general sanitary requirements are met on the premises to include:

(a) adequate and convenient hand-washing facilities;

(b) proper and timely removal of all litter and waste;

(c) adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;

(d) prohibiting a licensee or licensee employee with a communicable disease, open or draining skin lesions, or any illness accompanied by diarrhea or vomiting from working on a premises until the condition is corrected if the individual has a reasonable possibility of contacting marijuana items; and

(e) assurance that the licensee or licensee employees wash hands thoroughly before starting work, prior to having contact with a marijuana item, and at any other time when the hands may have become soiled or contaminated.

(12) A licensee must establish written standard operating procedures for each test being conducted and maintain them on the premises.

(13) A licensee must maintain the following records for at least three years. Records may be kept in either paper or electronic form on the premises:

(a) financial records that clearly reflect all financial transactions;

(b) testing documentation; and

(c) all licensee employee training and payroll records.

(14) A licensee must establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergency at all premises.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-328, 50-46-329, MCA

NEW RULE XIII MARIJUANA TESTING LABORATORIES ACCREDITATION (1) A laboratory licensee must be ISO 17025 accredited.

(2) An applicant, after providing written evidence of pending ISO 17025 accreditation:

(a) may submit an application for licensure pending the accreditation approval; and

(b) is eligible for a provisional license not to exceed six months.

(3) A licensed laboratory must maintain accreditation at all times.

(4) If a laboratory's accreditation lapses or is revoked, the laboratory may not perform any activities until it is reinstated.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-311, 50-46-312, MCA

NEW RULE XIV INVENTORY TRACKING SYSTEM USER REQUIREMENTS (1) A licensee must have an inventory 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 tracking system user accounts.

(3) To obtain and maintain an inventory tracking system user account, a licensee or licensee employee must successfully complete all required department inventory tracking system training.

(4) An individual entering data into the inventory tracking system may only use that individual's inventory tracking system account.

(5) A licensee must ensure:

(a) all inventory tracking system users are up to date on inventory tracking system user training requirements; and

(b) any data that is entered into the inventory tracking system in error is corrected.

(6) A licensee and any designated inventory tracking system user must enter data into the inventory tracking system that accounts for all inventory tracking activities.

(7) A licensee is accountable for all actions inventory tracking system users take while logged into the inventory tracking system.

(8) A licensee is responsible for the accuracy of all information entered into the inventory 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 tracking system it must get approval from the inventory 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 tracking system; and

(b) preserve original inventory tracking system data when transferred to and from a secondary application.

(11) If a licensee loses access to the inventory tracking system, the licensee must keep and maintain comprehensive records detailing all tracking inventory activities that were conducted during the loss of access.

(12) Once access is restored, all inventory tracking activities that occurred during the loss of access must be entered into the inventory tracking system.

(13) A licensee must document when access to the inventory tracking system was lost and when it was restored.

(14) A licensee may not transport any marijuana items to another registered premises until access is restored and all information is recorded into the inventory tracking system.

(15) All compliance notifications from the inventory tracking system must be resolved in a timely fashion.

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

NEW RULE XV INVENTORY TRACKING AND RECONCILIATION (1) A licensee must use the department's selected inventory 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 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 tracking system.

(4) Unique identification numbers cannot be reused.

(5) Each marijuana plant, marijuana item, test batch, harvest lot, and process lot that has been issued a unique identification number must have a physical tag placed on it with the unique identification number.

(6) The tag must be legible and placed in a position that can be clearly read and must be kept free from dirt and debris.

(7) Licensees must use unique identification tags provided by the department.

(8) All on-premises and in-transit marijuana item inventories must be reconciled in the inventory tracking system at the close of business each day.

(9) For each marijuana sale or transfer to a registered cardholder, the following must be recorded in the inventory tracking system at the close of business each day:

(a) the amount;

(b) the price before tax; and

(c) the date of the sale or transfer to a registered cardholder.

(10) Licensees must record in the inventory tracking system:

(a) wet weight of all harvested marijuana plants immediately after harvest;

(b) information for marijuana items by unit count;

(c) weight per unit of a product;

(d) weight and disposal of post-harvest waste materials;

(e) theft or loss of marijuana items; and

(f) other information as may be required by the department.

(11) These requirements do not apply to marijuana items held by a laboratory licensee that are undergoing analytical testing, so long as the marijuana items do not leave the laboratory's licensed premises and are reconciled on the same day that the quality assurance testing concludes.

(12) All samples taken for quality assurance testing must be recorded in the inventory tracking system.

(13) Licensed testing laboratories must record all testing results in the inventory tracking system.

(14) All transport manifests must be generated by the inventory tracking system and contain all the information required by these rules.

(15) A receiving location must document in the inventory tracking system any marijuana items received, and any differences between the quantity specified in the transport manifest and the quantities received.

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

NEW RULE XVI TRANSPORTATION AND DELIVERY OF MARIJUANA ITEMS (1) Marijuana items may only be transported between registered premises or licensed testing laboratories by a licensee or licensee employee.

(2) A printed transport manifest must accompany every transport of marijuana items. The manifest must contain the following information:

(a) registered premises address and license number of departure location;

(b) address and license number or cardholder number of receiving location;

(c) product name, quantities (by weight or unit), and unique identification numbers of each marijuana item to be transported;

(d) date and time of departure;

(e) date and time of arrival;

(f) delivery vehicle make, model, and license plate number; and

(g) name and signature of each licensee or licensee employee accompanying the transport.

(3) The transport manifest may not be voided or changed after departing from the originating registered premises.

(4) A copy of the transport manifest must be given to each location receiving the inventory described in the transport manifest.

(5) A registered premises is prohibited from receiving any marijuana items from transit without a valid transport manifest.

(6) The receiving location must ensure that the marijuana items received are as described in the transport manifest and must record receipt of the inventory.

(7) The receiving location must document any differences between the quantity specified in the transport manifest and the quantities received.

(8) Any vehicle transporting marijuana items must be capable of:

(a) keeping marijuana items in transit shielded from public view;

(b) securing (locking) the marijuana items during transportation; and

(c) being temperature controlled if perishable marijuana items are being transported.

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

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

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

NEW RULE XVII WASTE MANAGEMENT (1) A licensee must store, manage, and dispose of solid and liquid waste generated during marijuana production and processing in accordance with applicable state and local laws and regulations.

(2) A licensee must store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.

(3) Waste that must be rendered unusable prior to disposal includes:

(a) marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent;

(b) waste solvents used in the marijuana process;

(c) spent solvents, laboratory waste, and excess marijuana from any quality assurance testing; and

(d) marijuana items that ultimately fail to meet testing requirements.

(4) A licensee must maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana to include:

(a) what was disposed;

(b) quantity by weight or volume;

(c) date disposed;

(d) disposal method;

(e) reason for the disposal;

(f) identity of who disposed the waste; and

(g) record of the destination of marijuana waste rendered unusable.

(5) A licensee must provide a minimum of 72 hours' notice in the inventory tracking system prior to rendering the marijuana item unusable and disposing of it.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-311, MCA

NEW RULE XVIII 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.

AUTH: 50-46-344, MCA
IMP: 50-46-326, MCA

NEW RULE XIX REPORTING REQUIREMENTS (1) A registered cardholder must notify the department within ten calendar days of any changes in the following:

(a) cardholder's name or address;

(b) referral physician;

(c) provider or marijuana-infused products provider; or

(d) change in the status of the cardholder's debilitating medical condition.

(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) A registered cardholder must report to the department within ten calendar days any lost or stolen registry identification card.

(4) A licensee must notify the department within 30 calendar days of any changes in the following:

(a) anyone identified as an applicant;
(b) temporary closure of longer than 30 days; and
(c) permanent closure of the business.

(5) A licensee who wishes to change the location of a registered premises must submit a completed application for the new premises including all required forms, documents, and fees.

(6) A licensee who intends to make any material or substantial changes to the registered 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 premises;
(b) alterations to public ingress or egress of limited access areas;
(c) any changes to the security plan.

(7) 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 premises.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-311, MCA

NEW RULE XX INSPECTIONS (1) The department may conduct inspections to determine compliance with these rules and Montana statutes. To include:

(a) an initial application inspection;
(b) annual renewal inspections;
(c) unannounced inspections; and
(d) complaint inspections.

(2) A licensee or licensee employee must cooperate with the department during an inspection.

(3) A licensee or licensee employee may not:

(a) refuse to admit a department regulatory surveyor from entering a registered premises to conduct an inspection; or

(b) ask the regulatory surveyor to leave until the surveyor has had an opportunity to fully conduct an inspection.

(4) If a licensee or licensee employee fails to permit the department to conduct an inspection, the department may deny, suspend, or revoke their license or endorsement.

(5) If during an inspection the department determines the applicant is not in compliance with applicable licensing requirements or Montana statute, the department will notify the applicant of the specific deficiencies or errors.

(6) The department will not issue a license or renew a license until all required or corrected information has been received.

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

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

37.107.110 DEFINITIONS ~~For purposes of the Montana marijuana registry:~~

(1) remains the same.

(2) "Authorized employee" means:

(a) and (b) remain the same.

(c) an employee of a state or local government agency, including a state or local law enforcement agency, who has received ~~written~~ authorization to obtain marijuana registry information. ~~Written authorization, as applicable, must be provided to the department from a state agency director or director's designee, county sheriff, police chief, county attorney, or city attorney.~~

(3) "CBD" means cannabidiol.

(4) "CBDA" means cannabidiolic acid.

~~(3)~~ (5) "Cultivate" means to grow, propagate, clone, or harvest marijuana for use by registered cardholders.

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

(7) "Exit package" means a sealed container or package provided at the retail point of sale, in which any marijuana item already within a container is placed.

~~(4)~~ (8) "Fee" means the mandatory fees ~~necessary to process a marijuana registry card application~~ required by the department.

~~(5)~~ (9) "Fingerprint card" means ~~the department's~~ an FD-258 fingerprint card utilized to facilitate a Federal Bureau of Investigation (FBI) fingerprint and background check ~~for provider or MIPP applicants~~.

(10) "Food-Grade" means the processing and packaging has been done with clean equipment and can be safely eaten.

(11) "Harvest lot" means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 48 hour period at the same location, and cured under uniform conditions.

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

~~(6)~~ (13) "Landlord ~~P~~permission ~~F~~form" means a completed, signed, and notarized form which gives a ~~registrant~~ registered cardholder, applicant, or licensee who is renting or leasing the property where marijuana will be cultivated and manufactured for medical purposes, permission to do so, by the property owner. The form must be provided by the department.

(14) "Licensee" means any person licensed by the department.

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

~~(7)~~ (16) "Manufacture" means the act of preparing and processing usable marijuana into a marijuana-infused product. A marijuana-infused product must be labeled as to indicate that it contains marijuana.

(17) "Marijuana items" means:

(a) marijuana;

(b) usable marijuana;

(c) dried leaves and flowers of the marijuana plant;

(d) marijuana derivatives, concentrates, extracts, resins, infused products, edible products, ointments, tinctures, suppositories, topicals; and

(e) other marijuana-related products.

~~(8)~~ (18) "Physician statement" means a written statement by a Montana licensed physician on ~~one of three~~ department forms certifying the registered cardholder applicant's debilitating condition. Physician statement forms include:

(a) Physician Statement for Debilitating Condition; or

~~(b) Physician Statement for Chronic Pain Diagnosis; or~~

~~(c)~~ (b) Physician Statement for Minors.

(19) "Process lot" means:

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

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

(9) remains the same, but is renumbered (20).

(21) "Registered premises" means the premises specified in an application for a license that is owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, dispense, store, transport, or test medical marijuana.

~~(10) "Registrant" means any provider, MIPP, or registered cardholder who has been approved for, and entered into, the department registry.~~

~~(11)~~ (22) "Registry" means the department's confidential ~~marijuana~~ record identifying ~~marijuana~~ registered cardholders~~, providers, and MIPPs~~.

~~(12) "Residential health care facility" means an adult day care center, an adult foster care home, an assisted living facility, or a retirement home as defined in 50-5-101, MCA.~~

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

(24) "THC" means tetrahydrocannabinol.

(25) "THCA" means tetrahydrocannabinolic acid.

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

37.107.111 REGISTERED CARDHOLDER APPLICATION PROCESS

(1) ~~All applicants~~ An applicant must ~~have a Montana mailing address and submit an application packet on forms provided by the department for consideration to be placed in the registry~~ be a resident of the State of Montana under 1-1-215, MCA.

~~(2) Application forms are available from and must be submitted to the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are also available on the department's web site at www.dphhs.mt.gov/marijuana.~~

~~(3) Registered cardholder application materials that must be provided include:~~

~~(a) State of Montana Marijuana Registered Cardholder Application Form. The information on this form includes:~~

~~(i) the applicant's name, address, date of birth, and social security number;~~

~~(ii) verification that the applicant:~~

~~(A) will cultivate and manufacture marijuana for the applicant's own use; or~~

~~(B) will obtain marijuana from a provider or marijuana-infused products provider.~~

~~(iii) verification that the applicant agrees to not divert to any other person the marijuana that the applicant cultivates, manufactures, or obtains for the applicant's debilitating medical condition; and~~

~~(iv) verification that the applicant is not in the custody of, or under the supervision of, the Montana Department of Corrections (DOC) or a youth court.~~

~~(b) proof of residency;~~

~~(c) signed, applicable Physician Statement attesting to the applicant's diagnosis of a debilitating medical condition as defined in 50-46-302, MCA, diagnosis of chronic pain, or certification for use by a minor. The Physician Statement includes:~~

~~(i) physician's name, address, and telephone number; and~~

~~(ii) physician's Montana medical license number.~~

~~(d) applicable fees as outlined in ARM 37.107.117; and~~

~~(e) landlord permission form, if applicable.~~

~~(4) The department will verify with the Montana Board of Medical Examiners that the attending physician, and, if applicable, the referral physician, are licensed to practice medicine in Montana and the license is in good standing.~~

~~(5) The department must either approve or deny a registered cardholder application within 30 business days of receiving completed application materials. If approved, the department must issue a registry identification card within five business days of approving the application.~~

~~(6) Applicants who designate, on the application form, a provider or a MIPP who is not already registered with the department, will be issued a registry identification card listing no provider or MIPP.~~

~~(a) Named providers or MIPPs who are not already registered with the department will be required to submit application materials and be approved for the registry by the department, before they can be a provider or MIPP.~~

~~(b) Upon approval by the department, the registered cardholder will be issued a new card with the name of the registered provider or MIPP.~~

~~(7) The registry identification card expires one year from the date of issuance except when:~~

~~(a) the physician statement provides a written certification for a shorter period of time; or~~

~~(b) a registered cardholder changes provider or MIPP. When a change request form is received, processed, and approved by the department the registered cardholder's current card becomes void. The new card is not valid until it is received by the registered cardholder.~~

~~(8) Incomplete application packets will be handled pursuant to ARM 37.107.121.~~

~~(9) If the registered cardholder application is denied, the department will send the applicant notice of and reasons for the denial. Rejection of the application is considered a final department action, subject to judicial review.~~

(2) All applications must be completed on forms provided by the department.

(3) A complete application must include the required fee, statements, and forms required in the application packet to be accepted and processed by the department.

(4) The registry identification card expires one year from the date of issuance with the exception of the following:

(a) 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.

(6) The department will approve or deny an application within 30 calendar days of receiving a complete application.

(7) A registered cardholder may not purchase, grow, or possess marijuana items prior to the effective date of the registration card.

(8) Any denial under this part is subject to judicial review.

(9) A custodial parent or legal guardian may submit an application for a minor under 50-46-307, MCA.

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

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

37.107.115 ~~PROVIDER OR MIPP~~ LICENSE AND ENDORSEMENT APPLICATION PROCESS (1) ~~Provider/MIPP applicants must be:~~ An applicant must be a resident of the State of Montana under 1-1-215, MCA.

~~(a) a Montana resident; and~~

~~(b) named by a registered cardholder on the cardholder's application or change request form.~~

~~(2) Provider application materials are available from the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are available on the department's web site at www.dphhs.mt.gov/marijuana. Completed provider/MIPP application materials must include:~~

~~(a) Provider/MIPP Application form that includes:~~

~~(i) the applicant's name, address, date of birth, and social security number; and~~

~~(ii) verification that the applicant:~~

~~(A) is not in the custody of, or under the supervision of, the DOC or a youth court;~~

~~(B) does not have a felony conviction or a conviction for any drug offense;~~

~~(C) has not been convicted of a violation under 50-46-331, MCA;~~

~~(D) has not failed to pay any taxes, interest, penalties, or judgments due to a government agency;~~

~~(E) has not defaulted on a government-issued student loan;~~

~~(F) has not failed to pay child support; and~~

~~(G) has not failed to remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency;~~

~~(b) applicable fee as specified in ARM 37.107.117;~~

~~(c) legible copy of the individual's Montana driver's license or other Montana state-issued identification card; and~~

~~(d) fingerprint cards as required by ARM 37.107.119.~~

~~(3) The department must either approve or deny a provider or MIPP application within 30 business days of receipt of a completed application. If approved, the department must issue a registry identification card to the provider or MIPP applicant within five business days.~~

~~(4) Providers/MIPPs must reapply annually. Providers/MIPPs do not need to reapply every time they are named by a registered cardholder, unless it has been one year since their last application was approved.~~

~~(5) Provider/MIPP registration will be revoked if the provider/MIPP is no longer named by a registered cardholder.~~

~~(6) If a former provider/MIPP, whose registration has been revoked or has expired, is named by a registered cardholder on an application or change request form, the former provider must reapply for the program.~~

~~(a) A former provider/MIPP, who is reapplying for the registry, does not require a fingerprint background check unless it has been 12 months or more from the date their fingerprints were received by the department from the Montana Department of Justice (DOJ).~~

~~(b) When the former provider/MIPP is approved by the department, the $50 provider/ MIPP application fee will be due when fingerprinting is again required pursuant to ARM 37.107.119.~~

~~(7) Incomplete application packets will be handled pursuant to ARM 37.107.121.~~

~~(8) If the provider/MIPP application is denied, the department will send the applicant notice of and the reasons for denial.~~

~~(9) Rejection of any application is considered a final department action, subject to judicial review.~~

(2) All applications must be completed on forms provided by the department.

(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 of ten percent or more in the business or entity;

(b) all directors; and

(c) principal officers of corporate applicants.

(5) The license will expire one year from the date of issuance.

(6) Renewal applications must be submitted at least 30 calendar days prior to the expiration date of the license.

(7) The department will approve or deny an application within 30 calendar days of receiving a complete application.

(8) Prior to approving an application, the department may contact any applicant or individual listed on the application and request additional supporting documentation or information.

(9) 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.

(10) If a licensee fails to submit a renewal application prior to the license or endorsement expiration date, the licensee may not continue to operate.

(11) If a renewal application is received within 30 days of expiration, the department may process the application.

(12) The department will not consider renewal applications received more than 30 days after the license or endorsement expiration date.

(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) 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) Any denial under this part is subject to judicial review.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-309, 50-46-344, MCA

37.107.117 FEES (1) ~~The~~ An applicant must submit to the department ~~will assess the following fees~~ the following fees with the initial application and renewal application:

(a) registered cardholder application fee of ~~$5~~ $30;

(b) provider or marijuana-infused product provider with ten or fewer registered cardholders, an application fee of ~~$50~~ $1,000;

(c) ~~MIPP application fee of $50~~ provider or marijuana-infused product provider with more than ten registered cardholders, an application fee of $5000;

(d) a combined provider and ~~MIPP~~ marijuana-infused product provider with ten or fewer registered cardholders, an application fee of ~~$50; and~~ $1,000;

(e) ~~annual registered cardholder renewal fee of $5~~ a combined provider and marijuana-infused product provider with more than 10 registered cardholders, an application fee of $5000;

(f) dispensary license application fee of $500;

(g) chemical manufacturing endorsement application fee of $500;

(h) testing laboratory application fee of $2000;

(i) marijuana employee permit fee of $50 for each individual licensee employee listed on application and any subsequent hires; or

(j) for amending or changing a registry identification card, a fee of $10.

(2) All fees must be submitted with the application and must be ~~paid by check or money order~~ made payable to the Department of Public Health and Human Services. Cash is not accepted.

(3) Fees are nonrefundable regardless of final application status.

~~(4) Renewal applications received by the department after the expiration date will be treated as new applications.~~

AUTH: 50-46-344, MCA
IMP: 50-46-344, MCA

37.107.119 ~~PROVIDER AND MIPP~~ FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS (1) A fingerprint background check by the Montana Department of Justice and Federal Bureau of Investigation is required for the following:

(a) all individuals listed on the application;

(b) employees defined in 50-46-302, MCA; and

(c) a parent or guardian of a minor serving as the minor's provider.

~~(1)~~ (2) Two fingerprint cards must be completed ~~and acceptable fingerprint cards must be submitted with provider/MIPP application materials~~ by a trained individual within a certified fingerprinting agency and submitted to the department. ~~The fingerprint cards provided by the department are the only fingerprint cards to be accepted for this purpose. Photocopied duplicates are not valid.~~

~~(2) The fingerprint card must be processed under these conditions:~~

~~(a) fingerprints must be rolled onto each of the two provided fingerprint cards by a trained individual within a Montana law enforcement agency; and~~

~~(b) the individual rolling the prints must maintain control and possession of the fingerprint cards once the prints are rolled onto the cards and must place the cards into an envelope, seal it, and mail it to the department:~~

~~(i) The individual rolling the prints may also place the applicant's application and applicable fee into the envelope as long as the individual rolling the prints maintains control and possession of the fingerprint cards as required by this rule.~~

~~(3) Upon completion of the fingerprint background check, the DOJ will return both fingerprint cards to the department. Upon receipt of the cards, the department will destroy the returned fingerprint cards.~~

~~(4) If an adequate set of readable fingerprints cannot be obtained, the DOJ will notify the department that a federal name-based background check has been submitted for the named individual.~~

~~(a)~~ (3) If an adequate set of fingerprints cannot be obtained, a ~~F~~federal name-based background check~~s~~ can be conducted but may take up to 90 days to complete.

~~(5) Fingerprint cards are considered complete when they are returned to the department by the DOJ. The 30 business day application approval time required by the department will begin on the day the fingerprint cards are returned.~~

~~(6) The fingerprint background checks are valid for a 12-month period. Thirty calendar days prior to the expiration date of the background check, new prints must be obtained following the same procedures outlined in this rule and returned to the department by the DOJ.~~

(4) Fingerprint background checks are required with the initial application and annual renewal applications.

(5) Results of background checks must be received prior to:

(a) approval of any application; and

(b) issuance of a marijuana employee permit.

~~(7)~~ (6) If the ~~law enforcement~~ certified fingerprinting agency charges a fee for fingerprinting, the applicant is responsible for the fee.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-311, 50-46-344, MCA

37.107.127 ~~INVALIDATION OR REVOCATION~~ DENIAL OF REGISTRY IDENTIFICATION CARD~~S~~ APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD ~~(1) A registry card for a registered cardholder can be revoked for the following reasons:~~

~~(a) the registered cardholder no longer has a debilitating medical condition;~~

~~(b) the written recommendation has been rescinded by the physician;~~

~~(c) the registrant is now in the custody of, or under the supervision of, the DOC or a youth court;~~

~~(d) the registered cardholder fails to report to the department within ten business days a change:~~

~~(i) in name;~~

~~(ii) in street, mailing, or physical address;~~

~~(iii) in physician;~~

~~(iv) in provider/MIPP; or~~

~~(v) concerning the debilitating medical condition.~~

~~(e) a landlord revokes their permission in writing and a change request form, with a new physical address, is not received within ten business days of the receipt of the revocation;~~

~~(f) a registered cardholder is found to be in violation of 50-46-330, MCA or 50-46-331, MCA; or~~

~~(g) mail sent to the registered cardholder by the department is returned, undeliverable by the United States Postal Service (USPS), and no change of address is submitted within twenty business days after the day the mail is returned to the department.~~

~~(2) In addition to the criteria stated in 50-46-308,MCA the department will revoke an active provider/MIPP registry identification card if the department~~

~~determines that the provider/MIPP has violated the provisions of the Montana Marijuana Act in the following ways:~~

~~(a) the provider/MIPP pleads guilty to, or is convicted of, any offense related to driving under the influence of alcohol or drugs;~~

~~(i) a registry card revocation under this circumstance must be for the period of suspension or revocation of the individual's driver's license as set forth in 61-5-208 and 61-8-410, MCA. If a provider/MIPP registry card is due to be renewed during a period of driver's license revocation, it may not be renewed by the department until the term of the driver's license revocation has elapsed.~~

~~(b) fails to report to the department a change in name or address within ten business days of the change;~~

~~(c) a provider/MIPP whose registry identification was issued under Section 35, Ch. 419, L. 2011 fails to submit fingerprints and pass a fingerprint background check by October 1, 2011;~~

~~(d) the results of a fingerprint background check conducted after issuance of the registry card show that the person is ineligible for the card pursuant to 50-46-308, MCA;~~

~~(e) the provider/MIPP is no longer named by any registered cardholder on their application or change request form; or~~

~~(f) mail sent to the provider/MIPP by the department is returned, undeliverable by the USPS, and no change of address is submitted within 20 business days after the day the mail is returned to the department.~~

~~(3) A registration card is not valid if the card has been altered or mutilated. A photocopy of the registry card is not valid.~~

~~(4) If a provider/MIPP registry card is revoked for any reason, the department will notify the provider/MIPP and the registered cardholder in writing and advise the registered cardholder that the provider/MIPP can no longer assist them.~~

(1) The department, after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

(a) the applicant did not provide the information required in the application;

(b) the department determines the information provided in the application was inaccurate, misleading or falsified;

(c) the applicant did not submit the required fee with the application;

(d) the applicant or registered cardholder does not have or no longer has a debilitating medical condition as defined in 50-46-302, MCA;

(e) the applicant is not a resident of the State of Montana;

(f) the applicant is in the custody of or under supervision of the Department of Corrections or youth court;

(g) the applicant or registered cardholder has been convicted of driving under the influence of alcohol or drugs under 50-46-320, MCA;

(h) the applicant or registered cardholder is found to be in violation of 50-46-330, MCA;

(i) the department is notified in writing by a landlord revoking permission under 50-46-307, MCA;

(j) the applicant or registered cardholder did not report changes to the department in accordance with [NEW RULE XIX];

(k) the registry identification card has been found to be altered or manipulated in any way; or

(l) any violations otherwise under Title 50, chapter 46, part 3, MCA have occurred.

(2) Any denial or revocation under this part is subject to judicial review.

AUTH: 50-46-344, MCA
IMP: Section 35, Ch. 419, L. 2011, 45-9-203, 50-46-303, 50-46-308, 50-46-320, 50-46-344, 61-11-101, MCA

37.107.128 LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS ~~(1) A registered cardholder who has named a provider may possess up to 1 ounce of useable marijuana.~~

~~(2)~~ (1) A registered cardholder who has not named a provider may possess up to ~~4 mature plants, 12 seedlings, and~~ 1 ounce of ~~useable~~ usable marijuana.

~~(3) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.~~

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-319, 50-46-344, MCA

5. The department proposes to repeal the following rules:

37.107.113 MINOR APPLICATION PROCESS is found on page 37-26713 of the Administrative Rules of Montana.

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

37.107.116 CHEMICAL MANUFACTURING ENDORSEMENTS is found on page 37-26715 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

37.107.121 INCOMPLETE APPLICATION, RENEWAL, OR CHANGE REQUESTS is found on page 37-26717 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-344, MCA

37.107.123 PROPERTY RESTRICTIONS is found on page 37-26717 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-344, MCA

37.107.125 REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS is found on page 37-26718 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-344, MCA

37.107.129 NOTIFICATION TO LOCAL LAW ENFORCEMENT is found on page 37-26721 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-344, MCA

37.107.132 TESTING LABORATORIES is found on page 37-26721 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-328, 50-46-329, 50-46-344, MCA

37.107.133 COMPLAINT HOTLINE is found on page 37-26722 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-342, 50-46-344, MCA

37.107.135 DISCLOSURE OF CONFIDENTIAL MARIJUANA REGISTRY INFORMATION is found on page 37-26722 of the Administrative Rules of Montana.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-344, MCA

6. STATEMENT OF REASONABLE NECESSITY

The 65th Montana Legislature passed Senate Bill 333 (SB333) which made significant changes to the Montana Medical Marijuana Act. SB333 requires the department to:

a. implement an inventory tracking system;
b. issue licenses for dispensaries and endorsements for chemical manufacturing;

c. collect samples during the inspection of registered premises to be submitted to a testing laboratory for testing;

d. establishes a tax on providers and a fee on dispensaries;

e. establishes requirements for testing laboratories;

f. revises the amounts of marijuana registered cardholders and providers may possess; and

g. eliminates the requirement for a parent to serve as the provider for a minor child.

The proposed new administrative rules, ARM amendments, and repeals of rules are necessary to implement the provisions of SB333 to create a revised, more transparent, accountable, and safe medical marijuana program. The department has been conducting research, gathering input from stakeholders, and learning best practices to design a comprehensive set of rules to govern the program. Cardholders as well as those who provide and test medical marijuana and enforce the provisions need to know the requirements of the program. The proposed new and amended rules are intended to provide clear and concise guidance to applicants, licensees and endorsees, law enforcement, and departmental employees regarding the use of medical marijuana for debilitating medical conditions.

NEW RULE I

The department proposes to adopt this new rule to state that the purpose of the ARMs is to establish requirements for the Medical Marijuana Program. This is necessary to explain why the ARMs are being adopted, amended, and repealed.

NEW RULE II

The department proposes to adopt this new rule to specify the procedures for denying applications to become a provider or cardholder and revoking licenses and endorsements. This rule is necessary to put applicants and providers on notice of the reasons for which their application may be denied or their licenses and endorsements revoked and the remedy if a denial or revocation occurs.

NEW RULE III

The department proposes to adopt this rule to specify that all persons employed by licensees have an employee permit and to provide that employee permits will not be issued to a person who has been convicted of a drug offense. This rule is necessary to implement Senate Bill 333.

NEW RULE IV

The department proposes to adopt this rule that specifies how Montana residency may be verified so applicants will be aware of what verification is acceptable.

NEW RULE V

The department proposes to adopt this rule to specify the requirements for providers and marijuana-infused products providers regarding their premises, employees, procedures and other limitation on their conduct. This rule is necessary to put

licensees on notice of the rules and procedures they must follow so that they can comply with those rules and procedures.

NEW RULE VI

The department proposes to adopt this rule to specify the requirements for producing marijuana-infused products, concentrates, and extracts. This rule is necessary to put licensees on notice of requirements for the conditions of their premises, substances that may and may not be used to produce marijuana-infused products, concentrates, and extracts and procedures to be followed so they can comply with those requirements.

NEW RULE VII

The department proposes to adopt this rule to specify requirements for labeling marijuana items. This rule requires labeling that provides information about the content of items being sold to cardholders and warnings regarding limitations on use of the items and also prohibits using labels that are untruthful, misleading, or attractive to minors. This rule is necessary to implement a provision of SB 333 and to protect cardholders and others who may come in contact with the items.

NEW RULE VIII

The department proposes to adopt this rule to specify requirements for packaging usable marijuana to be sold to consumers. This rule is necessary to protect cardholders and others who may come in contact with the items, especially children.

NEW RULE IX

The department proposes to adopt this rule to specify requirements for batch samples. This rule is necessary to put licensees on notice of how marijuana and marijuana products must be batched, labeled, stored, and secured.

NEW RULE X

The department proposes to adopt this rule to specify requirements for testing marijuana and marijuana products. This rule is necessary to implement provisions of SB 333 regarding the substances for which marijuana and marijuana products will be tested and other details of the testing process and put licensees on notice of these testing requirements.

NEW RULE XI

The department proposes to adopt this rule to specify procedures to be followed when a sample fails the initial test. This rule is necessary to put licensees on notice of their right to have a sample retested, the requirements for retesting, and the consequence of failure to pass the initial or a subsequent test.

NEW RULE XII

The department proposes to adopt this rule to specify the requirements for the operation of laboratories, including required and prohibited activities, the conduct of employees, and recordkeeping. This rule is necessary to put licensees on notice of rules they must follow in the operation of their laboratories.

NEW RULE XIII

The department proposes to adopt this rule to provide that all testing laboratories must be accredited and to specify the criteria for accreditation. This rule is necessary to implement Senate Bill 333 and to put laboratories on notice of the requirement to be accredited and the process for achieving accreditation. Accreditation of laboratories is necessary to ensure the quality of marijuana items sold to cardholders.

NEW RULES XIV and XV

The department proposes to adopt these rules to provide that licensees must use the department's inventory tracking system and to specify details about the use of the tracking system. These rules are necessary to implement Senate Bill 333 and to put licensees on notices of requirements relating to use of the department's tracking system.

NEW RULE XVI

The department proposes to adopt this rule to specify requirements for the transportation of marijuana by licensees between registered premises and licensed testing laboratories. This rule is necessary to put licensees on notice of manifest requirements and other requirements concerning the delivery of marijuana.

NEW RULE XVII

The department proposes to adopt this rule to specify requirements for waste management to put licensees on notice of the requirements for storing, managing, and disposing of waste generated during marijuana production and for keeping records regarding waste materials. This is necessary so licensees can comply with those requirements.

NEW RULE XVIII

The department proposes to adopt this rule to authorize the department to require licensees to recall marijuana items that are unfit for human consumption or were not produced or processed by a licensee. This rule is necessary for the safety and protection of consumers and to make licensees aware that they must recall marijuana items under certain circumstances.

NEW RULE XIX

The department proposes to adopt this new rule to specify the duty of cardholders and licensees to report certain changes in their circumstances. This rule is necessary to implement provisions of SB 333 regarding reporting requirements and to put cardholders and licensees on notice of reporting requirements.

NEW RULE XX

The department proposes to adopt this rule to authorize the department to conduct inspections and specify when and how the department may conduct inspections. The rule also provides that providers must cooperate with the department in the inspections and specifies the consequences if a provider fails to cooperate or if the inspection shows a provider has not complied with licensing requirements. This rule is necessary to implement provisions of SB 333 regarding inspections and put providers on notice of the department's right to inspect, the providers' obligation to cooperate and the consequences of failure to cooperate or if an inspection shows a provider is deficient or otherwise out of compliance with licensing requirements.

ARM 37.107.110

ARM 37.107.110 contains definitions of terms used in the rules governing the Medical Marijuana Program. It is necessary to add a number of new definitions to clarify the meaning of terms used in the proposed new rules.

ARM 37.107.111

ARM 37.107.111 governs the application process for becoming a registered cardholder and for renewal applications, provides a remedy for denial of an application, provides an expiration date for cards, and contains requirements for registered cardholders. The department proposes to amend this rule to comply with statutes.

ARM 37.107.113

The department proposes to repeal ARM 37.107.113 specifying the process for processing a minor's application to become a registered cardholder. The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

ARM 37.107.115

ARM 37.107.115 governs the application process to be licensed or obtain a chemical manufacturing endorsement or dispensary license. The department proposes to amend this rule to comply with statute.

ARM 37.107.116

The department proposes to repeal ARM 37.107.116 allowing for temporary chemical manufacturing endorsements as these are now addressed in other rules.

ARM 37.107.117

ARM 37.107.117 specifies the fees cardholders and providers must pay. It is necessary to amend this rule to comply with provisions of SB333 and notify cardholders and providers of what fees they will be charged. Although SB333 sets the fees for providers of marijuana and marijuana infused products at $1,000 for providers with ten or fewer cardholders and $5,000 for providers with more than ten cardholders, it also allows the department to revise these fees as needed to adequately fund the administration of the program and the inventory tracking program. The department has chosen to set the fees at $1,000 and $5,000 as established by the Legislature because the department believes these fees are adequate to fund the administration of the program and inventory tracking program at this time.

SB333 further authorizes the department to set fees for dispensaries, endorsements for chemical manufacturing and testing laboratories by rule. The department proposes to increase the fee for cardholders from $5 to $30 and to set the fee for dispensary licenses, chemical manufacturing endorsements and testing laboratory applications at $500. The rule also proposes to establish an employee permit fee of $50 per employee and a fee for amending or changing a registry identification card. The department has decided to charge these fees because the department believes they are adequate to fund the administration of the program and inventory tracking system at this time.

ARM 37.107.119

ARM 37.107.119 requires background checks for persons applying to become providers, employees, and a parent or guardian serving as a minor's provider and specifies the requirements for fingerprinting of applicants. The department proposes to amend this rule to comply with statute.

ARM 37.107.121

The department proposes to repeal ARM 37.107.121 governing incomplete applications, renewals, and change requests. The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

ARM 37.107.123

The department proposes to repeal ARM 37.107.123 requiring cardholders and providers to notify the department whether property used to cultivate or manufacture

marijuana is owned or rented by the cardholder or provider and, if it is rented, requiring the cardholder or provider to have the landlord complete a landlord permission form. The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

ARM 37.107.125

The department proposes to repeal ARM 37.107.125 requiring cardholders to report the loss or theft of a card and providing for issuance of a duplicate card. The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

ARM 37.107.127

ARM 37.107.127 specifies reasons for which a cardholder's card or a provider's license may be revoked. The department proposes to amend this rule to comply with statute.

ARM 37.107.128

The department proposes to amend ARM 37.107.128 addressing the allowable amounts of marijuana to comply with statute.

ARM 37.107.129

The department proposes to repeal ARM 37.107.129 requiring the department to notify county sheriffs of providers and MIPP within their jurisdiction. The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

ARM 37.107.132

The department proposes to repeal ARM 37.107.132 allowing for temporary testing laboratory licensing as these are now addressed in other rules.

ARM 37.107.133

The department proposes to repeal ARM 37.107.133 requiring the department to establish a hotline to receive complaints concerning the Montana Medical Marijuana Program and specifying policies regarding operation of the hotline. The repeal of this rule is necessary because the subject matter has either been moved to another ARM or is otherwise covered by statute.

ARM 37.107.135

The department proposes to repeal ARM 37.107.135 requiring the department to disclose marijuana registry information to specified entities and as provided by law.

The repeal of this rule is necessary because the subject matter has either been moved to another rule or is otherwise covered by statute.

Fiscal Impact

Current Program Numbers	Current Fee	Proposed Fee	Cumulative Amount
20,000 cardholders	$5	$30	$25 increase = $500,000
387 providers with ten or fewer cardholders	$50	$1,000	$950 increase = $367,650
222 providers with more than ten cardholders	$50	$5,000	$4,950 increase = $1,098,9000
Four testing laboratories	$0	$2,000	$2,000 increase = $8,000
137 chemical manufacturer endorsements	$0	$500	$500 increase = $68,500

Other Estimated Actions/Fees

1,400 licensee's employees		$50	$50 new fee = $70,000
100 dispensaries		$500	$500 new fee = $50,000
4,000 change requests		$10	$10 new fee = $40,000

7. 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: Kenneth Mordan, 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 7, 2017.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on October 26, 2017.

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

/s/ Flint Murfitt	/s/ Sheila Hogan
Flint Murfitt, Attorney	Sheila Hogan, Director
Rule Reviewer	Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the adoption of New Rule I pertaining to dog training	))	NOTICE OF DECISION ON PROPOSED RULE ACTIONS

TO: All Concerned Persons

1. On May 12, 2017, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-473 pertaining to the proposed adoption of the above-stated rule at page 585 of the 2017 Montana Administrative Register, Issue Number 9. On September 8, 2017, the department published a notice of public hearings and extension of comment period on the proposed adoption of the above-stated rule at page 1447 of the 2017 Montana Administrative Register, Issue Number 17.

2. Public hearings on the notice of proposed adoption of the above-stated rule were held on October 2, 2017 in Great Falls, Billings, Miles City, and Glasgow, and on October 10, 2017 in Helena, Kalispell, Missoula, and Bozeman.

3. The department is not adopting the above-stated rule pertaining to dog training. During the first comment period, the department received over 100 written comments both in support of and in opposition to the language that was initially proposed. The Environmental Quality Council (EQC) also objected to the proposed rule. The department amended the proposed rule in an attempt to address issues raised during public comment and by the EQC, and put the amended proposal back out for public comment, including public hearings. The EQC again objected to the amended proposal. The department agreed to not adopt the rule, and instead work with the EQC on addressing concerns with the language currently in statute during the 2019 legislative session. The EQC asked the department to continue with public comment and the hearings to begin to collect public input on future legislation. All comments from both public comment periods and the public hearings will be sent to the EQC, and the department will continue to work with the EQC on future legislation pertaining to dog training.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 24.114.101 board organization, 24.114.202 public participation, 24.114.301 definitions, 24.114.401 fee schedule, 24.114.402 architect seal, 24.114.408 fee abatement, 24.114.411 military training or experience, 24.114.501 architect examination, 24.114.502 architect licensure by examination, 24.114.503 licensure of applicants registered in another state, 24.114.515 architect emeritus status, 24.114.1401 landscape architect licensure by examination, 24.114.1402 education and experience required for landscape architect licensure, 24.114.1403 landscape architect examinations, 24.114.1404 landscape architect licensure by endorsement, 24.114.1410 landscape architect seal, 24.114.2105 architect continuing education requirements, 24.114.2301 unprofessional conduct, 24.114.2402 screening and adjudication panels; and the repeal of ARM 24.114.406 solicitation of business by nonresident architects, 24.114.510 architects-in-training, 24.114.2101 renewals, and 24.114.2103 replacement licenses	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 7, 2017, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-36 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 976 of the 2017 Montana Administrative Register, Issue No. 13.

2. On August 1, 2017, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the August 4, 2017, deadline.

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

COMMENT 1: One commenter opposed the repeal of ARM 24.114.510 architects-in-training. The commenter stated that alternative titles will cause more confusion and referenced an NCARB blog that speaks directly to the use of architect-in-training as support for the commenter's position.

RESPONSE 1: Section 37-65-301, MCA, limits the use of the title architecture or any words, letters, figures, or other device indicating or intending to imply that the person is an architect, without having a license. The board concluded that architect-in-training or other such titles could confuse the public into thinking an architect-in-training is licensed by the board.

COMMENT 2: One commenter questioned the repeal of the renewal rule and believed it would create the possibility for those who honestly miss a renewal deadline to lose their licenses and receive board discipline.

RESPONSE 2: The process for late renewal of a license is outlined in 37-1-141, MCA, of the Uniform License Law. The board determined that eliminating this rule will have no impact on how late renewals are processed. Further, licensees will still be able to renew up to two years after the renewal deadline, prior to terminating.

COMMENT 3: A commenter indicated HSW is not defined by the board in rule.

RESPONSE 3: The board is adding a definition of HSW to ARM 24.114.301 as shown in the proposal notice.

COMMENT 4: One commenter questioned the elimination of CE provided by "qualified" individuals and the additional requirement that all CE be approved by AIA. The commenter was concerned that it can take a long time before AIA has relevant course offerings on some topics, such as building science education.

RESPONSE 4: The board is eliminating CE provided by "qualified" individuals because it was unclear who was "qualified" and how the board could measure qualifications. As proposed, CE courses do not have to be AIA courses, but they must be offered by individuals or organizations approved by the American Institute of Architects Continuing Education System, the Landscape Architect Continuing Education System, or the Interior Design Continuing Education Council. The board concluded that approval by one of these organizations ensures that the provider is offering quality CE and the subjects are timely, accurate, and address health, safety, and welfare.

COMMENT 5: One commenter indicated that clarification was needed in ARM 24.114.2105(3)(c). The current draft requires at least 75 percent of the course content and instruction time be devoted to HSW, which is proposed to be defined in ARM 24.114.201(8) as CE designated by the American Institute of Architects, the

American Society of Landscape Architects, the Interior Design Continuing Education Council, or NCARB. This is more restrictive than intended and the commenter suggested amending the proposal to strike "HSW" and replace with "health, safety, and welfare" to allow for a broader interpretation.

RESPONSE 5: The board concurs and will amend the proposed rule.

4. The board has amended ARM 24.114.101, 24.114.202, 24.114.301, 24.114.401, 24.114.402, 24.114.408, 24.114.411, 24.114.501, 24.114.502, 24.114.503, 24.114.515, 24.114.1401, 24.114.1402, 24.114.1403, 24.114.1404, 24.114.1410, 24.114.2301, and 24.114.2402 exactly as proposed.

5. The board has repealed ARM 24.114.406, 24.114.510, 24.114.2101, and 24.114.2103 exactly as proposed.

6. The board has amended ARM 24.114.2105 with the following changes from the original proposal, stricken matter interlined, new matter underlined:

24.114.2105 ARCHITECT CONTINUING EDUCATION REQUIREMENTS

(1) through (3)(b) remain as proposed.

(c) at least 75 percent of the course content and instruction time must be devoted to ~~HSW~~ health, safety, and welfare subjects such as technical and professional subjects necessary for proper evaluation, design, construction, and utilization of buildings and the built environment that are within the following enumerated areas:

(i) through (6) remain as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 30, 2017.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.222.301 definitions, 24.222.401 fees, 24.222.2301 unprofessional conduct, and the adoption of NEW RULE I limited licenses and NEW RULE II supervised professional experience	)))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 8, 2017, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-27 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1479 of the 2017 Montana Administrative Register, Issue No. 17.

2. On October 4, 2017, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. One comment was received by the October 6, 2017, deadline.

3. The board has thoroughly considered the comment received. A summary of the comment and the board response is as follows:

COMMENT 1: One commenter suggested the board amend (3) of NEW RULE I by striking language allowing education from programs accredited by entities deemed equivalent to the Council on Academic Accreditation in Audiology and Speech-Language Pathology of American Speech-Language Hearing Association (Council). The commenter stated that it is unknown what these equivalent entities would be, or who would decide whether an entity is equivalent.

RESPONSE 1: The board notes that allowing for equivalent entities will ensure the high accreditation standards of the Council are always met without having to amend the rule to add every new entity. Additionally, the board will determine if other accreditation bodies are equivalent to the Council. The board is adopting NEW RULE I exactly as proposed.

4. The board has amended ARM 24.222.401 and 24.222.2301 exactly as proposed.

5. The board has adopted NEW RULES I (24.222.508) and II (24.222.509) exactly as proposed.

6. While preparing the replacement pages for ARM 24.222.301, it was discovered that the definitions were no longer in alphabetical order as is the formatting requirement of the Secretary of State. To fix this clerical error and reorder the definitions, ARM 24.222.301 is amended as proposed, but with the following changes to the original proposal:

24.222.301 DEFINITIONS (1) and (2) remain as proposed.
(3) remains as proposed but is renumbered (4).
(4) remains as proposed but is renumbered (3).
(5) remains as proposed.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LUCY HART PAULSON, Ed.D., CCC-SLP
CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 30, 2017.

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

In the matter of the adoption of New Rules I through IV and the repeal of ARM 37.27.901, 37.27.904, 37.27.907, 37.27.908, 37.27.912, 37.27.916, 37.27.920, 37.27.921, and 37.27.926 pertaining to Medicaid substance use disorder services	))))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 4, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-736 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1258 of the 2017 Montana Administrative Register, Issue Number 15.

2. The department has adopted New Rule I (37.27.902), II (37.27.903), III (37.27.905), and IV (37.27.906) as proposed. The department has repealed the above-stated rules as proposed.

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

Comment #1: The department received one comment from the Montana Medical Association (MMA). While the MMA supports the rules, it recommends adding language to New Rule IV requiring a prescribing provider to have an in-person relationship with a patient to whom the provider issues a controlled substance designated in Schedule II for MAT services.

Response #1: The department thanks MMA for this comment, and acknowledges the importance for ensuring standards of care for MAT delivery, as well as ensuring that patients receive quality wrap-around services. The department will release proposed MAT rules in the coming weeks which will establish requirements for initiating and maintaining provider-patient relationship through face-to-face and telemedicine delivery. As soon as the MAT rules are approved, the department will propose amending the necessary rules to reference MAT rules for SUD treatment.

/s/ Francis X. Clinch
Francis X. Clinch
Rule Reviewer

/s/ Shannon McDonald for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.36.604 pertaining to updating the federal poverty index guidelines for the Montana telecommunications access program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 23, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-795 pertaining to the proposed amendment of the above-stated rule at page 864 of the 2017 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

4. The department intends to apply this rule retroactively to February 9, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

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

In the matter of the amendment of ARM 37.86.2950 pertaining to graduate medical education payment program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-799 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1268 of the 2017 Montana Administrative Register, Issue Number 15.

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

37.86.2950 GRADUATE MEDICAL EDUCATION PAYMENT PROGRAM

(1) and (2) remain as proposed.

(3) The department will make an annual payment to each eligible hospital on or before August 31 of each year.

(a) remains as proposed.

(b) If an eligible hospital reports no primary care or psychiatry resident full time equivalents (FTE) participating in the GME program for any given program year or portion thereof, the eligible hospital will not receive payment for those time periods of nonparticipation. FTE totals include residents conducting rural rotations. For purposes of this rule, a rural rotation is a period of ~~time of at least 28 days~~ one month where a primary care or psychiatry resident is working in a rural location, outside of their primary facility and urbanized area, with the express purpose of the resident being available to provide care to the rural area's patient population.

(4) and (5) remain as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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

COMMENT #1: The department received numerous comments supporting the inclusion of rural rotations, and psychiatry residency programs to the Graduate Medical Education rules.

RESPONSE #1: The department appreciates the comments received.

COMMENT #2: The department received several comments stating that the language in regarding the length of a rural rotation in ARM 37.86.2950 may be too restrictive for how rotations work in practice.

RESPONSE #2: The department agrees with the comments received and has modified the language to provide a more appropriate definition of a rural rotation.

4. The department intends to apply this rule amendment retroactively to August 1, 2017. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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

/s/ Shannon McDonald for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.13.601, 42.13.701, and 42.13.702 pertaining to the conditions for operating a brewery, production threshold, and beer reporting requirements	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Department of Revenue published MAR Notice No. 42-2-974 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1286 of the 2017 Montana Administrative Register, Issue Number 15.

2. On August 24, 2017, a public hearing was held to consider the proposed amendment. Sam Hoffman, Red Lodge Ales Brewing Company; Patrick Kainz, MAP Brewing Company; and Brian Smith, Blackfoot River Brewing Company, appeared and testified at the hearing. Other members of the public attended the hearing but did not testify. Written comments were received from Matt Leow, Montana Brewers Association and Kristi Blazer, Montana Beer and Wine Distributors' Association.

3. The department amends ARM 42.13.601 and 42.13.701 as proposed.

4. Based upon the comments received, the department amends ARM 42.13.702 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.13.702 BEER REPORTING REQUIREMENTS (1) On or before the 15th of each month, a brewery that sells beer directly to a retailer or consumer in Montana shall pay any tax due and file ~~the following reports with the department for the preceding month:~~

~~(a)~~ Form BET. ~~, reporting the amount of beer sold directly to retailers and consumers, the amount of beer produced within the reporting period, and the amount of beer sold to consumers for on-premises consumption;~~

~~(b) Form BET-3, reporting the names of the retailers and quantity of beer the retailer purchased; and~~

~~(c)~~(2) On or before the 15th of each month, each licensed brewer and beer importer located outside of Montana shall file Form BSM, reporting the amount of beer shipped directly into the state to each Montana beer wholesaler.

(2) remains as proposed, but is renumbered (3).

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

COMMENT 1: Mr. Hoffman, Mr. Kainz, and Mr. Leow all expressed concern that requiring self-distributing breweries to fill out Form BET-3, as proposed for ARM 42.13.702(1)(b), will create a substantial amount of additional paperwork for brewers. They commented that the existing reporting system, using the Form BET, is simple, sufficient, and working well and they would like the department to continue using it. The department's proposed amendments add, rather than reduce, confusion. The proposed reporting requirements, which impose additional burdens on breweries, are not the best way to achieve the department's stated goals.

RESPONSE 1: The department appreciates these comments. Because 16-3-211, MCA, already authorizes the department to examine a brewer's books and premises to verify the accuracy of any return, the department has reconsidered and determined it is unnecessary to require brewers to file Form BET-3. The department has further amended ARM 42.13.702 to remove this proposed language.

COMMENT 2: Mr. Hoffman, Mr. Kainz, and Mr. Leow also commented that the language proposed for ARM 42.13.702(1)(c), which requires brewers to file Form BSM, will be time consuming. Brewers already comply with current reporting requirements and they would like the department to continue using the existing reporting system. Requiring breweries to also submit a Form BSM is unnecessary. Breweries that self-distribute could have hundreds of invoices in a given month. While breweries already maintain records of the invoices, requiring them to enter and report detailed information from the invoices would be overly burdensome.

RESPONSE 2: The department agrees. The intent of the Form BSM is to capture shipments of beer into Montana by out-of-state breweries and beer importers. Therefore, the department has further amended the rule to make it clear that only licensed brewers and beer importers located outside of Montana are required to file Form BSM.

COMMENT 3: Mr. Hoffman, Mr. Kainz, and Mr. Leow all expressed concern that the department is proposing to make the brewery reporting requirements consistent with winery reporting requirements. They disagree with this approach because the two manufacturing types are regulated differently by statute. Further, the department's reason statement appears to suggest there is a need to address a compliance issue with brewery reporting. Montana breweries fully support compliance and take their reporting requirements seriously. There would be little reward and significant risk for failing to report fully and accurately.

RESPONSE 3: The department has further amended ARM 42.13.702 to remove the requirement for all brewers to file Form BET-3, and for in-state brewers to file Form BSM. Although there are similarities between the reporting requirements of breweries and wineries, the department agrees that each manufacturing license type is different and the reporting should reflect these unique statutory requirements.

COMMENT 4: Mr. Leow commented that the additional reporting requirements for Montana breweries are being applied too broadly in the proposed changes to ARM 42.13.702. The vast majority of Montana breweries will come nowhere near the 2,000 barrel limit for their on-premises sales. Ensuring brewers don't overreach the 2,000 barrel limit in a tasting room is of concern and reporting what is sold in-house versus wholesale would be simpler. The Form BET should be amended to require brewers to report total beer provided for on-premises consumption. Ms. Blazer commented that the Montana Beer and Wine Distributors' Association supports accountability and transparency in recordkeeping and the reporting of certain information to the department. The system needs to ensure the barrel limit on sample room sales is trackable and enforceable by the department.

RESPONSE 4: The department agrees that tracking the 2,000 barrel limitation for on-premises consumption by a brewer is important. Therefore, the department has updated its Form BET, beginning with the October 2017 reporting period, to require brewers to report the amount of beer they provided for on-premises consumption during each reporting period.

COMMENT 5: Mr. Leow offered suggestions for what the department might ask for on the existing Form BET, such as the total amount of beer produced in the month, total barrels of beer shipped to wholesalers, total barrels of beer sold to retailers, total barrels of beer donated, total barrels of beer sold for off-premises consumption, and total barrels of beer sold for on-premises consumption. Additionally, the department should require breweries to maintain records of sales to retailers and shipments to wholesalers that can be produced upon the department's request. Mr. Smith recommended the department ask brewers to report the total amount self-distributed to ease the regulatory burden on brewers, and encouraged the department to streamline the reporting process to a single document if possible.

RESPONSE 5: The department appreciates these suggestions from members of the industry and the recommendations for additional questions to ask on the Form BET. The department has updated the form to require brewers to report the amount of beer provided for on-premises consumption, the total amount of beer sold to beer wholesalers, the total amount of beer produced, and the on-hand inventory of finished beer at the end of each reporting period. These additional questions coincide with the reporting requirements in 16-3-211, MCA, and House Bill 541, L. 2017, and eliminates the need for additional forms to be submitted. Finally, because 16-3-211, MCA, already provides for the department's inspection of a brewer's or beer importer's books or premises for determining the accuracy of a return, the department believes it would be redundant to also include this requirement in the rule language.

/s/ Laurie Logan	/s/ Eugene Walborn
Laurie Logan	Eugene Walborn
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.173, 42.20.454, and 42.20.455 pertaining to deadlines for classification and appraisal reviews and consideration of sales price and fee appraisals as market value indicators	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 18, 2017, the Department of Revenue published MAR Notice No. 42-2-975 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1374 of the 2017 Montana Administrative Register, Issue Number 16.

2. On September 11, 2017, a public hearing was held to consider the proposed amendment. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. The Montana Forest Owners Association provided written comments stating they have no concern with the amendments as proposed.

3. The department amends ARM 42.20.173 and 42.20.454 as proposed.

4. Based upon the comments received, the department amends ARM 42.20.455 as proposed, but with the following changes from the original proposal, deleted matter interlined:

42.20.455 CONSIDERATION OF INDEPENDENT FEE APPRAISALS AS AN INDICATION OF MARKET VALUE (1) remains as proposed.

~~(2) If the fee appraisal submitted for consideration was for class four property, as defined in 15-6-134, MCA, but not completed for a federal related transaction or commercial lending institution, the fee appraiser must determine and perform the scope of work necessary to develop, disclose, and report credible assignment results in the Appraisal Report.~~

(3) and (4) remain as proposed, but are renumbered (2) and (3).

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

COMMENT 1: Bob Story, Executive Director of the Montana Taxpayers Association, asked why the department is requiring the recertification of an appraisal in ARM 42.20.455 to be completed by the original fee appraiser. He commented that he understands the logic for it, but doesn't know if it is practical. A property owner might have difficulty tracking down the original fee appraiser. He stated that he questions whether or not allowing an appraisal to be updated by an equally

qualified appraiser was the intent of the law or not, and asked the department to reconsider whether that is a necessary requirement.

RESPONSE 1: The department appreciates Mr. Story's comments and understands his question and concern for the property owner. The department follows the Uniform Standards of Professional Appraisal Practice for appraisal recertification, which requires the original appraiser to complete any recertification of their own work. The original appraiser is in possession of their personal work files, any documents they may have used to conduct their initial valuation, and the analysis methods they used to arrive at and certify their assessment at the time. A licensed/certified appraiser can amend or recertify their own work, but cannot amend or recertify work completed by another individual. If the original appraiser is not available to provide the recertification, the property owner would need to order a new, retroactive, appraisal to be conducted by another appraiser licensed or certified by the Montana Board of Real Estate Appraisers, as referenced under Title 37, chapter 54, MCA. A retroactive appraisal is performed when the effective date of the appraised market value determination is in the past. In this situation, the appraiser would determine the property's market value with an effective date that is consistent with the department's valuation date for the specified valuation cycle.

COMMENT 2: Mr. Story asked whether the proposed language in ARM 42.20.455(2) is necessary. He commented that it seems redundant with the language proposed for (1)(b)(ii), which states that an independent fee appraisal submitted to the department must be conducted in accordance with the current Uniform Standards of Professional Appraisal Practice (USPAP), as set forth for licensed or certified real estate appraisers under 37-54-403, MCA; or completed for federally related transactions or commercial lending institutions. Mr. Story stated he believes that an independent fee appraisal completed in accordance with USPAP requires the appraiser to determine and perform a scope of work necessary to develop, disclose, and report credible assignment results in the appraisal report that are the same whether or not the appraisal is completed for a federal related transaction or commercial lending institution.

RESPONSE 2: The department appreciates Mr. Story's input on the rule and agrees that the proposed language in (2) is redundant with (1)(b)(ii) and unnecessary. The department has further amended ARM 42.20.455 to remove the language that had been proposed in (2).

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.101, 42.20.102, 42.20.105, 42.20.118, and 42.20.119 pertaining to property tax exemption applications, exemptions for veterans' organizations, exemption notifications to county treasurers, and valuation of condominiums and townhomes	))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 18, 2017, the Department of Revenue published MAR Notice No. 42-2-976 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1383 of the 2017 Montana Administrative Register, Issue Number 16.

2. On September 7, 2017, a public hearing was held to consider the proposed amendment. Senator Russ Tempel and Glacier County Commissioner Michael Des Rosier attended the hearing. The Montana Forest Owners Association provided written comments stating they have no concern with the amendments as proposed. No testimony or other written comments were received.

3. The department amends ARM 42.20.101 and 42.20.105 as proposed.

4. The department amends ARM 42.20.102, 42.20.118, and 42.20.119 as proposed, but with 15-6-235, MCA, (Senate Bill 324, L. 2017, section 1) added to the implementing section for each rule, as follows, new matter underlined:

<u>42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS</u>
(1) through (18) remain as proposed.

AUTH: 15-1-201, MCA
IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-6-216, 15-6-221, 15-6-233, <u>15-6-235,</u> 15-6-311, 15-7-102, MCA

<u>42.20.118 TRIBAL GOVERNMENT APPLICATION FOR A TEMPORARY PROPERTY TAX EXEMPTION</u> (1) through (9) remain as proposed.

AUTH: 15-1-201, 15-6-230, MCA
IMP: 15-6-230, <u>15-6-235,</u> MCA

<u>42.20.119 AMMUNITION COMPONENTS MANUFACTURING - PROPERTY TAX EXEMPTION APPLICATIONS</u> (1) through (6) remain as proposed.

AUTH: 15-1-201, MCA
IMP: 15-6-219, 15-6-235, 15-24-1410, 30-20-201, 30-20-202, 30-20-203, 30-20-204, 30-20-205, 30-20-206, MCA

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.301 and 42.4.302 pertaining to calculating the elderly homeowner/renter tax credit	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2017, the Department of Revenue published MAR Notice No. 42-2-978 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1494 of the 2017 Montana Administrative Register, Issue Number 17.

2. On September 28, 2017, a public hearing was held to consider the proposed amendment. Claudia Clifford, Advocacy Director for AARP Montana, appeared and testified at the hearing. Written comments were received from Edward Houser, a taxpayer representative, and a phone-in comment was received from Clayton Schenck, an interested party.

3. The department amends the above-stated rules as proposed.

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

COMMENT 1: Ms. Clifford, Mr. Houser, and Mr. Schenck all expressed support for the rules as proposed.

Ms. Clifford commented that the elderly homeowner/renter tax credit is a popular form of tax relief for Montana's low income seniors and the department's proposed amendments provide a fairer and simpler methodology for calculating the credit for filers who live in senior living and long-term care residential settings. Some face challenges calculating the credit if the facility they reside in provides other services in addition to housing and does not itemize the monthly fee to specify the portion that covers rent. AARP Montana appreciates the department's initiative to address this problem with a reasonable solution.

Mr. Houser commented that he is very pleased with the efforts made by the department in drafting the proposed changes to the rules to address this important issue. Over the last few years he has been frustrated when working on this issue for an individual who resided in an assisted living facility. The process was confusing and did not meet the rigor required to validate the full tax credit the individual was entitled to receive. He stated that the proposed changes are an excellent solution to the problems he experienced and the examples provide clear guidance to the taxpayer on how to determine their credit category and he hopes the department will include these examples in the published instructions for claiming the credit.

Mr. Schenck commented that he is pleased the department is taking this action with the elderly homeowner/renter credit rules.

RESPONSE 1: The department appreciates these comments in support of the proposed rulemaking, and is considering Mr. Houser's suggestion to include the examples in future instructions or communications about the credit.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.9.106, 42.9.203, 42.9.301, 42.9.401, and 42.9.501 pertaining to pass-through entities	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2017, the Department of Revenue published MAR Notice No. 42-2-979 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1500 of the 2017 Montana Administrative Register, Issue Number 17.

2. The department amends the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.4.403, 42.4.502, 42.4.1702, 42.4.2301, 42.4.2302, 42.4.2303, 42.4.2704, 42.4.2802, and 42.4.4115, and the repeal of ARM 42.4.601, 42.4.602, 42.4.603, 42.4.702, 42.4.703, 42.4.2402, 42.4.2403, 42.4.2404, 42.4.2501, 42.4.2502, 42.4.2503, 42.4.3301, 42.4.3302, 42.4.3303, 42.4.3304, 42.4.3305, and 42.4.3306 pertaining to tax credits	))))))))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 22, 2017, the Department of Revenue published MAR Notice No. 42-2-981 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1620 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department adopts New Rule I (42.4.1202), amends ARM 42.4.403, 42.4.502, 42.4.1702, 42.4.2301, 42.4.2302, 42.4.2303, 42.4.2704, 42.4.2802, and 42.4.4115, and repeals ARM 42.4.601, 42.4.602, 42.4.603, 42.4.702, 42.4.703, 42.4.2402, 42.4.2403, 42.4.2404, 42.4.2501, 42.4.2502, 42.4.2503, 42.4.3301, 42.4.3302, 42.4.3303, 42.4.3304, 42.4.3305, and 42.4.3306 as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the employer apprenticeship tax credit	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 22, 2017, the Department of Revenue published MAR Notice No. 42-2-983 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1647 of the 2017 Montana Administrative Register, Issue Number 18.

2. On October 12, 2017, a public hearing was held to consider the proposed adoption. No members of the public appeared. Written comments were received from Steve Snezek, Executive Director of the Montana Building Industry Association.

3. The department adopts New Rule I (42.4.2202) as proposed, effective January 1, 2018.

4. The department has considered the comments received. A summary of the comments received and the department's response is as follows:

COMMENT 1: Mr. Snezek commented on behalf of the members and small business owners of the Montana Building Industry Association (MBIA) in support of the proposed new rule. He stated that they supported House Bill 308, L. 2017, because a trained workforce is among the top issues facing MBIA members. The ability to hire good employees is a serious problem in the construction trades and this legislation aimed to help alleviate that by providing tax incentives to employers, which is a positive step in the right direction. As proposed, the new rule adequately implements the department's portion of this new legislation.

RESPONSE 1: The department appreciates the MBIA's support of the new rule.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn
Eugene Walborn
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.

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 the accumulative table 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.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2017. This table includes those rules adopted during the period June 30, 2017, through September 30, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2017, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2017 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

New Rule	Due Date of Annual Financial Statement for Escrow Licensee, p. 623, 1141
New Rule	Definition of "Alter" for Mortgage Licensees, p. 965, 1516
2.21.3703	and other rules - Recruitment and Selection Policy, p. 1309
2.21.6608	and other rules - Employee Records Management Policy, p. 1316, 1443
2.59.1002	Merger Application Procedures for Banks, p. 724, 1295
2.59.1706	and other rules - Surety Bond – Table Funding – Application of Financial Standards – Reporting Forms for Mortgage Servicers – Standardized Forms and Procedures of the Nationwide Mortgage Licensing System – Clarification of Definition, p. 576, 1049

(Public Employees' Retirement Board)

2.43.1306	and other rules - Actuarial Rates and Assumptions - Service Purchases, p. 818, 1515
2.43.3502	and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 815, 1514

(Montana Lottery Commission)

2.63.1201	Prizes, p. 388, 782

AGRICULTURE, Department of, Title 4

New Rule Pesticides, p. 1322, 1950
New Rules Mediation Services, p. 1926
4.10.201 and other rules - Pesticide Housekeeping Changes, p. 2261, 626, 1948
4.12.1405 and other rules - Nursery Program, p. 1319, 1949
4.12.3103 Seed Labeling - Viability Information, p. 1445

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)
New Rules Air Ambulance - Hold Harmless Dispute Resolution, p. 1069, 1877
New Rules Corporate Governance Annual Disclosures, p. 1536
6.2.101 and other rules - Agency Rulemaking and Contested Case Procedures - Agency Debt Collection Practices, p. 1200, 1889
6.6.101 and other rules - Insurance Producer Licensing - Electronic Filing of the Appointment and Termination of Insurance Producers, p. 1206, 1890
6.6.304 and other rules - Replacement of Life Insurance - Medicare Select - Life Insurance Illustrations - Funeral Insurance - Title Insurance - Group Coordination of Benefits - Loss Cost Advisory Rate Filings - Hazardous Financial Conditions - Audited Reports and Annual Statements - Holding Company Systems - Guaranty Association - Actuarial Opinions - Captive Insurers - Mortality Tables - Viatical Settlement Agreements, p. 1186, 1888
6.6.503 and other rules - Medicare Supplement Insurance, p. 1542
6.6.1804 and other rules - Unfair Discrimination - Accreditation Fees - Small Employer Reinsurance - Insure Montana Program - Managed Care Community Networks, p. 1078, 1887
6.6.3813 and other rules - Credit for Reinsurance, p. 1929
6.6.4901 and other rules - Patient-Centered Medical Homes, p. 1574
6.6.8301 and other rule - Establishment or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual - Updates to the Public Participation Guidelines, p. 1324

COMMERCE, Department of, Title 8

8.94.3729 and other rule - Administration of the 2017 and 2018 Program Year Federal Community Block Grant (CDBG) Program – Public Facilities Projects – Affordable Housing Projects, p. 582, 869
8.94.3817 Administration of the 2019 Biennium Treasure State Endowment Program – Planning Grants, p. 580, 868
8.99.806 Implementation of the Primary Sector Workforce Training Program, p. 730, 1143
8.99.917 and other rule - Implementation of the Big Sky Economic Development Trust Program, p. 727, 1142

8.111.303 and other rules - Financing Programs - Conditions of Financial Assistance - Approved Lenders - Approved Servicers - Counseling Requirements - Eligibility Requirements - Repayment of the Loan - Definitions - Housing Credit Allocation Procedure - Lender and Servicer Requirements and Limits - Loan Terms and Conditions - Confidentiality and Disclosure of Information, p. 460, 783

EDUCATION, Title 10

(Board of Public Education)
10.57.101 and other rules - Educator Licensure, p. 1775, 2330
10.64.301 School Bus Requirements, p. 391, 1891

(Superintendent of Public Instruction)
10.13.310 and other rules - Traffic Education, p. 1210, 1650
10.55.701 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Amend ARM 10.55.701 to Require a Policy for Suicide Prevention Programs in Schools, p. 1577

FISH, WILDLIFE AND PARKS, Department of, Title 12

New Rule Dog Training, p. 585, 1447
12.3.109 Disease Management, p. 1328, 1951

(Fish and Wildlife Commission)
12.11.501 and other rules - Flathead Lake, p. 118, 661
12.11.501 and other rule - Madison River, p. 121, 663
12.11.501 and other rules - Fort Peck Dredge Cuts - Fort Peck Reservoir, p. 124, 664
12.11.610 and other rule - Recreational Use on the Bitterroot River, p. 1451

ENVIRONMENTAL QUALITY, Department of, Title 17

New Rules Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1331, 1932
17.30.660 Nutrient Standard Variances, p. 394, 470, 869
17.36.103 and other rules - Adoption of a New Version of Department Circular DEQ-8, p. 1580
17.50.403 and other rules - Definitions of Solid Waste Management - Landfarm Facility Standards - Compost Standards and Definitions, p. 3, 285, 666

(Board of Environmental Review)
17.8.102 and other rules - Incorporation by Reference - Definitions - Applicability - Operating Permit Program Overview - Applicability of Air Quality Rules, p. 1933

TRANSPORTATION, Department of, Title 18

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

(Public Safety Officers Standards and Training Council)

LABOR AND INDUSTRY, Department of, Title 24

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

Contestants - Managers - Physical Examination - Ringside Health Care Professional Requirements - Number and Duration of Rounds - Down - Fouls - Appeal of Decisions of Officials - Hand Wraps - Official Boxing Gloves - Mouthpiece - Ring--Equipment - Officials Required - Judges - Seconds/Corners - Referee - Unprofessional Conduct - Department Representatives - Contracts and Penalties - Medical Advisor - Tickets - Elimination-Type Events - Inspectors – Announcer, p. 404, 786

(Board of Architects and Landscape Architects)

24.114.101 and other rules - Board Organization - Public Participation - Definitions - Fee Schedule - Architect Seal - Fee Abatement - Military Training or Experience - Architect Examination - Architect Licensure by Examination - Licensure of Applicants Registered in Another State - Architect Emeritus Status - Landscape Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Landscape Architect Examinations - Landscape Architect Licensure by Endorsement - Landscape Architect Seal - Architect Continuing Education Requirements - Unprofessional Conduct - Screening and Adjudication Panels - Solicitation of Business by Nonresident Architects - Architects-In-Training - Renewals - Replacement Licenses, p. 976

(Board of Barbers and Cosmetologists)

24.121.601 and other rules - Licensure by Examination - School Operating Standards - School Curricula - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program, p. 1364, 1956

(Board of Dentistry)

24.138.304 Definition of Nonroutine Application - Dentist Licensure by Credential - Dental Hygiene Limited Access Permit - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service - Restricted Temporary Licensure of Nonresident Volunteer Dentists and Dental Hygienists - Exemptions and Exceptions - Minimum Qualifying Standards - Minimum Monitoring Standards - Infection Control - Renewals, p. 1601

(State Electrical Board)

24.141.507 and other rules - Military Training or Experience - Unprofessional Conduct - Screening Panel - Board Meetings - Apprentice Registration - Renewals - Complaint Procedure, p. 1743

(Board of Funeral Service)

24.147.1301 and other rules - Applications for Cemetery Licenses - Transfer of Cemetery Ownership - Prearranged, Prefinanced, or Prepaid Funerals - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Trust Funds–General - Cemetery Perpetual Care and

Maintenance Trust Accounts - Financial Records - Annual Reporting Requirements - Audits - Mortuary and Crematory Preneed Trust Accounts - Restrictions on Use of Cemetery Funds, p. 1461

(Board of Massage Therapy)

24.155.604 and other rules - Licensure by Examination - Licensure of Out-of-State Applicants - Nonroutine Applications, p. 1085

(Board of Nursing)

24.159.301 and other rule - Continuing Education, p. 2406, 604

24.159.1006 and other rule - Direct Supervision and Standards Related to the Practical Nurse's and Registered Nurse's Role in Cosmetic Procedures, p. 1232

(Board of Optometry)

24.168.401 and other rule - Fees - Continuing Education, p. 214, 788

24.168.402 and other rules - Licensure Requirements - Military Training or Experience - General Practice Requirements - Unprofessional Conduct - Screening Panel - Ophthalmological Diagnostic Permissible Drugs, p. 1474

(Board of Outfitters)

24.171.408 and other rules - Outfitter Records - Safety and First Aid Provisions - Watercraft Identification - Outfitter Qualifications - Successorship - Fishing Outfitter Operations Plan - Operations Plans and Amendments – Renewals, p. 428, 1900

(Board of Pharmacy)

24.174.401 and other rules - Fee Schedule - Internship Requirements - Foreign Intern Requirements, p. 1235, 1653

24.174.1712 Prescription Drug Registry Fee, p. 264, 1144

(Board of Physical Therapy Examiners)

24.177.503 and other rules - Military Training or Experience - Foreign-Trained Physical Therapist Applicants - Continuing Education - List of Licensed Physical Therapists, p. 1748

(Board of Private Security)

24.182.101 and other rules - Organization - Procedural Rules - Public Participation - Definitions - Fee Schedule - Identification Pocket Card - Insurance and Surety Bond Requirements - Regulations of Uniform - Qualification of Firearms for Armed Endorsement - Requalification Required Annually - Required Information for Application - Military Training or Experience - Written Examination - Temporary Practice Permit - Private Investigator Trainee - Certified Firearms Instructor - Company Licensure and Branch Offices - Firearms Training Courses - Private Investigator Training Program - Private Security Guard

Training Program - Security Alarm Installer Training Program - Alarm Response Runner Training Program - Standards for Continuing Education - Annual Continuing Education Requirements - Non-approved Activities - Auditing of Continuing Education Hours - Inactive Status and Conversion to Active Status - Alarm Response Runner - Private Investigator - Private Security Guard - Process Server - Resident Manager - Security Alarm Installer - Nonroutine Applications - Experience Requirements, p. 823, 1957

(Board of Psychologists)

24.189.301 and other rules - Behavior Analysts and Assistant Behavior Analysts Licensure, Continuing Education, and Unprofessional Conduct, p. 1240, 1656

24.189.601 and other rules - Application Procedures - Exemptions - Minimum Standards - Licensure of Foreign-Trained Psychologists - Competency - Limits of Confidentiality - Continuing Education Program Options - Continuing Education Implementation - Practice of Psychology, p. 992, 1654

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Licensing - Renewals - Continuing Education - Complaint Procedures - Credit for Blended Learning - Professional Conduct, p. 1088

(Board of Realty Regulation)

24.210.641 and other rules - Unprofessional Conduct - New Licensee Mandatory Continuing Education – Salespersons - Course Provider – Continuing Real Estate Education – Course Approval - Continuing Real Estate Education – Instructor Approval - Renewals - New Licensee Mandatory Continuing Education – Property Manager - Nonroutine Applications - Trust Account Course Requirement - Application for Determination of Equivalent Experience for Broker Licensing, p. 319, 1145

(Board of Respiratory Care Practitioners)

24.213.403 and other rules - Abatement of Renewal Fees - Continuing Education Requirements - Nonroutine Applications, p. 1752

(Board of Behavioral Health)

New Rules Certification of Behavioral Health Peer Support Specialists (CBHPSS), p. 1757

(Board of Speech-Language Pathologists and Audiologists)

24.222.301 and other rules - Definitions - Fees - Unprofessional Conduct - Limited Licenses - Supervised Professional Experience, p. 1479

24.222.502 and other rules - Speech-Language Pathologist and Audiologist Licenses - Military Training or Experience - Licensure of Out-Of-State Applicants - Examinations - Establishing the Practitioner-Patient Relationship - Competence - Practice Limits - Maintenance and Retention of Records - Continuing Education - Nonroutine Applications - Board Standards and Policy - Applications for License - Qualifications for Active Temporary License - Temporary Practice Permits - Policy - Continuing Education Definitions - Renewals - Complaint Procedure, p. 628, 1401

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Animal Health Division Fees - Definitions - Testing Within the DSA - Brucellosis Tests to Be Reported, p. 267, 492, 1296
32.2.403 Diagnostic Laboratory Fees, p. 850, 1297
32.3.212 and other rules - Additional Requirements for Cattle - Importation of Cattle From Mexico - Identification of Alternative Livestock With the Exclusion of Omnivores and Carnivores - Requirements for Mandatory Surveillance of Montana Alternative Livestock Farm Cervidae for Chronic Wasting Disease, p. 1001, 1101, 1661
32.18.102 and other rules - Special Identification Marks – Age Tally Mark – Numeral Mark – Placement of Digits, p. 592, 907

(Board of Milk Control)
32.24.101 and other rules - Organization of Board - Penalties - Initial Determination and/or Loss of Quota Records - New Producers– Percentage of Milk Sales Assigned to Quota Milk - Transfer of Quota - Reassignment of Quota From the Unassigned Quota Pool and Readjustment of Quota Into the Statewide Quota System - Producer Committee - Request for Review, Hardship, and Appeals - Reports and Records - Computation of Price for Quota Milk and Excess - Procedures for Pooling of Returns From Pool Milk - Payments to Pool Dairymen and Adjustment of Accounts - Marketing of Surplus Milk to Nonpool Handlers - Required Utilization of Surplus Milk - Procedures, Purchase Price, and Terms - Definitions - Transactions Involving the Purchase and Resale of Milk Within the State - Regulation of Unfair Trade Practices - Licensee Assessments - Additional Producer Assessment - Procedural Rules - Pricing Rules - Quota Definitions - Pooling Plan Definitions - Proceeds and Losses for Surplus Milk Over Quota, p. 732, 1151

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Water Right Permitting, p. 1485, 1608

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

MONTANA ADMINISTRATIVE REGISTER

2017 ISSUE NO. 21
NOVEMBER 9, 2017
PAGES 1993-2110

COREY STAPLETON
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620