MONTANA ADMINISTRATIVE REGISTER

2023 ISSUE NO. 24
DECEMBER 22, 2023
PAGES 1769-1921

ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Montana Growth Fund, a part of the Big Sky Economic Development Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 11, 2024, at 10:30 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_wWbz6FnbSVegS17naKdMuA

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require accommodation, please contact the department by 5:00 p.m. on January 9, 2024, to advise us of the nature of the accommodation that you are requesting. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I (8.99.1101) INCORPORATION BY REFERENCE OF GUIDELINES FOR ADMINISTRATION OF THE MONTANA GROWTH FUND, A PART OF THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM (1) The department adopts and incorporates by reference the Program Guidelines for the Montana Growth Fund, a part of the Big Sky Economic Development Program (MGF).

(2) The guidelines establish how the department will administer the MGF Program.

(3) As stated in the guidelines, the department will consider eligible applicants' proposals to obtain MGF funding for economic development projects in the form of:

(a) low-interest loans;

(b) forgivable loans; and

(c) grants (collectively, MGF funding).

(4) The guidelines state what applicants must submit to the department to be considered for MGF funding.

(5) The guidelines set matching requirements applicants must meet to obtain MGF funding.

(6) The guidelines set the factors the department considers when assessing MGF applications, including incentives for rural counties.

(7) The guidelines identify how successful applicants may use MGF funding.

(8) Copies of the guidelines may be obtained from the department's Business MT Division, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528, or on the department's web site at https://business.mt.gov.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

REASON: The proposed rule is necessary to implement and administer the MGF in accordance with HB 881, which was enacted by the 2023 Montana Legislature.

HB 881 directs the department to provide MGF funding to eligible applicants for economic development projects from the special revenue account established by 90-1-205, MCA. HB 881 identifies what information eligible applicants must provide to the department to be eligible for MGF funding, including cost estimates and matching funds. *See* 90-1-204, MCA. HB 881 also directs the department to award MGF funding to advance certain Legislative goals. *See* 90-1-202 through 90-1-204, MCA. HB 881 further provides that recipients of MGF funding only may use the funds for certain purposes. *See* 90-1-204, MCA. Finally, HB 881 permits the department to provide greater incentives for rural counties. *Id*.

The department proposes adopting NEW RULE I, which incorporates by reference the MGF Program Guidelines. The proposed MGF guidelines are consistent with HB 881. The proposed MGF guidelines and other relevant information and resources can be reviewed on the department's web site at https://business.mt.gov. Interested persons may comment on the guidelines in accordance with this notice.

Adopting the guidelines is necessary to provide public notice on how the department plans to administer the MGF program, as further described in HB 881.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdminstrativerules@mt.gov, and must be received by 5:00 p.m. on January 19, 2024.

5. The department's Office of Legal Affairs will preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. The requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Edward Buttrey, was contacted on December 12, 2023, by e-mail at Ed.Buttrey@legmt.gov.

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/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I and II pertaining to the administration of the Big Sky Film Grant Program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 11, 2024, at 10:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rules.

Video:

https://mt-gov.zoom.us/webinar/register/WN_vOAe9bzJT6Sar52zzjSnOA

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require accommodation, please contact the department by 5:00 p.m. on January 9, 2024, to advise us of the nature of the accommodation you are requesting. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I (8.119.401) INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS FOR THE BIG SKY FILM GRANT PROGRAM (BSFG) (1) The department adopts and incorporates by reference the Montana Film Office, Big Sky Film Grant Program Application Guidelines as rules governing the submission and review of applications under the program (guidelines).

(2) Copies of the guidelines may be obtained from the department's Brand MT Division, 301 South Park Avenue, P.O. Box 200204, Helena, Montana 59620-0528, or on the department's web site at https://www.montanafilm.com/mfo_bigskyfilmgrant/.

AUTH: 90-1-122, MCA
IMP: 90-1-122, MCA

REASON: The proposed new rule is necessary to implement and administer the BSFG Program in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section 1 of SB 540 authorizes the department to provide Montana-based film grants to eligible applicants.

The department proposes adopting NEW RULE I, which incorporates by reference the BSFG Guidelines. The proposed BSFG Guidelines can be reviewed on the department's web site, https://www.montanafilm.com/mfo_bigskyfilmgrant/. Interested persons may comment on the guidelines in accordance with this notice.

Adopting the guidelines is necessary to provide public notice on how the department plans to administer the BSFG Program in compliance with SB 540.

NEW RULE II (8.119.402) INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE BIG SKY FILM GRANT PROGRAM (BSFG)

(1) The department adopts and incorporates by reference the BSFG Project Administration Manual.

(2) The BSFG Project Administration Manual relates to the following:

(a) project start-up requirements;

(b) grant contract requirements;

(c) request for funds requirements;

(d) reporting requirements;

(e) deliverables requirements; and

(f) project closeout.

(3) The BSFG Project Administration Manual may be obtained from the department's Montana Film Office, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the MFO's web site at https://www.montanafilm.com/mfo_bigskyfilmgrant/.

AUTH: 90-1-122, MCA
IMP: 90-1-122, MCA

REASON: The proposed new rule is necessary to implement and administer the BSFG Program in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section 1 of SB 540 authorizes the department to provide Montana-based film grants to eligible applicants.

The department proposes adopting NEW RULE II, which incorporates by reference the BSFG Project Administration Manual. The proposed BSFG Project Administration Manual can be reviewed on the department's web site at https://www.montanafilm.com/mfo_bigskyfilmgrant/. Interested persons may comment on the administration manual in accordance with this notice.

Adopting the BSFG Project Administration Manual is necessary to provide public notice on how the department plans to administer the BSFG Program in compliance with SB 540.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdminstrativerules@mt.gov, and must be received by 5:00 p.m. on January 19, 2024.

5. The department's Office of Legal Affairs will preside over and conduct this hearing.

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

7. The requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 540, Senator Daniel Zolnikov, was contacted on December 12, 2023, by e-mail at Daniel.zolnikov@legmt.gov.

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

/s/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Pilot Community Tourism Grant Program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 11, 2024, at 11:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_ttcmbzMCTb-CNBfw8DVbGg

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require accommodation, please contact the department by 5:00 p.m. on January 9, 2024, to advise us of the nature of the accommodation you are requesting. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I (8.119.501) INCORPORATION BY REFERENCE OF RULES GOVERNING THE GUIDELINES FOR THE PILOT COMMUNITY TOURISM GRANT PROGRAM (1) The department adopts and incorporates by reference Guidelines for the Pilot Community Tourism Grant Program (PCTG Program), with the most current version being posted on the Tourism Grant Program website (guidelines), as rules governing how the department will administer the program.

(2) The guidelines address the following:

(a) Introduction;

(b) Definitions;

(c) Eligible Applicants;

(d) Eligible Uses of Funds;

(e) Ineligible Uses of Funds;

(f) Application Process;

(g) Application Review Process and Ranking Criteria; and

(h) Pilot Community Tourism Grant Program Administration.

(3) Copies of the guidelines may be obtained from the department's Brand MT Division, Office of Tourism, 301 South Park Avenue, PO Box 200501, Helena,

Montana, 59620-0501, or on its web site at https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program.

AUTH: 90-1-122, MCA
IMP: 90-1-122, MCA

REASON: The proposed new rule is necessary to implement and administer the PCTG Program in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section 1 of SB 540 authorizes the department to provide funding to eligible applicants to support Montana tourism.

The department proposes adopting NEW RULE I, which incorporates by reference the guidelines. The proposed guidelines can be reviewed on the department's web site at https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program. Interested persons may comment on the guidelines in accordance with this notice.

Adopting the guidelines is necessary to provide public notice on how the department plans to administer the PCTG Program in compliance with SB 540.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdminstrativerules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

5. The department's Office of Legal Affairs will preside over and conduct this hearing.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 540, Representative Daniel Zolnikov, was contacted on December 12, 2023, by e-mail at Daniel.Zolnikov@legmt.gov.

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

/s/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 17.58.336 and 17.58.344 and the repeal of ARM 17.57.101, 17.57.102, 17.57.103, 17.57.104, 17.57.105, 17.57.106, and 17.57.107 pertaining to third-party review of claims and corrective action plans and cleanup of administrative rules no longer utilized	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 17, 2024, at 1:30 p.m., the Petroleum Tank Release Compensation Board, attached to the Department of Environmental Quality, will hold a public hearing in the Bitterroot Conference Room of the Cedar Street Building, 1225 Cedar Street at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 4:00 p.m. on January 10, 2024, to advise us of the nature of the accommodation that you need. Please contact Garnet Pirre, Program Specialist, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; telephone (800) 556-5291; fax (406) 841-5091; or e-mail gpirre@mt.gov.

Zoom Call-In Information for Public Hearing:
https://mt-gov.zoom.us/j/88910938640?pwd=VjROUk9yTnYxNjdsVURWZzZwaGlpUT09

Meeting ID: 889 1093 8640
Password: 241085

Dial by Telephone +1 646 558 8656
Meeting ID: 889 1093 8640
Password: 241085

3. General Reason Statement: The proposed amendments are necessary to align the rules with recent legislative changes passed to clarify implementation of the petroleum storage tank cleanup program.

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

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) remains the same.

(2) Upon receipt of a claim for reimbursement for corrective action costs, the board staff ~~shall~~ will determine if the claim form is complete. The board staff ~~shall~~ will promptly advise the owner or operator, or a remediation contractor acting on behalf of an owner or operator, of any incompleteness or deficiency that appears on the claim form. The final review may be suspended pending the submission of additional information by the owner or operator, or a remediation contractor acting on behalf of an owner or operator.

(3) remains the same.

(4) ~~The board may delegate to the director of the Department of Environmental Quality authority to process and order reimbursement of specified categories of claims upon receipt and review. The director of the Department of Environmental Quality shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.~~ Upon notification that the proposed fund expenditures may not be in accordance with 75-11-313(3), MCA, the board chairperson will review the evidence and decide whether to initiate a third-party review. If the chairperson decides to initiate a third-party review, he or she will submit a claim for review to a qualified third party of his or her choosing. The results of the third-party review will be included in the board's claim review process per 75-11-312, MCA.

(5) remains the same.

(6) The owner or operator may appear before the board and make a statement regarding the claim and the board staff's recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board ~~shall~~ will thereafter consider the claim and, upon making the determinations required by 75-11-309(3), MCA, may grant it in whole, in such part as may to the board seem proper, or may deny the claim. Reasons for partial or total denials or disallowed expenses must be stated in the claim reimbursement summary contained in the file. The minutes of a board meeting must reflect the sequence of actions taken on claims.

(7) and (8) remain the same.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.344 REVIEW OF CORRECTIVE ACTION PLAN (1) The board staff ~~shall~~ will review each corrective action plan and establish the allowable reimbursement for each corrective action in a corrective action plan budget. If the review indicates that the fund is not being used in accordance with 75-11-313(3), MCA, the board staff will notify the board chairperson and provide an explanation of the board staff's findings. The chairperson will then review the evidence and decide whether to initiate a third-party review. If the chairperson decides to initiate a third-party review, he or she will submit a corrective action plan for review to a qualified

third party of his or her choosing. The results of the third-party review will be included in the board's corrective action plan review process per 75-11-312, MCA.

(2) Owners or operators or their representatives ~~shall~~ must solicit at least three competitive bids for subcontractor corrective action work costing over $2500. The owner or operator ~~shall~~ must submit documentation showing that at least three bids were solicited for the corrective action. Owners and operators must be reimbursed a reasonable amount for the time to prepare, solicit, and evaluate bids.

(3) through (6) remain the same.

AUTH: 75-11-318, MCA
IMP: 75-11-318, MCA

5. General Reason Statement: The rules proposed to be repealed are not statutorily supported. In accordance with Governor Gianforte's Red Tape Relief Initiative, the repeal of these rules is necessary to remove outdated and unnecessary regulations throughout Montana's state agencies.

6. The board proposes to repeal the following rules:

17.57.101 PURPOSE

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.102 APPLICABILITY

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.103 DEFINITIONS

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.104 STANDARDS INCORPORATED BY REFERENCE

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.105 DESIGN, CONSTRUCTION AND INSTALLATION STANDARDS FOR ALL ABOVEGROUND DOUBLE-WALLED PETROLEUM STORAGE TANK SYSTEMS

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.106 INSTALLATION OF ABOVEGROUND DOUBLE-WALLED PETROLEUM STORAGE SYSTEMS

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

17.57.107 GENERAL RELEASE DETECTION STANDARDS

AUTH: 75-11-319, MCA
IMP: 75-11-308, 75-11-319, MCA

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: Garnet Pirre, Program Specialist, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; telephone (800) 556-5291; fax (406) 841-5091; or e-mail gpirre@mt.gov., and must be received no later than 5:00 p.m., January 22, 2024.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Any person may add their name and e-mail address to the board's interest parties email list at https://deq.mt.gov/cleanupandrec/programs/ptrcb. Persons who wish to receive notice by mail must make a written request to board staff that includes the name and mailing address of the person to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 7 or may be made by completing a request form at any rules hearing held by the board.

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

10. Aislinn Brown, attorney for the board, or another attorney from Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail and email on November 30, 2023.

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

/s/ Aislinn Brown
Aislinn Brown
Rule Reviewer

/s/ John Monahan
John Monahan
Board Presiding Officer

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 24.138.509 pertaining to dental hygiene limited access permit	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 16, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/862 1032 1602
Meeting ID: 862 1032 1602, Passcode: 563569
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 862 1032 1602, Passcode: 563569

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) remains the same.

~~(2) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.~~

~~(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP. If the LAP dental hygienist qualifies for limited prescriptive authority pursuant to 37-4-405, MCA, and ARM 24.138.419, the dental hygienist shall maintain an additional three continuing education credits for each three-year cycle.~~

~~(4) LAPs must be renewed annually.~~

~~(5)~~ (2) ~~Pursuant to 37-4-405, MCA, the board identifies~~ In addition to the authorized public health facilities already defined under 37-4-405, MCA, the board

identifies the following additional public health facilities and programs ~~at which~~ where LAP services ~~under a LAP~~ may be provided:

(a) ~~Dodson School~~ schools that receive federal funds under Title I of the Elementary and Secondary Education Act;

(b) ~~Great Falls Rescue Mission~~ schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines;

(c) ~~Harlem Elementary School~~ hospice facilities;

(d) ~~Harlem Junior/Senior High School~~ family violence shelters; and

(e) ~~Paris Gibson Education Center~~ homeless shelters.

AUTH: 37-4-205, 37-4-401, 37-4-405, MCA
IMP: 37-4-401, 37-4-405, MCA

REASON: In 2021, the board discussed moving forward with proposing amendments to this rule by evaluating schools under a two-part test prior to adding additional schools as board-defined public health facilities or programs under 37-4-405, MCA. The board never formally began the rulemaking process under the Montana Administrative Procedure Act as the Commissioner of the Department of Labor and Industry received a request for active supervision of the potential rule amendments under 37-1-121 and 37-1-122, MCA.

As required by the department's active supervision process, the commissioner requested information from the board regarding its proposal. After receiving the board's response, the commissioner requested supplemental information from the board. In its supplementary response, the board considered proposing amendments to require a collaborative agreement structure between dentists and hygienists relating to LAP hygienists' work.

In February 2022, following her analysis of public comments, professional association comments, and the information provided by the board, the commissioner determined that access to oral health care is a continuing issue in Montana, especially among American Indian and low-income children; and, that the public health concerns that led to creation of the LAP still existed in 2021.

The commissioner further determined the language in the potential rule proposal was not taken pursuant to a clearly articulated state policy and that the rule unduly restrained the trade of dental hygienists. The commissioner's opinion noted the proposal was devoid of any process by which a new facility may be named. As to the board's suggestion of a collaborative agreement, the commissioner noted that while the board may disagree with the Legislature's determination of the scope of practice for an LAP, it may not contravene legislative determinations that LAP practice is permitted. The commissioner disapproved of the proposed rule language, and no changes to the board's rule were enacted.

To address the issues noted by the commissioner, the board is proposing these amendments to allow for a more general guidance for approved facilities, rather than listing individual locations. The board proposes using federal guidelines for free or reduced lunch and Title I funding for schools in defining facilities and programs. This is based on research staff and the board conducted on the laws in other states which allow for similar practice and methodology to identify students

who may not receive regular dental care due to the financial constraints of their parents.

Additionally, the board is adding hospice facilities in (2)(c) to correspond with the nursing homes, long term care facilities, and home health agencies as already defined by the Legislature in 37-4-405, MCA. The board is including family violence and homeless shelters under (2)(d) as those facilities contain "patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care."

Finally, the board is proposing to repeal (2), (3), and (4) as they are unnecessarily duplicative of existing rules that address application procedures, continuing education, and renewals.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., January 19, 2024.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and at sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

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

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

BOARD OF DENTISTRY
DIANE KLEMANN, RDH, CHAIR

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 37.34.702, 37.40.1017, 37.40.1407, and 37.90.406 pertaining to HCBS Setting Regulations	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 12, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/87238776671?pwd=YTlabjlnZk5OS0ZsR2pOZCtFQVZZdz09, meeting ID: 872 3877 6671, and password: 808278; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 872 3877 6671, and password: 808278. Find your local number: https://mt-gov.zoom.us/u/kegv6sYkkd.

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 December 29, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.34.702 ADULT SERVICES: PERFORMANCE REQUIREMENTS

(1) through (3)(c) remain the same.

(d) provide supervision, support, care, education, and training according to the needs of the individual and as specified by the ~~IP team~~ personal support plan (PSP);

(e) implement any assigned activities of the ~~IP~~ PSP;

(f) remains the same.

(g) participate in the PSP ~~IP~~ team process, recommending objectives, as applicable, to the PSP ~~IP~~ team for the individual; and

(h) coordinate transportation to assist the individual in meeting the individual's needs~~;~~.

~~(i) adhere to the service component definitions when specified in the contract; and~~

~~(j) provide additional or specialized services or requirements when specified in the contract.~~

(4) A contractor providing adult services must ensure that any contractor-owned or contractor-controlled setting:

(a) is integrated in and facilitates full access of the individual to the greater community;

(b) ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services;

(c) is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting;

(d) ensures the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;

(e) supports health and safety based upon the individual's needs, decisions, or desires;

(f) optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact;

(g) provides an opportunity to seek employment and work in competitive integrated settings; and

(h) facilitates individual choice of services and supports, and who provides them.

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

(8) The department adopts and incorporates by reference 42 CFR 441.301(c)(4), as amended January 16, 2014. A copy of this regulation may be obtained at https://www.ecfr.gov/ or by contacting the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-20-204, MCA
IMP: 53-20-205, MCA

37.40.1017 AGENCY-BASED COMMUNITY FIRST CHOICE SERVICES: PROVIDER REQUIREMENTS (1) remains the same.

(2) CFCS personal care attendant providers will maintain staff resources, including a nurse supervisor and person-centered plan facilitator, to perform the necessary CFCS duties as referenced in ARM 37.40.1005. The nurse supervisor and plan facilitator may be the same person.

(3) and (4) remain the same.

(5) The CFCS ~~provider agency~~ personal care attendant providers must provide documentation to verify the nurse supervisor and plan facilitator credentials, certification, and training.

(6) remains the same.

(7) A provider of services must ensure that the services adhere to the requirements of 42 CFR 441.710(a)(1) and (a)(2), which permits reimbursement with

Medicaid monies only for services within settings that meet certain qualities set forth under the regulation. These qualities include that the setting:

(a) is integrated in and facilitates full access of the individual to the greater community;

(b) ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services;

(c) is selected by the individual from among setting options, including non-disability specific settings and an option to choose a private unit in a residential setting;

(d) ensures the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;

(e) optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.;

(f) provides an opportunity to seek employment and work in competitive integrated settings; and

(g) facilitates individual choice of services and supports, and who provides them.

(8) The department adopts and incorporates by reference 42 CFR 441.710(a)(1) and (a)(2), as amended January 16, 2014. A copy of this regulation may be obtained at https://www.ecfr.gov/ or by contacting the Department of Public Health and Human Services, Senior & Long-Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

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

37.40.1407 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: GENERAL REQUIREMENTS (1) and (2) remain the same.

(3) A provider of services must ensure that the services adhere to the requirements of 42 CFR 441.301(c)(4), which permits reimbursement with Medicaid monies only for services within settings that meet certain qualities set forth under the regulation. These qualities include that the setting:

(a) is integrated in and facilitates full access of the individual to the greater community;

(b) ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services;

(c) is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting;

(d) ensures the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;

(e) supports health and safety based upon the individual's needs, decisions, or desires;

(f) optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to daily activities, physical environment, and with whom to interact;

(g) provides an opportunity to seek employment and work in competitive integrated settings; and

(h) facilitates individual choice of services and supports, and who provides them.

~~(3)~~(4) A provider of services must meet the requirements necessary for the receipt of reimbursement with Medicaid monies.

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

(8) The department adopts and incorporates by reference 42 CFR 441.301(c)(4), as amended January 16, 2014. A copy of this regulation may be obtained at https://www.ecfr.gov/ or by contacting the Department of Public Health and Human Services, Senior & Long-Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

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

37.90.406 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PROVIDER REQUIREMENTS (1) remains the same.

(2) A provider of services must ensure that the services adhere to the requirements of 42 CFR 441.301(c)(4), which permits reimbursement with Medicaid monies only for services within settings that meet certain qualities set forth under the regulation. These qualities include that the setting:

(a) is integrated in and facilitates full access of the individual to the greater community;

(b) ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services;

(c) is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting;

(d) ensures the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;

(e) supports health and safety based upon the individual's needs, decisions, or desires;

(f) optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to daily activities, physical environment, and with whom to interact;

(g) provides an opportunity to seek employment and work in competitive integrated settings; and

(h) facilitates individual choice of services and supports, and who provides them.

~~(2)~~(3) The department may authorize a SDMI HCBS contracted case management entity to issue pass-through payment for reimbursement of services rendered by a non-Medicaid provider for the following services:

(a) through (f) remain the same.

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

(6) The department adopts and incorporates by reference 42 CFR 441.301(c)(4), as amended January 16, 2014. A copy of this regulation may be obtained at https://www.ecfr.gov/ or by contacting the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905.

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

4. STATEMENT OF REASONABLE NECESSITY

Montana Medicaid provides Home and Community Based Services (HCBS) through three Section 1915c Home and Community Based Waivers and one Section 1915i State Plan. HCBSs are long-term services and supports provided in home and community-based settings that may assist in diverting and/or transitioning eligible individuals from institutional settings into their homes and community or maintaining such individuals in their homes and communities.

CMS issued guidance to states on July 14, 2020, indicating that the transition period for ensuring compliance with the HCBS Final Rule has been extended one year to March 17, 2023, in response to the COVID-19 pandemic. The guidance can be found here: https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf. The Department of Public Health and Human Services (department) has been communicating collectively and individually with Montana Medicaid HCBS providers to support their transition to full compliance with the federal regulation. Additional information about the department's transition plan to comply with the federal settings rule may be found at https://dphhs.mt.gov/hcbs.

Effective March 17, 2023, only HCBS services provided in accordance with the HCBS Final Rule, which is promulgated at 42 CFR 441.301 and 42 CFR 441.710, are eligible for federal reimbursement under the Medicaid program. The proposed changes to ARM 37.34.702, 37.40.1017, 37.40.1407, and 37.90.406 are necessary to require HCSB providers to comply with the federal HCBS Final Rule, which is intended to ensure, among other things, individuals receiving services through an HCSB waiver have access to the greater community, including opportunities to seek employment and work in competitive settings, to engage in community life, to control personal resources, and to receive services in the community, to the same degree of access as individuals not receiving HCBS.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

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: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-3026; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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 paragraph 5.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses, by requiring provider of home and community-based services to comply with federal regulation.

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.

12. 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/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 37.34.1101 and the repeal of ARM 37.34.1102, 37.34.1103, 37.34.1105, 37.34.1107, 37.34.1108, 37.34.1114, 37.34.1117, and 37.34.1119 pertaining to Developmental Disabilities Program Plan of Care	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 12, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81531300744?pwd=WS85Sjg4eWxpYWhLcTU1WXo4WUtOQT09, meeting ID: 815 3130 0744, and password: 179274; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 815 3130 0744, and password: 179274. Find your local number: https://mt-gov.zoom.us/u/kfkCLroDn.

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 December 29, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.34.1101 PLAN OF CARE: PERSONAL SUPPORT PLAN: PURPOSE

(1) A personal support plan (PSP) is a person-driven and person-centered plan that identifies the supports and services ~~that are necessary for~~ a person receiving state-administered developmental disabilities services uses to achieve independence~~, dignity~~ and personal fulfillment while meeting health and safety needs. ~~The PSP is a person-driven and person-centered plan that assesses an eligible person's needs and identifies services that are appropriate to meet the person's assessed needs.~~

(a) The Developmental Disabilities Program Personal Support Plan Manual, dated July 1, 2023, sets forth requirements and criteria that govern the development of the Personal Support Plan for the developmental disabilities program of the department.

(b) The department adopts and incorporates by reference the Developmental Disabilities Program Personal Support Plan Manual, dated July 1, 2023.

(c) A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

4. The department proposes to repeal the following rules:

37.34.1102 PLAN OF CARE: PERSONAL SUPPORT PLAN: IMPLEMENTATION

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

37.34.1103 PLAN OF CARE: PERSONAL SUPPORT PLAN: COMPONENTS

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

37.34.1105 PLAN OF CARE: PERSONAL SUPPORT PLAN: ASSESSMENTS

AUTH: 53-2-201, 53-6-402, 53-20-204, MCA
IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1107 PLAN OF CARE: PERSONAL SUPPORT PLAN: PLAN TEAM

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

37.34.1108 PLAN OF CARE: PERSONAL SUPPORT PLAN: QUARTERLY REPORTS

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

37.34.1114 PLAN OF CARE: PERSONAL SUPPORT PLAN: DECISION MAKING

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, MCA

37.34.1117 PLAN OF CARE: INDIVIDUAL FAMILY SERVICE PLAN: PURPOSE

AUTH: 53-2-201, 53-6-402, 53-20-204, MCA
IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1119 PLAN OF CARE: INDIVIDUAL FAMILY SERVICE PLAN: IMPLEMENTATION

AUTH: 53-2-201, 53-6-402, 53-20-204, MCA
IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1101 and to repeal ARM 37.34.1102, 37.34.1103, 37.34.1105, 37.34.1107, 37.34.1108, 37.34.1114, 37.34.1117, and 37.34.1119 pertaining to Personal Support Plans.

The following summary explains the reasonable necessity for the proposed rule amendment.

The department proposes to amend ARM 37.34.1101 to adopt and incorporate into rule the revised Personal Support Plan (PSP) Manual. The PSP Manual was revised to eliminate unnecessary and duplicative procedures as required by 53-20-215, MCA. The changes to the PSP Manual include updated language pertaining to PSP timeframes, Targeted Case Management, Action Plans & Protocols, behavioral supports and safety mods, and the removal of language pertaining to vision statement.

The department proposes to repeal ARM 37.34.1102, 37.34.1103, 37.34.1105, 37.34.1107, 37.34.1108, 37.34.1114, 37.34.1117, and 37.34.1119. It is necessary to repeal these rules because they no longer provide accurate information or direction in creating Personal Support Plans. The PSP Manual, as proposed to be adopted and incorporated by reference in ARM 37.34.1101, will provide an accurate and updated source for providers and department staff to access the information required to provide successful Personal Support Plans.

The department's authorizing statute is 53-20-203, MCA, which states that the department shall carry out the review of administrative rules, policies, and procedures provided for in 53-20-215, MCA, and take the steps necessary to eliminate or change a rule, policy, or procedure found by the review to be unnecessary, duplicative, or in need of revision, including applying for any amendments to Medicaid waivers.

Fiscal Impact

The proposed rule amendments and repeals have no anticipated fiscal impact implications.

6. The department intends to apply these proposed rule amendments and repeals retroactively to July 1, 2023.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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.

10. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

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

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

13. 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/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 37.111.124 pertaining to Public Sleeping Accommodations	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 15, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89263075491?pwd=L21ZUUxINW82Y1FIM21Cai9iUEcwZz09, meeting ID: 892 6307 5491, and password: 835916; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 892 6307 5491, and password: 835916. Find your local number: https://mt-gov.zoom.us/u/kcFxg2QT4g.

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 January 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.111.124 FOOD SERVICE REQUIREMENTS (1) An establishment preparing or serving food that meets the definition of a "retail food establishment" under 50-50-102, MCA, must obtain a separate retail food license. ~~An establishment licensed as a public accommodation is exempt from the requirement to obtain a retail food license if it serves food only to registered guests and day visitors pursuant to 50-50-102(21)(c)(xii), MCA.~~

(2) An establishment licensed as a public accommodation is exempt from the requirement to obtain a retail food license if it serves food only to registered guests and day visitors pursuant to 50-50-102(21)(c)(xii), MCA. The establishment must comply with all other food safety rules contained under ARM Title 37, chapter 110, subchapter 2.

AUTH: 50-51-103, MCA
IMP: 50-51-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.111.124 to address food safety requirements for public sleeping accommodations serving food that are exempt from obtaining a retail food license under 50-50-102(21)(c)(xii), MCA.

In 2022, the department generally revised the public sleeping accommodation rules. See MAR Notice No. 37-981. These rule amendments resulted in the inadvertent removal of prior rule language addressing food safety requirements for public sleeping accommodations who serve food, but are exempt from obtaining a retail food license. The department is proposing to amend ARM 37.111.124 to address the inadvertent removal of the prior food safety requirements. The proposed rule amendment is necessary to ensure public sleeping accommodations exempt from obtaining a retail food license adhere to basic food safety and sanitary requirements when providing food service.

Fiscal Impact

There is no fiscal impact anticipated from this rulemaking.

5. The proposed rule amendment is intended to be effective upon the day after the date of publication of the adoption notice.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

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

11. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 37.106.310, 37.106.503, 37.106.506, 37.106.1006, and 37.106.1012 pertaining to health care facilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 11, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85836384838?pwd=RHJWRTEybk9wVWRQcW02ejNwaVlJUT09, meeting ID: 858 3638 4838, and password: 801001; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 858 3638 4838, and password: 801001. Find your local number: https://mt-gov.zoom.us/u/keDcD8j3Mn.

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 December 28, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE (1) through (3)(a)(i) remain the same.

(ii) that has ~~achieved accreditation by a recognized accrediting organization~~ been granted accreditation by an accreditation entity approved by the U.S. Centers for Medicare & Medicaid Services; or

(iii) remains the same.

(b) The facility must submit or make available to the department the full accreditation entity or department inspection report.

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

(4) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-202, 50-5-203, 50-5-204, MCA

37.106.503 DEFINITIONS ~~(1) "Accreditation Association for Ambulatory Health Care (AAAHC)" means the organization nationally recognized by that name and surveys outpatient centers for surgical services upon their request and grants accreditation status to the outpatient center for surgical services that it finds meets its standards and requirements.~~

(2) through (4) remain the same but are renumbered (1) through (3).

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

37.106.506 MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES (1) remains the same.

(2) An outpatient center may:

(a) show written evidence of current accreditation by ~~the Accreditation Association for Ambulatory Health Care (AAAHC)~~ an accreditation entity approved by the U.S. Centers for Medicare & Medicaid Services including recommendations for future compliance as a condition of licensure; or

(b) remains the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

37.106.1006 DEFINITIONS ~~(1) "Commission for the Accreditation of Birth Centers" means the organization nationally recognized by that name and that surveys outpatient birth center facilities upon their request and grants accreditation status to the outpatient birth center that it finds meets its standards and requirements.~~

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

AUTH: 50-5-103, 53-6-106, MCA
IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207, MCA

37.106.1012 MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR PRIMARY CARE: BIRTH CENTERS (1) If an outpatient center for primary care operates a birth center, the birth center shall:

(a) remains the same.

(b) show written evidence of current accreditation by ~~the Commission for the Accreditation of Birth Centers~~ an accreditation entity approved by the U.S. Centers for Medicare & Medicaid Services including recommendations for future compliance or meet the standards as outlined in ARM 37.106.1014; and

(c) and (d) remain the same.

AUTH: 50-5-103, 53-6-106, MCA
IMP: 50-5-103, 50-5-106, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.310, 37.106.503, 37.106.506, 37.106.1006, and 37.106.1012. The 2023 legislature enacted House Bill 102, an act revising laws related to accrediting agencies for health care facilities. The bill was signed by the Governor on April 18, 2023. The department proposes to amend ARM 37.106.310, 37.106.503, 37.106.506, 37.106.1006, and 37.106.1012, to implement HB 102. Amendment of these rules is necessary to allow all health care facilities to be eligible to seek accreditation from any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services and submit the accreditation survey and certification received by the health care facility from such accrediting entity for eligibility for licensure.

ARM 37.106.310

The department proposes amendment to this rule, which provides circumstances in which a 3-year license may be granted to a health care facility, so that the terminology surrounding a facility's ability to submit an accreditation report to the department for licensing aligns with the same terminology in 50-5-103, MCA, as amended by HB 102. As noted above, this proposed change is necessary to implement HB 102. The rule is further amended to require that the accreditation report and certificate must be received by the department for review for eligibility for licensure.

ARM 37.106.503

The department proposes amendment to this rule, which provides definitions used in Outpatient Centers for Surgical Services, to remove the definition of "Accreditation Association for Ambulatory Health Care (AAAHC)," and to renumber subsequent rules. The changes to 50-5-103, MCA, allow outpatient centers for surgical services to choose any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services from which to receive accreditation, and not the specific accrediting agency mentioned in this rule. Therefore, no definition of this accreditation agency is needed. This proposed change would further implement HB 102.

ARM 37.106.506

The department proposes amendment to this rule, which provides minimum standards for outpatient centers for surgical services, to change the requirement from the facility showing evidence of accreditation by the Accreditation Association for Ambulatory Health Care, to the facility showing evidence of accreditation by an accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services. As noted above, this proposed change is necessary to implement HB 102.

ARM 37.106.1006

The department proposes amendment to this rule, which provides definitions used in outpatient centers, to remove the definition of "Commission for the Accreditation of Birth Centers," and to renumber subsequent sections. The changes to 50-5-103,

MCA, allow outpatient centers to choose any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services from which to receive accreditation, and not the specific accrediting agency mentioned in this rule. Therefore, no definition of this accreditation agency is needed. This proposed change would further implement HB 102.

ARM 37.106.1012

The department proposes amendment to this rule, which provides minimum standards for outpatient centers for primary care – birth centers, to change the requirement from the facility showing evidence of accreditation by the Commission for the Accreditation of Birth Centers, to the facility showing evidence of accreditation by an accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services. As noted above, this proposed change is necessary to implement HB 102.

Fiscal Impact

This proposed rule amendments have no fiscal impact.

5. The department intends these amendments to be applied retroactively to October 1, 2023, the effective date of HB 102.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on September 5, 2023.

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

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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

In the matter of the adoption of NEW RULE I pertaining to certificates of nonviable birth	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 12, 2024, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/88560018635?pwd=dGdPeHA5QzlXbFFUS3k4N2Jrb2haZz09, meeting ID: 885 6001 8635, and password: 752327; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 885 6001 8635, and password: 752327. Find your local number: https://mt-gov.zoom.us/u/kmDw2GY3x.

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 December 29, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

NEW RULE I CERTIFICATE OF NONVIABLE BIRTH (1) Upon request by either parent made in accordance with the requirements of 50-15-209, MCA, and this rule, the department will issue a certificate of nonviable birth.

(2) All requests for issuance of a certificate of nonviable birth must be made by completing the department's Application for Certificate of Nonviable Birth (version 1.0) form, which the department adopts and incorporates by reference. The form is available electronically at www.dphhs.mt.gov/vitalrecords/vitalrecordsforms or by contacting the Office of Vital Records at P.O. Box 4210, Helena, MT, 59604, 406-444-2685.

AUTH: 50-15-209, MCA
IMP: 50-15-209, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing adoption of NEW RULE I to implement the requirements of House Bill (HB) 213 passed during Montana's 68th Legislative Session. HB 213 creates a certificate of nonviable birth and establishes a process for the department to issue the certificate upon request by either parent made within 60 days of the nonviable birth. Under HB 213, requests for issuance of a certificate of nonviable birth must be made on a form prescribed by the department through rule. The adoption of NEW RULE I is necessary to implement HB 213 and to establish by rule the form required to be completed by a parent to request issuance of a certificate of nonviable birth. A copy of the proposed form referenced in the rule is available electronically at www.dphhs.mt.gov/vitalrecords/vitalrecordsforms.

Fiscal Impact

There is no anticipated fiscal impact associated with this proposed rulemaking.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply. The primary bill sponsor was notified by email on September 11, 2023.

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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 and non-Medicaid provider rates, fee schedules, and effective dates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 12, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84114854263?pwd=QmRYb2lQNXhJTlowbmRIbUY3Wi9GUT09, meeting ID: 841 1485 4263, and password: 634074; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 841 1485 4263, and password: 634074. Find your local number: https://mt-gov.zoom.us/u/kdVHbVRxeQ.

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 December 29, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@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) and (2) 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) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals, as provided in ARM 37.86.2907, effective ~~October 1, 2022~~ October 1, 2023; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~39.1~~ 40.0, contained in the APR-DRG Table of Weights and Thresholds, effective ~~October 1,~~

~~2022~~ October 1, 2023. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2022~~ October 1, 2023.

(b) through (g) remain the same.

(h) The outpatient drugs reimbursement vaccine administration fee, as provided in ARM 37.86.1105(6), will be $21.32 for the first vaccine and $18.65 for each additional ~~administered~~ vaccine administered on the same date of service, effective July 1, 2023.

(i) and (j) remain the same.

(k) Montana Medicaid adopts, and incorporates by reference, the Region D Supplier Manual, effective ~~July 1, 2023~~ October 1, 2023, 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 ~~July 1, 2023~~ October 1, 2023. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2023~~ October 1, 2023.

(l) through (6) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana legislature during the 2023 regular legislative session, the actual cost of services, and the availability of services.

Proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, can be found at https://medicaidprovider.mt.gov/proposedfs.

ARM 37.85.105 Effective Dates, Conversion Factors, Policy Adjusters, And Cost-To-Charge Ratios of Montana Medicaid Provider Fee Schedules

(3)(a) Inpatient Hospital Services Rates
The House Bill (HB) 2 Narrative for the 2025 biennium provides for an increase appropriation from the 2023 biennium for Medicaid services provided by non-critical access hospitals in an amount equivalent to a 4.0% provider rate increase. The

provider rate increase for inpatient non-critical access hospital services is contingent on the department's evaluation of the Upper Payment Limit methodology. The department has completed the Upper Payment Limit demonstration, which has been approved by the Centers for Medicare & Medicaid Services, and the demonstration confirms Montana Medicaid provider payments do not exceed the Upper Payment Limit.

The department proposes a 5.3% increase to inpatient hospital reimbursement, effective from October 1, 2023. The increase will be applied over a 9-month period, instead of over 12 months. The projected outcome of these changes is a 4.0% increase to inpatient hospital reimbursement during SFY 2024.

The department proposes to adopt Version 40.0 of the 3M APR-DRG grouper, effective October 1, 2023. This grouper update includes changes to DRG relative weights, average lengths of stays, and adds or deletes some DRGs. The department proposes the following base rates:

General Hospitals: $5,660
Centers of Excellence: $8,430
Inpatient Rehab Facilities: $6,790
Long Term Acute Care Hospitals: $7,640

(3)(h) The department proposes changing language relating to vaccine administration to clarify the rule to ensure it reflects existing practice. This proposed amendment does not change the benefit or reimbursement for vaccines.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies
The department proposes to update the fee schedule date for prosthetic devices, durable medical equipment, and medical supplies to October 1, 2023. This update is necessary to ensure the department can implement CMS quarterly updates for these services.

Fiscal Impact

The following table displays the anticipated financial impact during SFY 2024, and the number of providers affected by the proposed amendments.

Provider Type	SFY 2024 Budget Impact (Federal Funds)	SFY 2024 Budget Impact (State Funds)	SFY 2024 Budget Impact (Total Funds)	Active Provider Count
Durable Medical Equipment	$0	$0	$0	525
Hospitals – Inpatient	$5,357,454	$1,586,959	$6,944,413	471

5. The department intends these amendments to apply retroactively to October 1, 2023.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

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

11. 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.

12. 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/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.1235 and 42.20.511 and the repeal of ARM 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1204, 42.19.1205, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221, 42.19.1222, 42.19.1223, 42.19.1224, and 42.22.1305 pertaining to Industrial Property	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 18, 2024, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5:00 p.m. on January 4, 2024. Please contact Kassie Hawbaker, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-0365; fax (406) 444-3696; or kassie.hawbaker@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 68th Montana Legislature enacted Senate Bill 46 (SB 46) which was part of the Governor's Red Tape Relief Initiative to identify and repeal obsolete statutes. SB 46 repealed 15-6-192, MCA, pertaining to new industrial classification, and amended 15-6-135 and 15-24-1401, MCA, by removing all references to new industrial property. Historically, new industrial property classification was an incentive to reduce the tax rate for class five qualifying assets to three percent. But over time the asset's tax rate shifted lower and lower, and once it was equal to the three percent tax rate for personal property, there was no incentive for a taxpayer to apply for new industrial property classification. The classification is irrelevant, and the department has seen no applications for over 20 years.

Therefore, the department proposes to amend ARM 42.19.1235 and 42.20.511 and repeal ARM 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1204, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221, 42.19.1222, 42.19.1223, 42.19.1224, 42.22.1305 for implementation of SB 46.

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

42.19.1235 PROPERTY TAX ~~INCENTIVE~~ ABATEMENT FOR NEW OR EXPANDING INDUSTRY (1) through (6) remain the same.

~~(7) An applicant's property that qualifies for classification as new industrial property under 15-6-135, MCA, cannot qualify for a tax incentive pursuant to 15-24-1402, MCA, as new or expanding industry property defined in 15-24-1401, MCA.~~

(8) remains the same but is renumbered (7).

~~(9) An applicant seeking to qualify pursuant to 15-24-1401, MCA, shall include the same information and certifications as required by ARM 42.19.1222.~~

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-24-1401, 15-24-1402, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes the following:

1. Revise the catchphrase of the rule to be consistent with the language provided in 15-24-1402, MCA.
2. Strike current (7) and (9), which is necessary because the current language is specific to new industrial property classification. The amendment of 15-6-135 and 15-24-1401, MCA, removed all references to new industrial property.
3. Renumber current (8) to (7).

42.20.511 VALUATION OF CLASS FIVE REAL PROPERTY FOR QUALIFYING AIR AND WATER POLLUTION CONTROL PROPERTY, ~~NEW INDUSTRIAL PROPERTY,~~ GASOHOL FACILITIES, QUALIFYING RESEARCH AND DEVELOPMENT FIRMS, AND ELECTROLYTIC REDUCTION FACILITIES

(1) Qualifying air and water pollution control property, ~~new industrial property,~~ gasohol facilities, qualifying research and development firms, and electrolytic reduction facilities real property included in class five will be revalued annually. The department will apply an annual appraisal trending factor to the qualifying property to arrive at the market value. An annual appraisal trend factor will be calculated, using the January cost indices from the Marshall & Swift Valuation Service Guide (Marshall & Swift Guide), for the current tax year. If the Marshall ~~Valuation Service~~ & Swift Guide is not available, other accepted cost manuals or indices may be used.

(2) remains the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to remove the words "new industrial property" from the catchphrase and in (1) since it has been removed from 15-6-135 and 15-24-1404, MCA. The department also proposes amendments to the references for the Marshall & Swift Valuation Service Guide for internal consistency with other department rules.

5. The department proposes to repeal the following rules:

42.19.1201 TREATMENT OF AGRICULTURAL PROCESSING

AUTH: 15-1-201, MCA
IMP: 15-6-135, MCA

42.19.1202 TREATMENT OF PROPERTY NOT USED AS PART OF THE NEW INDUSTRY

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, 15-24-1401, 15-24-1402, MCA

42.19.1203 TREATMENT OF AIR AND WATER POLLUTION CONTROL EQUIPMENT

AUTH: 15-1-201, MCA
IMP: 15-6-135, MCA

42.19.1204 TREATMENT OF MOTOR VEHICLES

AUTH: 15-1-201, MCA
IMP: 15-6-135, MCA

42.19.1205 DEFINITIONS

AUTH: 15-24-2405, MCA
IMP: 15-24-2403, 15-24-2404, MCA

42.19.1211 PERIOD OF CLASSIFICATION AS NEW INDUSTRIAL PROPERTY

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, MCA

42.19.1212 COMMENCEMENT OF OPERATIONS

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, MCA

42.19.1213 CHANGES IN OPERATIONS

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, MCA

42.19.1221 OPINION LETTERS

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-192, MCA

42.19.1222 APPLICATION FOR SPECIAL CLASSIFICATION

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, 15-24-1401, 15-24-1402, MCA

42.19.1223 PROCESSING OF APPLICATION

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, MCA

42.19.1224 ADVERSE IMPACTS

AUTH: 15-1-201, 15-6-192, MCA
IMP: 15-6-135, 15-6-192, MCA

42.22.1305 INDUSTRIAL PROPERTY OTHER THAN LAND

AUTH: 15-1-201, MCA
IMP: 15-8-111, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to repeal ARM 42.19.1205, which inadvertently was not repealed in 2017 when the department repealed ARM 42.19.1240 regarding taxable reduction for value added property. This rule consists of one definition, "value added," which is no longer used in the subchapter.

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: Kassie Hawbaker, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-0365; fax (406) 444-3696; or e-mail kassie.hawbaker@mt.gov and must be received no later than 5:00 p.m., January 22, 2024.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in

number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on November 20, 2023 and December 8, 2023.

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

/s/ Todd Olson	/s/ Scott Mendenhall
Todd Olson	Scott Mendenhall
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 42.39.104, 42.39.115, 42.39.401, 42.39.405, 42.39.409, 42.39.413, and 42.39.415 pertaining to implementation of House Bills 128, 903, and 948 (2023), and revising requirements applicable to chemical, infused product, and mechanical manufacturers of marijuana	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 18, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 29, 2023. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 68th Montana Legislature enacted several pieces of legislation that revised the Legislature's interpretation and implementation of the Montana Marijuana Regulation and Taxation Act (MMRTA) from 2021 and included House Bills (HB) 128, 903, and 948.

For purposes relative to this rulemaking, and among other enactments, HB 128 provided for the general revision of marijuana laws; clarified limitations of the MMRTA; removed outdated dates; removed background check requirements for certain individuals; extended the moratorium for new marijuana licenses; transferred authority over marijuana testing laboratories from the Department of Public Health and Human Services to the department; clarified legislative intent on a cultivator's ability to increase tiers; revised requirements for a combined-use license; and extended the department's rulemaking authority.

HB 903 notably revised the definition for "former medical marijuana licensee" in 16-12-102, MCA, to those cultivators, manufacturers, and dispensaries licensed or having an application for licensure pending on April 27, 2021, instead of November

3, 2020. This change expanded licensure to those applicants and licensees not accounted for under House Bill 701 (2021) (HB 701).

Based on the above-described legislative changes, this rulemaking is necessary to align ARM 42.39.104, 42.39.115, 42.39.401, 42.39.405, 42.39.409, 42.39.413, 42.39.415 with the statutes amended by HB 128 and HB 903.

The department also proposes to adopt NEW RULES I through III which involves the transfer of content from ARM 42.39.401 (*see* current (9), (10), and (12) through (15) of the rule) to the respective new rules to clarify requirements applicable to marijuana manufacturers who are engaged in chemical, infused product, and mechanical manufacturing of marijuana and marijuana products. The department contends NEW RULES I through III are necessary for the department to carry out its statutory duty to protect Montana consumers and are based on the evolution of the manufacturing processes employed by licensees to render the expansive varieties of marijuana products that are available in the marketplace.

Lastly, the department proposes amendments to the above-described rules to simplify and clarify department procedures and licensee requirements, which are both department goals under the Governor's Executive Order 2021-01, "Red Tape Relief Initiative."

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

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

NEW RULE I MARIJUANA MANUFACTURER LICENSE – CHEMICAL MANUFACTURING (1) A marijuana manufacturer licensee that applies to engage in chemical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a chemical manufacturing designation on its initial license or license renewal application.

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

(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (3)(a);

(b) only use food grade nonhydrocarbon-based solvents, such as water, vegetable glycerin, vegetable oils, or animal fats;

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

(d) have processing equipment approved for use by the fire code official with jurisdiction over the licensed premises;

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

(f) have all applicable safety data sheets readily available at the licensed premises; and

(g) have a current, written standard operating procedure available for inspection at the licensed premises that details employee training on closed-loop

extraction system operation and proper handling of solvents and gasses used in processing or stored on the licensed premises.

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

(a) 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

(b) 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 600 pounds per square inch.

(4) A marijuana manufacturer licensee that engages in chemical manufacturing may not use class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research.

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA
IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE I to provide specific licensure requirements for a marijuana manufacturer licensee engaged in chemical manufacturing.

Proposed (1) is necessary to notify applicants for marijuana manufacturer licenses engaged in chemical manufacturing of the requirement to notify the department of its election to engage in chemical manufacturing. The rule section also clarifies there is no additional cost for the designation on an initial license or license renewal application.

Proposed (2) and (3) are a transfer and general restatement of current ARM 42.39.401(9) and (10) for all marijuana manufacturer licensees to establish reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-221, MCA.

Section (4) proposes to transfer the existing requirement from ARM 42.39.401(11)(a) to continue specific guidance for this manufacturing method regarding the prohibition of class 1 solvents through the department's inclusion of the reference named in the rule section.

NEW RULE II MARIJUANA MANUFACTURER LICENSEE – INFUSED PRODUCTS (1) A marijuana manufacturer licensee that applies to engage in marijuana-infused product manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects an infused product manufacturing designation on its initial license or license renewal application.

(2) A marijuana manufacturer licensee that engages in marijuana-infused product manufacturing must store all products that require refrigeration or freezing in a refrigerator or freezer until the time of sale and affix these foods with a label that indicates the product must be kept refrigerated or frozen, as appropriate.

(3) A marijuana manufacturer licensee that engages in marijuana-infused product manufacturing may not:

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

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

(c) infuse raw or cooked meat; or

(d) infuse root vegetables, including but not limited to garlic and onion, in oil.

(4) A marijuana manufacturer licensee that produces marijuana-infused products must have current, written SOPs at the licensed premises available for inspection that detail the following:

(a) an employee illness policy that requires employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food; and

(b) procedures for monitoring and maintaining refrigeration and cold holding equipment, if applicable.

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA
IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE II to provide specific licensure requirements for marijuana manufacturer licensees engaged in marijuana-infused product manufacturing.

Proposed (1) is necessary to notify applicants for a marijuana manufacturer license engaged in marijuana-infused product manufacturing of the requirement to notify the department of its election to engage in marijuana-infused product manufacturing. The rule section also clarifies there is no additional cost for the designation on an initial license or license renewal application.

Proposed (2) and (3) are a transfer and reorganization of current ARM 42.39.401(12) through (14) which require marijuana and marijuana products to be shelf-stable products under time-temperature controls to avoid spoilage or foodborne illness. The sections require basic food product handling through refrigeration or freezing until the time of product sale to the consumer, and like other perishable food items, the department requires the manufacturer to provide the consumer with some food handling labeling. Proposed (3) also continues to restrict "copycat" packaging

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

Consistent with the requirements in ARM 42.39.401, proposed (4) includes requirements for written standard operating procedures and requires all marijuana manufacturer licensees to establish reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-221, MCA.

NEW RULE III MARIJUANA MANUFACTURING LICENSE – MECHANICAL MANUFACTURING (1) A marijuana manufacturer licensee that applies to engage in mechanical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a mechanical manufacturing designation on its initial license or license renewal application.

(2) A marijuana manufacturer licensee must have current, written SOPs at the licensed premises available for inspection that details the procedures for the safe handling, maintenance, and storage of a hydraulic press.

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA
IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule III to provide more specific licensure requirements for marijuana manufacturer licensees applying to engage in mechanical manufacturing than what is currently found in ARM 42.39.401(10).

Proposed (1) is necessary to notify marijuana manufacturer licensees of the new requirement to designate the type of manufacturing processes, which include chemical, infused, or mechanical, that the department is authorizing on application or renewal. The rule section also clarifies there is no additional cost for the designation on an initial license or license renewal application.

Consistent with the requirements in ARM 42.39.401, proposed (2) includes requirements for written standard operating procedures and requires all marijuana manufacturer licensees to establish reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-221, MCA.

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

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

(a) through (c) remain the same.

~~(d) Marijuana dispensary license: $5,000 per licensed premises.~~

(e) remains the same but is renumbered (d).

~~(f)~~(e) Manufacturer license:

(i) remains the same.

(ii) $10,000 for each manufacturing facility that produces, on a monthly basis, between ten ~~pounds of concentrate~~ and 15 pounds of concentrate;

(iii) $20,000 for each manufacturing facility that produces, on a monthly basis, between 15 ~~pounds~~ and 20 pounds of concentrate; ~~and~~

(iv) ~~any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, shall pay an additional $1,000 per pound.~~ $30,000 for each manufacturing facility that produces, on a monthly basis, between 20 and 30 pounds of concentrate;

(v) $40,000 for each manufacturing facility that produces, on a monthly basis, between 30 and 40 pounds of concentrate;

(vi) $50,000 for each manufacturing facility that produces, on a monthly basis, between 40 and 50 pounds of concentrate;

(vii) $60,000 for each manufacturing facility that produces, on a monthly basis, over 50 pounds of concentrate.

(g) remains the same but is renumbered (f).

(g) The application fee to change location of a licensed premises: $2,500.

(2) At the time of the initial application and at renewal, an applicant shall pay the department a nonrefundable processing fee equal to 20 percent of the applicable license fee identified in (1). The department will not begin processing an application until it receives all processing fees. A licensee shall pay the department the remaining 80 percent of the license fee upon department notification of approval of its application or renewal.

(3) ~~The fee for an~~ Initial worker permit and a renewal: ~~permit is~~ $50. A replacement permit: ~~is~~ $10.

(4) ~~The fee for an~~ Initial registry identification card and a renewal card: ~~is~~ $20. ~~A~~ Replacement registry identification card: ~~is~~ $10.

(5) Application to change or update controlling beneficial owners, financial interest holders, sources of funding, or other business organization: $1,000, which is nonrefundable and must be paid in full before the department will begin processing the application.

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

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

AUTH: 16-12-112, 16-12-202, ~~16-12-204,~~ 16-12-221,16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, ~~16-12-204,~~ 16-12-221, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA.

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes amendments to proposed ARM 42.39.104(1)(e) to create an administratively less burdensome and more predictable license fee structure for manufacturing licenses. The department is also transferring the fee in current (6) to proposed (1)(g) for improved organization. Further the department proposes the addition of a new fee for

applying to change the ownership and other business organization related transactions. The application fee is necessary because of the increase in these types of applications that the existing fee structure did not contemplate and reflects the amount of time and expense associated with processing those applications.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the payment of the license fees listed in proposed ARM 42.39.104(1)(e)(iii) through (vii), if known, the application fees described in proposed ARM 42.39.104(5), if known, and the number of persons affected.

The department cannot accurately estimate the fiscal impact of the proposed manufacturing license fees because what production tier a manufacturing licensee selects for its operation is an independent business decision based on the needs of each licensee and its business model. But based on the department's concentrate production data analysis since adoption of the rule in 2022, the department believes that many manufacturing licensees will realize a net benefit from its new tier, compared to the existing tier, before the license renewal cycle commences.

The department also cannot accurately estimate the fiscal impact of the proposed application fees because the estimate would range from a low of $1,000, based on only one applicant's fee, to a theoretical maximum of $1,000 multiplied by every licensee in Montana that opts to change its organizational structure or underlying beneficial owners, financial interest holders, or sources of funding.
As of December 4, 2023, there are:

1. 185 cultivator licensees operating 362 cultivator sites;
2. 170 dispensary licensees operating 435 dispensary sites;
3. 108 manufacturing licensees operating 169 manufacturing sites; and
4. Three testing laboratory licensees.

42.39.115 WORKER PERMITS; ADDITIONAL TESTING LABORATORY WORKER REQUIREMENT (1) A marijuana worker permit is required for any individual age 18 and over who performs work for or on behalf of any aspect of a marijuana business or testing laboratory.

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

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

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

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

(2) An applicant applying to work in a marijuana testing laboratory must undergo a criminal background check and pay the background check fee provided in ARM 42.39.104 before the department will begin processing the application.

~~(6)~~ (3) Applicants must pay the fee provided in ARM 42.39.104 within ten days of ~~submitting an application~~ applying. Failure to pay the fee within the 10-day period will result in denial of the application.

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

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

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.115 to include a previously overlooked requirement that all testing laboratory workers undergo background checks pursuant to 16-12-206(3), MCA. In connection with the background check requirement for testing laboratory workers, the department proposes a companion requirement that testing laboratory workers must obtain a marijuana worker permit to align with other industry workers.

Lastly, the department proposes amendments to remove current (2) through (5) which is necessary to reflect HB 128's amendments to 16-12-129, MCA, which removed background checks for marijuana business workers. The department's first proposed amendment reflects the requirement in the catchphrase of the rule.

42.39.401 MARIJUANA MANUFACTURER LICENSES – GENERAL PROVISIONS (1) remains the same.

(2) The department shall begin accepting applications for marijuana manufacturers that are not former medical marijuana licensees, as defined in 16-12-102~~(14)~~, MCA, on July 1, ~~2023~~ 2025.

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

~~(4)~~ (3) Licensees will elect their tier level at their next renewal date and pay the fee provided in ARM ~~42.39.102~~ 42.39.104.

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

~~(7)~~ (6) A marijuana manufacturer licensee must take all reasonable measures and precautions to ensure the following:

(a) remains the same.

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

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

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

~~(8)~~ (7) A marijuana manufacturer licensee must:

(a) remains the same.

(b) maintain detailed instructions for making each infused product, concentrate, or extract, which shall be kept confidential by the department; ~~and~~

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

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

(e) provide hand-washing facilities designed to ensure that employee hands are not a source of contamination of marijuana-infused products, contact surfaces, or packaging materials used for marijuana-infused products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(11)~~ (8) A marijuana manufacturer licensee ~~that engages in chemical manufacturing~~ may not use:

~~(a) class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research;~~

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

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

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

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

~~(15)~~ (9) A marijuana manufacturer licensee may not ~~treat or otherwise alter a marijuana product with any synthetic cannabinoid additive, including Delta-8 tetrahydrocannabinol, that would increase potency, toxicity, or addictive potential~~ manufacture, process, or offer for sale a synthetic marijuana product as defined in 16-12-102, MCA.

~~(16)~~ (10) A marijuana manufacturer licensee must have current, written ~~standard operating procedures~~ SOPs at the licensed premises and available for inspection for the following:

(a) ~~each category and type of marijuana that it produces~~ for each final form product, the equipment, ingredients, and manufacturing process used, which shall be kept confidential by the department;

(b) ~~cleaning~~ how all equipment, counters, and surfaces are thoroughly cleaned;

(c) remains the same.

(d) proper disposal of any waste produced during processing in accordance with ARM 42.39.310; ~~and~~

~~(e) training employees on how to use the closed-loop system and handle and store the solvents and gasses safely.~~

(e) how employees are trained in the use of all emergency equipment such as eye-wash stations, fire extinguishers, chemical spill kits, or any applicable safety concern; and

(f) precautions to ensure that employees with illnesses or open lesions be excluded from any operations which may be expected to result in contamination of marijuana products until their condition is corrected.

~~(17)~~ (11) A marijuana manufacturer licensee and an employee of a marijuana manufacturer licensee may only transport ~~their~~ marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413~~(4)~~ (3) through ~~(15)~~ (18) ~~but~~ and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA
IMP: ~~16-12-204,~~ 16-12-221, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.401 primarily to effectuate the transfer of content in current (9), (10), and (12) through (15) to NEW RULES I through III. The department also proposes to amend the catchphrase of the rule to add "General Provisions" which is necessary to clarify the scope of the rule.

The department's proposed amendments to current (2) and removal of current (3) are necessary to align with HB 128 amendments to statute. Proposed (3) through (6) reflect renumbering of rule sections except the text in proposed (6)(c)

has been relocated to proposed (7)(d). Similar to the department's proposals in NEW RULES I through III, proposed (7)(e) establishes reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-221, MCA, and is necessary for general consistency of marijuana manufacturing regardless of the method(s) employed.

Proposed (8) reflects a necessary revision of the rule section that removes requirements for chemical manufacturing (moved to NEW RULE II) but keeps the section's applicable general manufacturing requirements.

Proposed (9) has been amended to cross-reference HB 948's prohibition of synthetic marijuana product, as defined in 16-12-102, MCA.

Similar to other amendment proposals in this rulemaking, proposed (10) seeks to establish requirements for written standard operating procedures and requires all marijuana manufacturer licensees to establish reasonable measures to ensure a clean, safe manufacturing area and equipment, pursuant to 16-12-112 and 16-12-221, MCA.

Finally, proposed (11) contains amendments which reflect areas of concern raised by stakeholders and are necessary to clarify and specify the conditions for the lawful transport of marijuana and marijuana products by a marijuana manufacturer licensee.

42.39.405 MARIJUANA CULTIVATOR LICENSES (1) remains the same.

(2) The department shall begin accepting applications for marijuana cultivators that are not former medical marijuana licensees, as defined in 16-12-102~~(14)~~, MCA, on July 1, ~~2023~~ 2025.

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

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

~~(6)~~ (5) For purposes of determining the appropriate canopy license tier:

(a) an existing outdoor cultivation space counts as a cultivation facility as used in ~~(5)~~ (4) and its square footage counts toward the total allowable square footage under each tier;

(b) and (c) remain the same.

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

~~(8)~~ (7) A marijuana cultivator licensee must create and maintain a manual of written ~~standard operating procedures~~ SOPs to produce marijuana. The marijuana cultivator licensee must keep the manual at the licensed premises and make it available for department inspection at all times. The manual must include, at a minimum:

(a) through (c) remain the same.

~~(9)~~ (8) If a marijuana cultivator licensee makes a material change to the ~~standard operating procedures~~ SOPs, it must document the change and revise the written ~~standard operating procedures~~ SOPs manual accordingly.

(10) remains the same but is renumbered (9).

~~(11)~~ (10) A marijuana cultivator licensee must maintain a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana in the seed-to-sale tracking system, which must be updated weekly. The log shall be kept confidential by the department.

(12) remains the same but is renumbered (11).

~~(13)~~ (12) A marijuana cultivator licensee and an employee of a marijuana cultivator licensee may only transport ~~their own~~ marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413~~(4)~~ (3) through ~~(15)~~ (18) ~~but~~ and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA
IMP: 16-12-112, 16-12-203, ~~16-12-204,~~ 16-12-210, 16-12-221, 16-12-222, 16-12-223, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.405. The department's proposed amendments to current (2) and removal of current (3) are necessary to align with HB 128 amendments to statute. Proposed (3) through proposed (9) reflect the necessary renumbering of rule sections based on the removal of current (3).

Proposed amendments to (7) and (8) which adopt the acronym of SOP for standard operating procedures reflect a proposed definition of "SOP" in ARM 42.39.102 which is proposed in MAR Notice No. 42-1073, filed concurrently with this rulemaking.

Proposed (10) seeks to amend a licensee's agricultural chemical log requirement to be updated on a weekly basis to provide clarity of this reconciliation requirement which is different from a licensee's reconciliation of marijuana item inventories in the seed-to-sale tracking system at the close of business each day.

Proposed (11) contains amendments which reflect areas of concern raised by stakeholders and are necessary to clarify and specify the conditions for the lawful transport of marijuana and marijuana products.

Proposed (12) improves clarity for cultivator licensees regarding what marijuana and marijuana products they are able to transport under the license.

42.39.409 MARIJUANA DISPENSARY LICENSES (1) remains the same.

(2) The department shall begin accepting applications for marijuana dispensaries from applicants that are not former medical marijuana licensees as defined in 16-12-102, MCA, on July 1, ~~2023~~ 2025.

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

(4) through (7) remain the same but are renumbered (3) through (6).

(7) A marijuana dispensary licensee may not sell a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana-infused product except when commercially manufactured food products are used as ingredients in a marijuana-infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused

product and the licensee does not state or advertise to the consumer that the final marijuana-infused product contains the commercially manufactured food product.

(8) Marijuana dispensary customers must not handle marijuana or marijuana products outside of its packaging prior to purchase. Customers may return marijuana or marijuana products but the dispensary must destroy those products ~~and the destruction must be entered into the seed-to-sale tracking system~~. Nothing in this rule prevents a marijuana dispensary licensee from refusing product returns.

(9) through (11) remain the same.

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

(a) a driver's license or temporary driver's permit issued by Montana or any other state or territory of the United States, including any state or territory that has authorized digital driver's licenses;

(b) through (d) remain the same.

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

(f) remains the same.

~~(13) The prohibition in 16-12-208, MCA, on marijuana dispensaries selling hemp is limited to hemp flower and hemp plants.~~

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

(14) remains the same.

(15) A marijuana dispensary licensee that offers retail deli-style sales must maintain and make available for inspection a SOP detailing sterile handling techniques to handle marijuana flower.

~~(15)~~ (16) A marijuana dispensary licensee and an employee of a marijuana dispensary licensee may only transport marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413~~(4)~~ (3) through ~~(15)~~ (18) ~~but~~ and may not transport marijuana or marijuana products of other licensees without a marijuana transporter license.

(16) remains the same but is renumbered (17).

~~(17) A marijuana dispensary licensee may continue to sell marijuana and marijuana products that have been tested under the medical marijuana program statutes and administrative rules.~~

(18) A marijuana dispensary must not maintain or make available for sale any marijuana product that has not received a "test passed" status from a licensed marijuana testing laboratory.

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

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.409. The department's proposed amendments to current (2) and removal of current (3) are necessary to align with HB 128 amendments to statute. Like proposed New Rule II(3), proposed (7) in this rule continues to restrict "copycat" packaging of marijuana and marijuana products with packaging of commercial snack foods, candy, etc., such as those examples provided in the rule section. This restriction is necessary for public safety because the department observes that marijuana and marijuana products have been developed that appear very similar to mainstream food products and those could be misidentified by consumers, particularly children.

The department proposes amendments to (8) to reflect the removal of the requirement for a licensee to enter destruction of product into the seed-to-sale tracking system to alleviate an administrative burden for licensees for product that is no longer in their seed-to-sale tracking system.

The department's amendments to (12) are proposed to reflect that state governments have authorized digital versions of driver licenses and the rules acknowledge alternate forms of authorized identification.

Current (13) is proposed for removal because HB 948 amended 16-12-208, MCA, to clarify that only hemp flower and hemp plants are restricted for dispensaries and the rule section is now obsolete.

Proposed (13) is consistent with other licensee requirements for marijuana and marijuana products to be shelf-stable products under time-temperature controls to avoid spoilage or foodborne illness. The sections require basic food product handling through refrigeration or freezing until the time of product sale to the consumer, and like other perishable food items, the department requires the manufacturer to provide the consumer with some food handling labeling.

Proposed (15) seeks to establish requirements for standard operating procedures and requires all licensees offering deli-style sales establish sterile handling techniques which is necessary to ensure product safety for consumers. Similarly, the department proposes (18) which the department believes is necessary guidance for licensees to ensure product safety for consumers.

As has been discussed in other proposals above, proposed (16) in this rule contains necessary amendments to clarify and specify the conditions for the lawful transport of marijuana and marijuana products.

Finally, current (17) is proposed for removal because it is an obsolete provision adopted to aid in the transition of the industry under HB 701.

42.39.413 TRANSPORTATION OF MARIJUANA AND MARIJUANA PRODUCTS; MARIJUANA TRANSPORTER LICENSES (1) remains the same.

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

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

~~(4)~~ (3) All distribution and delivery of marijuana and marijuana products must:

(a) remains the same.

(b) depart from a licensed premises and be delivered to a licensed premises or to a registered cardholder's address, in which case the registered cardholder must

provide a valid registry identification card to the transporter prior to the transporter completing the transport;

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

(i) and (ii) remain the same

(iii) the most direct route to be traveled to complete the transport;

~~(iii)~~ (iv) actual date and estimated time of departure;

~~(iv)~~ (v) actual date and estimated time of arrival;

(v) remains the same but is renumbered (vi).

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

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

(A) remains the same.

(B) accurate amount of product being transported verified by count or with a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101; and

(C) remains the same.

(d) be accomplished within ~~48~~ 72 hours from the date and time of departure.

(4) If the transport requires an overnight stay during the planned direct route to complete the transfer, the transporting licensee must:

(a) identify the stay on the transport manifest prior to transport;

(b) accept the in-transit product into the storage facility's inventory or other licensed premises; and

(c) store the in-transit product in the licensee's licensed premises.

(5) The transporter of the marijuana or marijuana product must record in the seed-to-sale tracking system:

(i) the actual time of departure from the originating license; and

(ii) the actual time of arrival at the destination.

(5) through (7) remain the same but are renumbered (6) through (8).

(9) A receiving licensed premises may not accept any marijuana or marijuana products from a transporter that does not match the description and/or quantity shipped on the transport manifest.

(10) Upon receipt, the receiving licensed premises shall ensure that the product received is as described in the transport manifest, verified by count or with a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101. A receiving licensed premises must immediately record receipt of the transported inventory.

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

(12) Except as provided in (b), a receiving licensed premises must reject a transport that contains marijuana or marijuana products that do not match the description and/or quantity shipped on the transport manifest.

(a) Transport manifest discrepancies must be reconciled by the originating licensee at the originating licensed premises prior to transport.

(b) A receiving licensed premises may accept packages on a transfer manifest with a +/- of 0.9 grams per pound for scale variance and -5 to -7 grams per pound for drying.

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

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

(10) through (15) remain the same but are renumbered (13) through (18).

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

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.39.413. The department's proposed removal of current (2) is necessary to align with HB 128 amendments to statute.

The department proposes several minor, yet necessary, amendments to proposed (3) to add additional clarity to the requirements for every marijuana transport transaction whether it occurs licensee-to-licensee or licensed-to-registered cardholder.

New (4) and (5) are proposed to reflect changes that are occurring in the seed-to-sale tracking system and adding a transfer hub, which includes more detailed information for reporting and transport. The sections also provide necessary guidance and compliance to ensure marijuana products are stored in a licensed premises when an overnight stay is involved in transport. Section (5) is proposed for better tracking and to clarify whether a transporting or receiving licensee failed to timely record transport and receipt.

Current (5) through (7) are renumbered as (6) through (8).

Proposed (9) through (12) are necessary additions to the rule, or are relocations of text from current (8) and (9), because the transport of marijuana products is increasing in frequency and involves complex logistics for its smooth operation. Stakeholders have requested the department provide guidance regarding the exchange of transported product because the marijuana laws involve strict liability and compliance issues involve different licensees at different times.

Current (10) through (15) are renumbered as (13) through (18).

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

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

~~(3)~~ (2) A combined use licensee is subject to the marijuana laws~~, including 16-12-223, MCA~~.

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

IMP: 16-12-225, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., January 22, 2024.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of HB 128, Representative Kassmier, was contacted by email on June 5, 2023 and on December 7, 2023. The primary bill sponsor of HB 903, Representative Hopkins, was contacted by email on August 11, 2023 and on December 7, 2023. The primary bill sponsor of HB 948, Representative Galloway, was contacted by email on August 11, 2023 and on December 7, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses. While the extent of any potential impact is fact-dependent on the circumstances of each licensee, the department notes the impactful changes correlate to the fiscal impact of application fees discussed above.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I and II and the amendment of ARM 42.39.102, 42.39.123, 42.39.314, 42.39.315, 42.39.316, 42.39.317, 42.39.318, 42.39.319, 42.39.320 pertaining to packaging and labeling of marijuana, marijuana wholesaling, and marijuana advertising	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 19, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 29, 2023. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

NEW RULE I LABELING OF SEEDS OR PLANTS (1) Each package of marijuana seeds or plants shall be labeled with the following information:

(a) name and license number of the dispensary selling the seeds or plants and the cultivator that produced the seeds or plants;

(b) net weight or number of individual seeds;

(c) number or plants;

(d) name of the strain; and

(e) the universal marijuana symbol as required in ARM 42.39.314.

AUTH: 16-12-112, 16-12-208, MCA
IMP: 16-12-122, 16-12-208, 16-12-223, MCA

REASONABLE NECESSITY: The department proposes to adopt NEW RULE I which is necessary for the department to establish minimal labeling protocols involved in the sale or transfer of marijuana seeds or plants.

When the department adopted ARM 42.39.314, effective January 1, 2022, the need to include packaging and labeling for the sale or transfer of marijuana seeds or

plants had not been established. However, as of the date of this proposal, those circumstances have changed and the adoption of NEW RULE I is the department's preference versus the amendment of ARM 42.39.314 because it is narrow in scope.

The department believes the proposed requirements in (1) provide a minimal level of product identification, in the interest of public health and safety, without creating undue administrative burdens on dispensaries or cultivators.

NEW RULE II WHOLESALE PACKAGE AND LABEL APPLICATIONS

(1) For purposes of this rule and ARM 42.39.320, "wholesale" means the act of a licensed cultivator, manufacturer, or dispensary engaged in selling marijuana or marijuana products in bulk or in quantities sufficient for resale, repackaging, or distribution by another licensee. The term does not include the sale of marijuana flower from licensed cultivator to licensed cultivator.

(2) Wholesalers of marijuana or marijuana products must comply with the package and label application requirements of ARM 42.39.320.

(3) All label and package applications for wholesale marijuana and marijuana products must contain photographs or accurate renderings of proposed labels and packages.

(4) A wholesaler must apply and receive approval to use all wholesale packaging and labels before distributing wholesale products.

AUTH: 16-12-112, 16-12-208, MCA
IMP: 16-12-112, 16-12-208, MCA

REASONABLE NECESSITY: ARM 42.39.320 provides packaging and labeling requirements applicable to all licensees, but does not specifically provide for wholesale transactions, which has resulted in duplicate packaging and labeling approvals for licensees engaging in the sale or transfer of wholesale marijuana.

The department proposes to adopt NEW RULE II to establish wholesale marijuana packaging and labeling requirements to comply with 16-12-208(8), MCA, while lessening the administrative burden of packaging and labeling applications for certain wholesale transactions.

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

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) through (11) remain the same.

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

(13) through (21) remain the same.

(22) "Label" or "labeling" means the ~~written,~~ printed~~,~~ analytical information pertaining to the marijuana flower or marijuana product ~~or graphic matter~~ displayed

on the packaging in which marijuana or a marijuana product is dispensed or displayed to a customer.

(23) and (24) remain the same.

(25) "Major food allergen" or "allergen" means milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, sesame, ~~and~~ soybeans, any additional ingredient identified by the United States Food and Drug Administration, and any ingredient containing a protein derived from these foods.

(26) remains the same.

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

(28) through (30) remain the same.

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

(32) and (33) remain the same.

(34) "Mixed strain" means multiple strains of marijuana.

(34) through (37) remain the same but are renumbered (35) through (38).

~~(38)~~ (39) "Package" or "packaging" means the immediate container in which a finished marijuana product is placed for retail sale to consumers and any outer container or wrapping used in the retail display of the marijuana or marijuana product to customers, and includes graphics, logos, and design elements.

(39) through (42) remain the same but are renumbered (40) through (43).

(44) "Reconcile" for purposes of seed-to-sale tracking means to ensure that what is recorded in the seed-to-sale tracking system is consistent with what is physically located at the licensed premises.

(43) through (46) remain the same but are renumbered (45) through (48).

(49) "Safety data sheet (SDS)" means a summary document that provides information about the hazards of a product and advice about safety precautions written by the manufacturer or supplier of the product. An SDS must be provided by a supplier of a hazardous product at the time of sale.

(47) remains the same but is renumbered (50).

(51) "Standard operating procedure (SOP)" means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

(52) "Strain" means a pure breed or hybrid variety of cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(48) remains the same but is renumbered (53).

~~(49)~~ (54) "THC" means delta-9 tetrahydrocannabinol.

(50) and (51) remain the same but are renumbered (55) and (56).

~~(52)~~ (57) "Total potential psychoactive THC" or "Total THC" means the highest theoretical concentration of psychoactive THC available in a marijuana item achievable only through the complete conversion of THCa to THC with the

application of heat during administration/consumption. Total potential psychoactive THC is the sum of THC and THCa calculated using the following equation: Total potential psychoactive THC = (THCa x 0.877) + THC.

(53) remains the same but is renumbered (58).

~~(54)~~ (59) "Transmucosal marijuana-infused product" means an ingestible marijuana-infused product that is intended to be placed in a body cavity and absorbed through the mucosal lining of the cavity, and may be psychoactive when used as intended. ~~Transmucosal marijuana-infused products include, but are not limited to, marijuana-infused tinctures, anal suppositories, lozenges, and nasal sprays.~~

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-102, 16-12-104, 16-12-105, 16-12-112, 16-12-201, 16-12-207, 16-12-208, 16-12-210, 16-12-301, 16-12-501, 16-12-503, 16-12-508, 16-12-515, 16-12-533, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.102 to propose new definitions or revise existing definitions which are necessary to: (a) implement and align the rule with statutory changes enacted under House Bills 128 and 229 (2023); (b) support quality assurance testing or packaging and labeling requirements throughout the chapter; (c) support the department's proposed amendments to ARM 42.39.123; (d) or provide improved clarity of regulatory terminology.

42.39.123 ADVERTISING (1) remains the same.

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

(3) remains the same.

(4) "Brand" or "branding" means creating a unique identity for a business to target an audience or consumers. Branding does not include references to specific marijuana or marijuana products.

(5) "Market" or "marketing" means an action a business uses to promote their brand, location, or services. Marketing does not include references to specific marijuana or marijuana products.

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

~~(5)~~ (7) A licensee's outdoor signage may not use colloquial terms for marijuana or marijuana products (e.g., pot, reefer~~, ganja~~, weed) and may not use an image or visual representation of useable marijuana, marijuana-infused products, marijuana concentrates, marijuana paraphernalia, or an image that indicates the presence of a product such as smoke, edibles, etc.

(6) and (7) remain the same but are renumbered (8) and (9).

~~(8)~~ (10) Marijuana business social media accounts that advertise marijuana or marijuana products must be private and must contain a clearly visible notice on

the main page stating that only persons 21 years of age or older may follow the account. A marijuana business that uses a QR code in an electronic advertisement must utilize appropriate measures to verify that individuals visiting the QR code's webpage are 21 years of age or older.

(9) remains the same but is renumbered (11).

~~(10)~~ (12) The prohibition in ~~(9)~~(11)(c) does not prohibit the use of informational pamphlets for dissemination at marijuana trade conferences or the use or distribution of business cards. Nothing in this rule shall be construed to allow the sale or possession of marijuana or marijuana products outside of a licensed premises, including at tradeshows.

~~(11)~~ (13) The prohibition in ~~(9)~~(11)(d) does not prohibit a marijuana business from asserting that its products have been tested by a licensed marijuana testing laboratory.

AUTH: 16-12-112, 16-12-211, MCA
IMP: 16-12-112, 16-12-211, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.123 to provide additional, necessary guidance about what is marketing and branding versus what is advertising. The department fields numerous questions in this regard, and the proposed amendments reflect identified issues and seek to improve guidance to licensees about what is allowable, or prohibited, under the law.

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

(2) remains the same.

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

(a) the strain name, except when the marijuana or marijuana product contains a mixed strain, then indicate mixed strain;

(b) and (c) remain the same.

(d) the unique identification number generated from the seed-to-sale tracking system correlated to the marijuana or marijuana product's final form testing results;

(e) remains the same.

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

(i) through (iii) remain the same.

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

(g) and (h) remain the same.

(i) the universal symbol, available from the department's website. The universal symbol may be a sticker if the sticker meets the requirements of this section. The universal symbol:

(i) remains the same.

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

(iii) may not be colored by hand and/or using a highlighter, marker, etc.; and

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

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

(a) through (5) remain the same.

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

(7) remains the same.

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

(a) through (9) remain the same.

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.314 to support the department's proposals in NEW RULES I and II and to improve clarity and consistency of this rule within the quality assurance testing and sampling requirements found in ARM Title 42, chapter 39, subchapter 6, and the authorities referenced therein.

42.39.315 LABELING REQUIREMENTS FOR MARIJUANA FLOWER

(1) For purposes of this rule and ARM 42.39.318, "flower" includes marijuana pre-rolls, but excludes infused marijuana pre-rolls.

(1) through (3) remain the same but are renumbered (2) through (4).

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.315 through the addition of new (1) because the department must distinguish marijuana pre-rolls, which are flower, from infused marijuana pre-rolls, which are concentrates/extracts, for purposes of determining which labeling rules apply under statute. The remaining sections will be renumbered.

42.39.316 LABELING OF INGESTIBLE MARIJUANA-INFUSED PRODUCTS

(1) In addition to the general labeling requirements set forth in ARM 42.39.314, each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information:

(a) remains the same.

(b) an allergen statement that ~~shall~~ must declare the presence, or absence, of major food allergens in plain language;

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

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

(A) through (ii) remain the same.

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

(A) and (B) remain the same.

(C) CBD; and

(D) ~~and~~ CBDa;

(d) through (3) remain the same.

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.316 to clarify that marijuana product sold as an edible or a food product or for an edible marijuana product must provide information for actual milligrams for serving size or dose and actual milligrams for multi-serving packages.

The department also proposes amendments to improve clarity regarding required product allergen disclosures which is necessary for overall product and consumer safety.

Section (1)(c)(iii)(C) and (D) are amended to fix a text error with placement of the word "and" from a prior rulemaking.

42.39.317 LABELING OF NON-INGESTIBLE MARIJUANA-INFUSED PRODUCTS (1) In addition to the general labeling requirements set forth in ARM 42.39.314, each packaging of non-ingestible marijuana-infused products shall be labeled with the following information:

(a) remains the same.

(b) an allergen statement that must declare the presence, or absence, of major food allergens in plain language; and

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

(2) and (3) remain the same.

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

REASONABLE NECESSITY: Similar to the department's proposal for ARM 42.39.316, the department proposes to amend ARM 42.39.317 to improve clarity regarding required product allergen disclosures which is necessary for overall product and consumer safety.

42.39.318 LABELING REQUIREMENTS FOR MARIJUANA CONCENTRATES AND EXTRACTS (1) In addition to the general labeling requirements set forth in ARM 42.39.314, each package of marijuana concentrate, including infused marijuana pre-rolls, sold to a customer shall be labeled with the following information:

(a) remains the same.

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

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

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

(A) remains the same.

(B) the number of servings or doses per package, except for vapes and other smokable marijuana products;

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

(A) the percentage concentration of:

(I) through (III) remain the same.

(IV) CBDa; or

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

(I) THC;

(II) THCa;

(III) CBD; and

(IV) CBDa; and

(B) remains the same but is renumbered (C).

(d) through (3) remain the same.

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.318 which is necessary to distinguish infused pre-rolls, which are concentrates/extracts, from marijuana pre-rolls, which are flower, for purposes of determining which labeling rules apply under statute. Like the department's proposals for ARM 42.39.316 and 42.39.317, the department proposes amendments to improve clarity regarding required product allergen disclosures which is necessary for overall product and consumer safety.

The department's proposed amendments in (1)(c)(i)(B) reflect the difficulty with setting a service size for vapes and other smokable marijuana products so the department proposes to provide an exception for those products.

The department's proposed amendments in (1)(c)(ii)(B) for dosage apply to infused marijuana pre-rolls which arguably fall into two categories: flower and concentrate. Since the department is proposing other amendments to accommodate infused marijuana pre-rolls, this amendment is necessary.

42.39.319 PACKAGING REQUIREMENTS (1) through (3) remain the same.

(4) Exit packaging of marijuana and marijuana products provided to customers at the point of sale may not contain any other information or design elements than what is allowed under 16-12-208(6)(b)(ii), MCA. Exit packaging may not reference specific or general marijuana or marijuana products and may not include advertisements, including the promotion of events, sales, or special pricing.

(5) Exit packaging of marijuana and marijuana products provided to customers at the point of sale may contain:

(a) a QR code provided, the code utilizes appropriate measures to verify that individuals visiting the QR code's webpage are 21 years of age or older;

(b) a licensee's phone number or address;

(c) marketing and branding elements.

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.319 as a necessary extension of the proposed amendments to ARM 42.39.123. As stated in the statement of reasonable necessity for ARM 42.39.123, the department fields numerous questions regarding marketing and branding versus advertising, and the proposed amendments in (4) support allowable or prohibited advertising restrictions which also apply to exit packaging.

42.39.320 PACKAGING AND LABELING APPLICATIONS, FEES AND DEPARTMENT APPROVAL PROCESSES; EXIT PACKAGE APPROVAL; INITIAL REQUIREMENTS APPLICABLE TO ALL LICENSEES (1) through (4) remain the same.

(5) All applicants, whether as an initial license applicant or existing licensee, must ~~submit an application~~ apply to the department for approval of the labeling of each marijuana product category intended for sale to customers.

(6) An applicant must submit a separate application for each label - up to a maximum of ~~eight~~ nine total label applications - based on the applicant's sale of some or all of the following marijuana or marijuana product categories:

(a) seed/plants;

(a) through (h) remain the same but are renumbered (b) through (i).

(7) An applicant will be given the following labeling options for the product categories listed in (6):

(a) selecting and affirming its use of a pre-approved template label available for download from the department, at no cost to the applicant, as provided in ~~(15)~~ (16); or

(b) use of a custom label design and pay the custom label application fee, as provided in ~~(15)~~ (16).

(8) through (14) remain the same.

(15) Licensees do not need to apply for package and label approvals for products purchased wholesale that have been previously approved by the department.

~~(15)~~ (16) Except as provided in (17), ~~A~~an applicant must submit the following fees to the department:

(a) through (d) remain the same.

(17) Wholesale label applicants must submit the following fees to the department:

(a) no charge ($0.00) for label applications described in (7)(a) or packaging applications in (12)(a);

(b) $100 per label application described in (7)(b) for custom label design; and

(c) $50 per package application described in (12)(b).

(16) through (18) remain the same but are renumbered (18) through (20).

(19) remains the same but is renumbered (21).

~~(20) In order to fully implement the packaging and labeling requirements of the Act, all licensees must submit their packaging and label applications to the department by August 1, 2022. Licensees may continue to use packaging and labeling that is compliant with the former Montana Medical Marijuana Act (Title 50, chapter 46, MCA) during the pendency of the department's approval(s), provided the licensee's applications were submitted by August 1, 2022.~~

~~(21) A licensee that fails to submit applications for approval of packaging and labeling by August 1, 2022 shall be subject to disciplinary proceedings.~~

(22) remains the same.

~~(23) All marijuana and marijuana products must be in approved packaging and affixed with approved labeling no later than January 1, 2023. Licensees shall repackage and/or relabel all marijuana and marijuana products on or before January 1, 2023, as necessary, to comply with this provision.~~

~~(24) A licensee must maintain approval letters for all product packaging, labels, and exit packages at the licensed premises and shall make those letters available to department inspectors upon request.~~

AUTH: 16-12-112, MCA
IMP: 16-12-112, 16-12-208, 16-12-215, 16-12-224, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.320 to support the wholesale packaging and labeling rules changes proposed in this rulemaking and to implement a wholesale packaging and labeling fee structure.

Proposed (6)(a) expands marijuana product categories to include marijuana seeds or plants, as provided in NEW RULE I.

Proposed (15) implements the adoption of NEW RULE II so wholesale marijuana packaging and labeling requirements comply with the department's statutory directive in 16-12-208(8), MCA, while lessening the administrative burden of wholesale packaging and labeling applications.

Proposed (17) establishes wholesale packaging and labeling application fees, including the no-fee options described in (17)(a), which are identical to other license types provided in (16)(a). The department contends the fees proposed in (17)(b) and (c) - required by 16-12-208(8)(d)(i), MCA - are reasonable and guided by 16-12-112(1)(q), MCA, given the amount of department review and processing of custom label and packaging applications and related submissions, and the required tracking of wholesale product from wholesale licensees through industry supply chains.

The department proposes to strike current (20), (21), and (23) as they were required for initial implementation of the rule but are now obsolete. Current (24) is proposed for removal because the information is available to the department and the department desires to lessen an administrative burden on licensees.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the payment of the wholesaler packaging and labeling application fees described in proposed ARM 42.39.320(17), if known, and the number of persons affected.

The department cannot accurately estimate the fiscal impact of the proposed wholesaler application fees because the number of marijuana product packages, labels, and exit packages which require a wholesale application and payment of fees are directly relative to the number of licensees who engage in wholesaling and the variety of their wholesale inventory. Further, any fiscal impact does not factor any cost savings for packaging and labeling that received prior department approval.

The department provides the following data regarding fee revenue for wholesale packaging and labeling for the period December 1, 2022 to December 1, 2023, but makes no assumptions about the current level of wholesale activity in the industry and how the proposed fees may impact the number of wholesale packages and labels on a go-forward basis.

Packages:

2,764 were identified as wholesale products in some way.
1,112 unique packages.

$27,640 in fees received by the department from wholesale packages.
$11,120 in fees received from unique packages.

Labels:

695 labels were identified as wholesale labels.
714 labels were unique labels.

$17,375 in fees received from wholesale labels.
$17,850 in fees received from unique packages.

The above information is based on the names that were provided by the licensee when they submitted packaging and labeling applications, and could not be manually validated due to volume. The label numbers do not include laboratory labels, as they would not be able to submit for a wholesale application since they do not have a dispensary license.

As of December 4, 2023, there are 185 cultivator licensees operating 362 cultivator sites and 170 dispensary licensees operating 435 dispensary sites in Montana.

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

or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., January 22, 2024.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of HB 128, Representative Kassmier, was contacted by email on June 5, 2023 and on December 7, 2023. The primary bill sponsor of HB 229, Representative Hopkins, was contacted by email on August 11, 2023 and on December 7, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed adoption and amendment of the above-referenced rules may significantly and directly impact small businesses. While the extent of any potential impact is fact-dependent on the circumstances of each licensee, the department notes the impactful changes correlate to the fiscal impact of wholesaler license fees discussed above.

/s/ Todd Olson	/s/ Scott Mendenhall
Todd Olson	Scott Mendenhall
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State December 12, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2901, 44.3.2902, 44.3.2903, 44.3.2904, and 44.3.2905 pertaining to annual security assessments and training	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 16, 2024, at 2:00 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., January 9, 2024, to advise of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TTY/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

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

44.3.2901 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) and (2) remain the same.

(3) "Qualified assessor" means a security professional who, at the time of engagement, is certified and in good standing with at least of one of the following security credentials which require passing an exam covering related security subject matter and possessing the required amount of relevant information security work experience (based on certification requirements in effect on ~~April 15, 2022~~ December 1, 2023):

(a) ~~Certified Authorization Professional (CAP).~~ Certified in Governance, Risk, and Compliance (CGRC). The requirements to obtain a ~~CAP~~ CGRC credential can be found at https://www.isc2.org;

(c) through (h) remain the same.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: The naming of the Certified Authorization Professional credential has changed to Certified in Governance, Risk, and

Compliance. The exam and required experience have remained the same. The change to ARM 44.3.2901(3)(a) addresses the name change for the credential.

44.3.2902 ANNUAL SECURITY ASSESSMENTS (1) Election security practices performed at county election offices shall be annually assessed based on controls derived from one of the following frameworks that detail security best practices for mitigating security risks to an organization:

(a) through (c) remain the same.

(d) the Center for Internet Security's "~~A Handbook for Elections Infrastructure~~ Essential Guide to Election Security," version ~~1.0~~ 1.4.1, published ~~February 2018~~ September 29, 2023, found at ~~https://www.cisecurity.org~~ https://essentialguide.docs.cisecurity.org/.

(2) Assessments shall be performed according to the following schedule:

(a) remains the same.

(b) during all other years, the security assessments may be performed using a self-assessment conducted through the Nationwide Cybersecurity Review (NCSR) based on requirements as of ~~April 15, 2022~~ December 1, 2023, and found at https://www.cisecurity.org/~~, or the Election Infrastructure Assessment Tool (EIAT) based on requirements as of April 15, 2022, and found at https://www.cisecurity.org/~~. This ~~These~~ tool~~s~~ details the security best practices for mitigating security risks to an organization.

(3) remains the same.

(4) County election administrators shall provide the results of the third-party assessments to the Secretary of State in January of each calendar year. The results provided to the Secretary of State will include a management description detailing the controls assessed and the effectiveness of each control. The management description shall include the name and qualification of the assessor including their security credential's verification, certification, or identification number.

(5) remains the same.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: The Center for Internet Security's "A Handbook for Election Infrastructure" has changed its name and online location. The change to ARM 44.3.2902(1)(d) reflects this change. The Center for Internet Security's Election Infrastructure Assessment Tool (EIAT) is no longer available. The change to ARM 44.3.2902(2)(b) removes the tool. The change to ARM 44.3.2902(4) clarifies that the results of the third-party assessments must be provided to the Secretary of State's Office.

44.3.2903 ANNUAL SECURITY AWARENESS TRAINING (1) through (3) remain the same.

(4) The county election administrator shall provide the Secretary of State with records of their election staff's completion of the security awareness training in January of each calendar year ~~within two weeks after the end of each annual training cycle~~.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: The change to ARM 44.3.2903(4) simplifies the reporting requirements by aligning the timeframes with reporting requirements in ARM 44.3.2902(4) and 13-1-205(1)(b), MCA.

44.3.2904 PHYSICAL SECURITY (1) remains the same.

(2) County election administrators shall maintain an inventory ~~record~~ and a chain of custody for any type of component that is used within a voting system as defined in 13-1-101, MCA, and any keys, cards, fobs, or other controls used to access election-related equipment or storage locations.

(a) County election administrators shall document ~~records and~~ chains of custody on forms prescribed by the Secretary of State and located on the Secretary of State website.

(b) through (4) remain the same.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: Counties already electronically document inventories of assets in asset management systems. The proposed update to ARM 44.3.2904(2)(a) changes the word "record" to "inventory" for clarity and removes the requirement that inventories must be documented on forms prescribed by the Secretary of State.

44.3.2905 OTHER ELECTION SECURITY REQUIREMENTS (1) remains the same.

(2) Workstations, desktops, laptops, or other computing devices used by county election departments and connected to a computer network shall have endpoint detection and response (EDR) tools or behavioral-based anti-virus software installed, operating as recommended by the vendor and updated with the latest signatures or other version as required and supported by the vendor.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: The proposed change incorporates specific anti-virus software into the requirements. Both endpoint detection and response (EDR) tools and behavioral-based anti-virus software provide significant improvements in protection over traditional signature-based anti-virus.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these proposed rule amendments will not have a fiscal impact.

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: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

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

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 12th day of December, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.104 pertaining to guidelines for polling place accessibility	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 16, 2024, at 2:30 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., January 9, 2024, to advise of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TTY/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

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

<u>44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY</u>

(1) Polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Completed forms prescribed by the Secretary of State pursuant to ARM ~~44.2.102(1)(b)~~ <u>44.3.102</u> are the method by which an election administrator must demonstrate the compliance of each polling place with this subchapter.

AUTH: 13-3-205, MCA
IMP: 13-3-205, MCA

REASONABLE NECESSITY: The proposed amendment is correcting an incorrect administrative rule reference to the correct reference.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this change will not have a fiscal impact.

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: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

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

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 12th day of December, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I, the amendment of ARM 44.3.1719, and the repeal of ARM 44.3.1718 and 44.3.1720 pertaining to postelection audit processes for federal and nonfederal elections	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On January 16, 2024, at 3:00 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., January 9, 2024, to advise of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TTY/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

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

NEW RULE I POSTELECTION AUDIT PROCESS FOR A NONFEDERAL ELECTION (1) Pursuant to the Postelection Audit Act, Title 13, chapter 17, part 5, MCA, if a board of county commissioners requests an audit of vote-counting machines for a nonfederal election, they shall randomly select the precincts or ballot styles, races and ballot issues, and vote counting machines (if applicable) to be audited.

(a) The selection of precincts or ballot styles, races and ballot issues, and vote counting machines (if applicable) shall be accomplished by using a statistically random technique chosen by the board.

(b) The board shall record the results on a form prescribed by the Secretary of State.

(2) If audit selection is based on precincts, the board of county commissioners shall utilize current official precinct information provided by the county conducting the audit. One precinct in the election shall be selected. If there is only one precinct, that precinct is automatically selected. After random selection, one additional precinct from the election will also be selected, if possible, in case a discrepancy in vote tallies occurs that necessitates further auditing.

(a) The board shall select up to two races and up to two ballot issues from the selected precinct to audit. If there is only one race and/or ballot issue, that one is automatically selected. The selections may not include:

(i) a retention election for a judicial candidate; or

(ii) a race in which a candidate was unopposed.

(3) If audit selection is based on ballot styles, the board of county commissioners shall utilize current official ballot style information provided by the county conducting the audit. One ballot style in the election shall be selected. If there is only one ballot style, that ballot style is automatically selected. After random selection of the ballot style to be audited, an additional ballot style from the election will also be selected, if possible, in case a discrepancy in vote tallies occurs that necessitates further auditing.

(a) The board shall select up to two races and up to two ballot issues from the selected ballot style to audit. If there is only one race and/or ballot issue, that one is automatically selected. The selections may not include:

(i) a retention election for a judicial candidate; or

(ii) a race in which a candidate was unopposed.

(b) If a selected ballot style has more than 2500 ballots cast and the ballots were counted by more than one vote-counting machine, the board of county commissioners may further narrow the audit by selecting one vote-counting machine used to count the selected ballot style.

(4) The board shall notify the county election administrator of the selections in a public meeting.

(5) The board shall appoint individuals to serve on an audit committee, complying in number and composition with 13-17-504, MCA.

(6) The county audit committee shall conduct the audit pursuant to 13-17-506 and 13-17-510, MCA.

(7) Once the county audit committee has conducted a random-sample audit, the county election administrator shall submit the results to the Secretary of State on an approved form.

AUTH: 13-17-510, MCA
IMP: 13-17-504, 13-17-506, 13-17-510, MCA

REASONABLE NECESSITY: On April 19, 2023, the Governor of Montana signed into law House Bill (HB) 172 which allows boards of county commissioners to request a random-sample audit of vote-counting machines after a nonfederal election and directs the Secretary of State to promulgate rules defining the process and procedure. The Secretary proposes NEW RULE I as the process for conducting a postelection audit for a nonfederal election. The process proposed incorporates postelection audit best practices in order to promote citizens' confidence in elections.

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

44.3.1719 ~~SELECTION PROCESS FOR RANDOM-SAMPLE AUDIT~~

POSTELECTION AUDIT PROCESS FOR A FEDERAL ELECTION (1) Within seven to nine days after a federal election, the Secretary of State ~~shall~~ will call a public meeting of the state board of canvassers, to randomly select the races, ballot issues, and precincts to be audited pursuant to the Postelection Audit Act, Title 13, chapter 17, part 5, MCA. ~~Such~~ The public meeting will be posted no later than five days prior to the meeting date on the Secretary of State's ~~web site~~ website.

(2) A county ~~exempt from the postelection audit requirements because it does not use a vote-counting machine or~~ that has a race ~~that is~~ within the margins of a recount pursuant to Title 13, chapter 16, part 2, MCA, shall notify the Secretary of State of its exemption no later than seven days after the election by submitting a notice for exemption on the form approved by the Secretary of State.

(3) Pursuant to 13-17-503, MCA, at least ~~5~~ 10% of the precincts in each county, or a minimum of ~~one~~ two precincts in ~~a~~ each county, shall be audited, whichever is greater. If there is only one precinct, that precinct is automatically selected. The state board of canvassers shall utilize current official precinct information provided by the counties to the Secretary of State to determine the number of precincts to be audited per county. Three additional precincts, or as many as possible up to three, in each county will be selected ~~pursuant to 13-17-505, MCA,~~ in case a discrepancy in vote tallies occurs that necessitates further auditing.

~~(4) To select the specific races and precincts to be audited, the board shall use ten-sided dice with numerals from 0 to 9 as the method of random selection. One, two, or three dice shall be used as specified below. The dice shall be red, white, and blue in color where red is the first number, white is the second number, and blue is the third number, if necessary.~~

~~(a) The precincts shall be numbered with consecutive numbers from 00 up to the actual number of precincts for counties having from 11 to 100 precincts, i.e., precinct 1 is numbered 01, precinct 2 is numbered 02 and so on until all the precincts in a county have been numbered. Precinct 100 will be numbered 00. For counties with 101 or more precincts, the precincts shall be numbered with consecutive numbers from 101 up to the actual number of precincts.~~

~~(b) One or two ten-sided dice shall be used to select one statewide office race, if any, one federal office race, one legislative office race, and one statewide ballot issue, if any, by assigning a number to each district or race based on its order of placement on the ballot.~~

~~(c) One ten-sided die shall be used to select the precinct to be audited for counties consisting of ten or less precincts, with 0 representing precinct 10.~~

~~(d) Two ten-sided dice shall be utilized to select the precinct or precincts to be audited for those counties consisting of 11 to 100 precincts.~~

~~(e) Three ten-sided dice shall be utilized to select the precincts to be audited for any counties consisting of more than 100 precincts.~~

~~(f) The board may decide to assign a number range of equal intervals to each precinct to reduce the number of dice throws needed, e.g., 0 – 2 = precinct 1, 3 – 5 = precinct 2, 6 – 8 = precinct 3, etc.~~

(4) The state board of canvassers shall select the races, ballot issues, and precincts by rolling ten-sided dice with numerals from 0 to 9. The dice shall be red, white, and blue, with red as the first digit, white the second, and blue the third. For

example, rolling 1 on a red die, 2 on a white die, and 3 on a blue die, would indicate the number 123.

(5) To select precincts, each shall be assigned numbers which, when matched with dice rolls, indicate the precincts to be audited.

(a) For counties consisting of ten or fewer precincts, each shall be assigned numbers 1-10. One red, ten-sided die shall be rolled. The number on the die shall be the precinct audited. (The number zero shall represent precinct 10).

(b) For counties having from 11 to 100 precincts, since two dice will be needed, each precinct must be assigned two-digit numbers. For example, number 1 is 01, 2 is 02, and so on up to the number of precincts in the county. Precinct 100 shall be assigned 00. A red and a white ten-sided die shall be rolled, with red indicating the first digit, and white the second digit. The number rolled shall be the precinct audited (i.e., a red 3 and white 2 shall designate precinct 32.).

(c) For counties with 101 or more precincts, three dice will be needed, and precincts shall be assigned three-digit numbers from 001 up to the actual number of precincts. The red die indicates the first digit, white the second, and blue the third.

(d) The board may decide to assign a number range of equal intervals to each precinct to reduce the number of dice throws needed, e.g., 0 - 2 = precinct 1, 3 - 5 = precinct 2, 6 - 8 = precinct 3, etc.

~~(5)~~(6) The board shall determine the order in which board members will throw the dice. Board members will rotate dice throwing after each 30-minute interval. A ribbed tumbler and dice tray shall be utilized to accomplish the dice throw. The Secretary of State will ~~shall~~ record the results on the prescribed form.

(7) The selection of races and ballot issues designated in 13-17-503, MCA, shall be made in the same manner as described above for precincts. Each race or ballot issue shall be assigned a number using placement on the ballot to determine the order. One red die shall be rolled for 10 or fewer races and a red and a white die for 11 or more. The number rolled shall indicate the race or ballot issue to be audited in the precincts previously selected.

~~(6)~~(8) Once the races and the precincts to be audited have been selected, the Secretary of State will ~~shall~~ notify each county election administrator of the race and precinct selections and post the selections on the Secretary of State's ~~web site~~ website.

(9) If a request is made to audit a countywide race pursuant to 13-17-503, MCA, selection of the race(s) must be done by using a statistically random technique chosen by the board of county commissioners. The precincts used for the audit must be the same precincts selected by the state board of canvassers.

~~(7) The Secretary of State in collaboration with the counties will provide guidance to the counties as to the method the counties will use to ensure all individual precinct ballots, including but not limited to each precinct's absentee ballots, are accounted for in a manner that will correlate to a specific vote-counting machine. The method will ensure that the postelection audit is a blind count.~~

(10) For elections where ballots were hand-counted, the audit committee, selected pursuant to 13-17-504, MCA, shall use the method to count ballots outlined in 13-15-206, MCA. If the random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, another full count of the race(s) and/or ballot issue(s) shall be performed. If the discrepancy remains,

the audit committee shall count the selected race(s) and/or ballot issue(s) from the three additional precincts selected per (3). The results of all audits shall be reported to the county board of canvassers.

(11) For elections where a voting system was used to count votes, the method for the audit must be conducted as outlined in 13-17-506, MCA, and must comply with 13-17-503 and 13-17-504, MCA. Discrepancies in results must be addressed pursuant to 13-17-507, MCA.

(12) Once the county audit committee has conducted a random-sample audit, the county election administrator shall submit the results to the Secretary of State on an approved form. These will be posted on the Secretary of State's website.

AUTH: 13-17-503, MCA
IMP: 13-17-503, 13-17-504, 13-17-505, 13-17-506, 13-17-507, MCA

REASONABLE NECESSITY: On June 29, 2023, the Governor of Montana signed into law Senate Bill (SB) 254. SB 254 removes the exemption from a postelection audit for counties that tabulate their votes by hand. The proposed amendment provides the audit process for elections where ballots are hand counted. On May 2, 2023, the Governor of Montana signed into law Senate Bill (SB)197 which increases the number of races included in the postelection audit. The proposed amendment increases the number of races to reflect the numerical change established in SB 197. On April 19, 2023, the Governor of Montana signed into law House Bill (HB) 172 which permits boards of county commissioners to request the addition of a countywide race to the random-sample audit of vote-counting machines after a federal election. The Office of the Secretary of State is proposing amendments to ARM 44.3.1719 to reflect the changes in statute applicable to a postelection audit for a federal election. The proposed rules incorporate the legislature's amendments to 13-1-101, 13-17-503, and 13-17-505, MCA. Additional proposed amendments include revisions to the current selection process to enhance readability and clarification of the meaning of "board."

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

44.3.1718 DEFINITIONS

AUTH: 13-17-503, MCA
IMP: 13-17-503, MCA

REASONABLE NECESSITY: The Office of the Secretary of State is proposing repeal of ARM 44.3.1718. The definition of "blind count" is no longer necessary because the proposed amendments to ARM 44.3.1719 remove use of the term. Also, the definition of "board" does not apply to all rules of subchapter 17. "Board" in ARM 44.3.1719 refers to the state board of canvassers for a federal election, defined in 13-15-502, MCA. The board in proposed NEW RULE I, describing a nonfederal election, refers to the board of county commissioners.

44.3.1720 REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT

AUTH: 13-1-202, 13-17-503, MCA
IMP: 13-17-505, 13-17-506, 13-17-507, MCA

REASONABLE NECESSITY: The Office of the Secretary of State is proposing a repeal of ARM 44.3.1720 because it is no longer necessary. The process for reporting results and for performing random-sample audits for a federal election has been incorporated into the proposed amendments to ARM 44.3.1719.

6. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these proposed rule changes will not have a fiscal impact and no persons will be affected.

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: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., January 19, 2024.

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

9. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

10. With regard to the bill sponsor contact requirements of 2-4-302, MCA, the primary bill sponsors, Representative David Bedey, Senator Kenneth Bogner, and Senator Mike Cuffe, were contacted by phone on August 3, 2023, and by email on October 13, 2023.

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

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 12th day of December, 2023.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV, the amendment of ARM 10.102.1158, 10.102.1160, 10.102.4003, 10.102.9101, 10.102.9102, 10.102.9104, 10.102.9105, and the repeal of ARM 10.102.9103 and 10.102.9106 pertaining to updating rules to comply with recent legislation	))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 3, 2023, the Montana State Library published MAR Notice No. 10-102-2301 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1431 of the 2023 Montana Administrative Register, Issue Number 21.

2. The State Library has adopted NEW RULE I (10.102.4002), NEW RULE II (10.102.7001), NEW RULE III (10.102.7002), and NEW RULE IV (10.102.7003), as proposed.

3. The State Library has amended the above-stated rules as proposed.

4. The State Library has repealed the above-stated rules as proposed.

5. The State Library commission has thoroughly reviewed and considered all comments received. The commission received 120 comments supporting the amendment to ARM 10.102.1160, and 412 comments opposing the rule proposal. A summary representing the general themes of the comments in opposition and the commission's response follows.

COMMENT 1: The president-elect of the Montana Library Association spoke in opposition to the amendment and stated that it was "four-to-one" (referencing comments supporting versus comments opposing) against the proposal and that she hoped the commission would "pay attention to your public." She further commented that "these are your patrons speaking up, including library staff, librarians, directors, trustees statewide for libraries of all sizes, former commissioners, as well as the public. 71% of people opposing the removal of this standard should speak for [themselves]. It is not a close discussion."

COMMENT 2: A Montana library director provided public comment stating: "The commission can now do one of two things, stick to its guiding principles, and begin working to repeal all public library standards, since their very existence is apparently a blatant affront to local control. Or it can repeal just master's standard,

and in doing so, affirm what everyone in this meeting probably suspects, that this is nothing more than political retribution for a perceived injustice at one library."

COMMENT 3: A Bozeman resident provided written comment that the job of a library director requires professional education and skills learned through the Master of Library Science (MLS) degree. The commenter further questioned why anyone would advocate against education, "especially those that are in roles that serve to advance education."

COMMENT 4: A Kalispell resident submitted written comment in opposition stating, "[L]ocal Boards of Trustees have the choice to hire a director without those qualifications (MLS degree), and in doing [so] decline the state funding. Giving trustees discretion in hiring as an argument for eliminating this requirement is spurious."

COMMENT 5: A Helena resident provided comment opposing the rule change and compared the removal of the MLS degree requirement to the removal of similar professional degrees and professional requirements for doctors, educators, and lawyers.

COMMENT 6: A resident from Somers opposed the rule change and stated that an MLS degree should be required in order for a library serving 25,000 people or more to receive state funding.

RESPONSE: The commission disagreed with the above-stated comments and the other comments in opposition and amended ARM 10.102.1160 as proposed, and in doing so, removed the requirement of an MLS degree for libraries serving a population of 25,000 or more. The commission provided the following response and justification for its decision. Many residents are misguided in believing that amending ARM 10.102.1160 to remove the MLS degree requirement will result in libraries abandoning quality assurance standards and placing too much power in the hands of trustees. Specifically, if this standard is eliminated, there are 30 other quality assurance standards in place, that should assuage any fears. It is not going to be a no holds barred, every library does whatever they want kind of scenario if this one standard is abandoned. Pursuant to 22-1-310, MCA, the board of trustees of each library shall appoint and set the compensation of the chief librarian. The MCA clearly provides a library board of trustees with the power to make the hiring decisions of their library directors. It is not an opinion; it is Montana law. Further, 22-3-109, MCA, gives library boards broad power and the responsibility for making decisions like this.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Robyn Scribner
Robyn Scribner
Commission Chair
Montana State Library

Certified to the Secretary of State December 12, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.9.202 pertaining to the brinkman game preserve	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On July 7, 2023, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-606 pertaining to the public hearing on the proposed repeal of the above-stated rule at page 611 of the 2023 Montana Administrative Register, Issue Number 13.

2. The commission has repealed the above-stated rule as proposed.

3. The commission has thoroughly considered the comments and testimony received. A summary of the comments received, and the commission's response is as follows:

COMMENT #1: The commission should repeal this rule because the Brinkman Game Preserve harms farmers and ranchers. It affects the ability to control excess wildlife and causes damage to fencing and forage ground.

RESPONSE #1: The commission appreciates the public's participation in this process, and has taken this comment into consideration.

COMMENT #2: The commission should repeal this rule because it infringes the Second Amendment rights of private landowners with land within the preserve boundary. A basic rule of the game preserve is you cannot transport a firearm. The current administration should consider property rights of landowners who own land within the preserve.

RESPONSE #2: The commission appreciates the public's participation in this process, and has taken this comment into consideration.

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State December 14, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and NEW RULE II and the amendment of ARM 17.36.101, 17.36.112, 17.36.123, 17.36.310, 17.36.321, 17.36.323, 17.36.605, 17.36.610, 17.36.802, 17.36.914, 17.36.918, 17.38.101, and 17.38.102, pertaining to the review of sanitation facilities in subdivisions such as water wells, onsite sewage disposal systems, and stormwater amenities. In addition, the proposed amendment to Circular DEQ-4 and Circular DEQ-20	)	NOTICE OF ADOPTION AND AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On August 25, 2023, the Department of Environmental Quality published MAR Notice No. 17-430 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 786 of the 2023 Montana Administrative Register, Issue Number 16.

2. The department has amended the above-stated rules as proposed.

3. The department has adopted the following rules as proposed: NEW RULE I (17.36.115) and NEW RULE II (17.36.611).

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

COMMENT 1: One commenter believes the proposed changes to ARM 17.36.123 should be expanded to include language that requires interlocal agreements to comply with the requirement that a public municipal or county sewer district wastewater system must accept a connection request from a proposed subdivision if any boundary of the subdivision is within 1,000 feet of any component of a public wastewater system. Without that, the commenter notes, cities could still deny connections to their systems, which is opposite of the intent of SB 215 from the 2023 legislative session.

RESPONSE 1: The department appreciates the comment but cannot make the change suggested by the commenter. The department's authority to adopt rules is limited by the authority granted to it by the legislature. When interpreting a statute,

the department cannot consider legislative history to contradict the plain language of the statute when the law is clear on its face. *Haney v. Mahoney*, 2001 MT 201, ¶ 7.

In this case, SB 215 directed the department to amend its rule to add a requirement that a municipal or county water and/or sewer district water and wastewater system must accept a connection request from a proposed subdivision and make public wastewater service available to the subdivision under certain specified circumstances. In general, the department's jurisdiction over municipal systems and county water and sewer districts extends only to the engineering and monitoring requirements applicable to all public systems, while the administration of those systems is subject to the local government statutes of Title 7, MCA. The department has made the change exactly as required by the bill but does not have authority to require systems to make changes to their governing documents or interlocal agreements.

COMMENT 2: One commenter, the sponsor of SB 215, believes that a municipal or county water or sewer district should not have the ability to reject a proposed connection so long as the connection meets the criteria proposed in ARM 17.36.123(4) and other provisions of that rule. He believes that under no circumstances should the connection be contingent upon approval from another third party or entity including another local government entity if the proposed criteria in ARM 17.36.123 are met.

RESPONSE 2: The department appreciates the comment. As proposed and adopted, the rule implements the statutory directive to prohibit municipalities or county water and sewer districts from rejecting proposed connections if the statutory criteria have been met. For the reasons discussed in Response 1, the department does not have additional authority to alter contracts or other interlocal agreements. Those municipalities or county water and sewer districts will have to evaluate whether such contracts or agreements appropriately comply with the new rule.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.202 pertaining to incorporation by reference of the most recent version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP)	))))))	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On August 25, 2023, the Department of Environmental Quality published MAR Notice No. 17-431 pertaining to the proposed amendment of the above-stated rule at page 806 of the 2023 Montana Administrative Register, Issue Number 16.

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

3. No comments or testimony were received.

/s/ *Nicholas Whitaker*
Nicholas Whitaker
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State December 12, 2023.

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

In the matter of the repeal of ARM 24.156.1622 pertaining to supervision of physician assistant	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On October 20, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-97 regarding the public hearing on the proposed repeal of the above-stated rule, at page 1243 of the 2023 Montana Administrative Register, Issue No. 20.

2. On November 9, 2023, a public hearing was held on the proposed repeal of the above-stated rule via the videoconference and telephonic platform.

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

Comment 1: One commenter supported the board's proposed repeal.

Response 1: The board appreciates all comments received during the rulemaking process.

Comment 2: Numerous commenters opposed the repeal, urging the board to adopt administrative rules defining how competency is determined, and requiring physician assistants to complete an additional 6000 hours under a collaborative agreement when changing medical specialties, similarly to how a physician attends a structured residency program when changing a medical specialty.

Response 2: This comment is outside the scope of this proposed rulemaking but will be addressed by the board as part of MAR Notice No. 24-156-94. The board proposed this repeal after the Economic Affairs Interim Committee informally objected to the proposed amendment of the rule in MAR Notice No. 24-156-94.

4. The agency has repealed ARM 24.156.1622 as proposed.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.

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

In the matter of the adoption of NEW RULE I pertaining to pharmacist prescribing	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 3, 2023, the Board of Pharmacy (board) published MAR Notice No. 24-174-80 regarding the public hearing on the proposed adoption of the above-stated rule, at page 1471 of the 2023 Montana Administrative Register, Issue No. 21.

2. On November 28, 2023, a public hearing was held on the proposed adoption of the above-stated rule via the videoconference and telephonic platform. Comments were received by the deadline.

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

Comment 1: Several commenters thanked the board for proposing clear and concise rules.

Response 1: The board appreciates all comments received during the rulemaking process.

Comment 2: One commenter opposed the proposal, stating that telehealth is a better idea to make physicians more available to patients.

Response 2: The 2023 Legislature passed Senate Bill (SB) 112, extending limited prescribing authority to pharmacists. The board is therefore exercising its rulemaking authority to set standards for patient care, evaluation, recordkeeping, and provider notification required of pharmacists prescribing under SB 112's authority.

Comment 3: Several commenters opposed the rule, stating the rule as drafted lacks specificity needed to ensure a clear standard of practice.

Response 3: The board believes that allowing for pharmacists to use flexibility to exercise their professional judgment in treating patients is better for patient care than requiring every patient be treated pursuant to a specific protocol that may not fit that patient's needs.

Comment 4: Numerous commenters opposed the proposal, stating that pharmacists are not trained in diagnosis of diseases or patient-centered medical decision making,

and that extending general prescribing authority to pharmacists is a patient safety issue.

Response 4: The board disagrees with the commenters, and notes that the 2023 Legislature passed SB 112, extending limited prescribing authority to pharmacists. The board is therefore exercising its rulemaking authority to set standards for patient care, evaluation, recordkeeping, and provider notification required of pharmacists prescribing under SB 112's authority.

Comment 5: One commenter noted that pharmacy school does not prepare pharmacists to give physical or mental examinations or diagnose patients.

Response 5: SB 112 allows for independent prescribing by pharmacists in specific situations but requires that a pharmacist recognize the limits of the pharmacist's knowledge and experience and consult with and refer to other health care providers as appropriate.

Comment 6: Commenters suggested that patients should be made aware that pharmacists do not have the same level of training as other medical professionals, including that pharmacists do not have the ability to diagnose a medical condition.

Response 6: See Response 5.

Comment 7: Numerous commenters suggested the pharmacist be required to communicate their credentials to the patient and if the pharmacist holds a doctorate degree, to clearly state they are not a medical doctor.

Response 7: See Response 5.

Comment 8: One commenter believed it is not responsible or ethical to allow pharmacists to prescribe medication without the oversight of a physician, PA, or nurse practitioner.

Response 8: See Response 5.

Comment 9: Several commenters noted that conditions which are "minor" and "self-limiting" do not require prescription medication, and suggested the board amend the rules to suggest patients consider rest and over-the-counter medications.

Response 9: See Response 5.

Comment 10: Several commenters requested defining the term "patient emergencies" in the rules.

Response 10: The board considered defining the term, and determined that a definition would be too limiting, since "emergency" is particular to each patient. Pharmacists choosing to prescribe under SB 112's authority are expected to use

independent clinical judgment in assessing patients and comply with the requirements of SB 112 and corresponding rules.

Comment 11: Numerous commenters suggested the board add a section specifying what medications a pharmacist may prescribe in a patient emergency.

Response 11: See Response 10.

Comment 12: One commenter suggested that limiting refilling of prescriptions in "emergency" situations with proper physician notification would be appropriate.

Response 12: Emergency refills are addressed in ARM 24.174.836. This new rule addresses pharmacists' independent prescribing authority, as allowed by the Legislature in passing SB 112. Pharmacists must document the justification for the patient care they provide and comply with the requirements of SB 112 and corresponding rules.

Comment 13: Numerous commenters suggested the board add a section specifying conditions that are "minor."

Response 13: The board considered defining the term, and determined that a definition would be too limiting, since "minor" is particular to each patient. Pharmacists choosing to prescribe under SB 112's authority are expected to use independent clinical judgment in assessing patients. Patient care is unique to each patient, and adding the commenter's specific language would potentially limit the pharmacist's exercise of judgment and interfere with patient care.

Comment 14: Several commenters noted that the rule proposal states "any pharmacist" may independently prescribe, but that the bill states the section does not apply to a pharmacist within a collaborative pharmacy practice agreement, and that appears to be a conflict.

Response 14: Pharmacists working under the authority of collaborative pharmacy practice agreements, including clinical pharmacist practitioners, can still choose to prescribe independently pursuant to SB 112's authority. Testimony at the legislature included the difference between a clinical pharmacist practitioner, pharmacists working under collaborative agreements, and this independent authority. Pharmacists working in any of those three roles are required to document patient assessments and justification for the care provided.

Comment 15: Several commenters suggested that the rule provides confusion among pharmacists working under a collaborative practice agreement.

Response 15: See Response 14.

Comment 16: Numerous commenters suggested the board delete (1) of the rule as duplicative of statute, or in the alternative, strike the word "any" as confusing to

pharmacists in collaborative agreements or pharmacists whose license does not allow them to prescribe.

Response 16: See Response 14. Pharmacists whose licenses have been restricted from practice are governed by the restriction in the disciplinary action, and use of the term "any" in this section does not override a disciplinary action.

Comment 17: Numerous commenters suggested amending (2) to include obtaining all necessary information for appropriate clinical decision making.

Response 17: The board believes that "adequate information" and "all pertinent information" serve the same purpose, and that the pharmacist will exercise independent clinical judgment in determining whether they have gathered information sufficient to make an appropriate clinical decision.

Comment 18: Numerous commenters suggested that the board amend the new rule to include patient inclusion and exclusion criteria, and explicit medical referral criteria.

Response 18: Patient care is unique to each patient, and including the specifics requested by the commenter would potentially limit the pharmacist's exercise of judgment and interfere with patient care. SB 112 requires that a pharmacist recognize the limits of the pharmacist's knowledge and experience and consult with and refer to other health care providers as appropriate.

Comment 19: Numerous commenters suggested the board amend the unprofessional conduct rule to include failure to implement or produce the pharmacist's patient assessment.

Response 19: This rule requires that documentation be made available to the board upon request, and the board already has unprofessional conduct rules requiring pharmacists to follow laws governing pharmacy and to respond to requests from the board. The board believes this to be sufficient to address the commenters' concerns.

Comment 20: Numerous commenters suggested the board amend (3) to require the follow up care plan adhere to clinical guidelines and a requirement that the follow up care plan be implemented.

Response 20: The board believes the rule is sufficient to require implementation of the follow up care plan based on the standard of care model and the patient assessment being based on current clinical guidelines, best practice standards, or evidence-based research findings, as applicable.

Comment 21: Numerous commenters suggested that the board amend (4) to require effective communication methods and confirmation of receipt when a follow up care plan involves a named provider or a patient emergency.

Response 21: No other professionals are held to this standard. The rules are designed to hold pharmacists to the standard of care model, and pharmacists use various forms of communication as part of their standard of care. The board believes further notification requirements suggested by the commenter to be unnecessary.

Comment 22: One commenter stated the board should set a three-business day requirement for notifying a provider, or in the event of a patient emergency, 24 hours.

Response 22: Pharmacists choosing to prescribe under SB 112's authority are expected to use independent clinical judgment, including what is a reasonable time for provider notification.

Comment 23: Several commenters requested that prescribing pharmacists be held to the same standards of documentation as all other medical professionals.

Response 23: Medical record keeping of medical records are understood to be part of the standard of care of each profession. The board has complied with the statutory requirements as set forth in SB 112.

Comment 24: One commenter requested the board address whether every clinical laboratory improvement amendment (CLIA) waived test is allowed, even if the condition is not minor or self-limiting.

Response 24: The commenter is requesting a statutory interpretation, which is outside the scope of this rulemaking project. The commenter is welcome to use 2-4-501, MCA, to seek a formal ruling from the agency on the statutory interpretation.

4. The board has adopted NEW RULE I (24.174.505) as proposed.

BOARD OF PHARMACY
JEFF NIKOLAISEN, PHARMACIST,
PRESIDENT

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI pertaining to property management licensure	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 3, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-209-1 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1473 of the 2023 Montana Administrative Register, Issue No. 21.

2. On November 30, 2023, a public hearing was held on the proposed adoption of the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has adopted NEW RULES I (24.209.401), II (24.209.501), III (24.209.601), IV (24.209.2201), V (24.209.2205), and VI (24.209.2301), as proposed.

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.351.101, 24.351.211, 24.351.215, 24.351.227, 24.351.411, and 24.351.1117, the adoption of NEW RULES I and II, and the repeal of ARM 24.351.201, 24.351.203, 24.351.204, 24.351.207, 24.351.301, 24.351.321, 24.351.401, 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115 pertaining to the building and commercial measurements bureau	)))))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 3, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-351-357 regarding the public hearing on the proposed changes to the above-stated rules, at page 1515 of the 2023 Montana Administrative Register, Issue No. 21.

2. On November 28, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.351.101, 24.351.211, 24.351.215, 24.351.227, 24.351.411, and 24.351.1117 as proposed.

4. The agency has adopted NEW RULES I (24.351.105) and II (24.351.1121) as proposed.

5. The agency has repealed ARM 24.351.201, 24.351.203, 24.351.204, 24.351.207, 24.351.301, 24.351.321, 24.351.401, 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115 as proposed.

6. The amendment, adoption, and repeal of the referenced rules are effective January 1, 2024.

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through V, the amendment of ARM 36.12.101 through 36.12.103, 36.12.110 through 36.12.113, 36.12.116, 36.12.117, 36.12.121, 36.12.1401, 36.12.1501, 36.12.1601, 36.12.1702 through 36.12.1704, 36.12.1706, 36.12.1707, 36.12.1801, 36.12.1903, and 36.12.1904, and the repeal of ARM 36.12.1301, 36.12.1701, 36.12.1705, and 36.12.1901 pertaining to water right permitting	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 6, 2023, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-219 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1151 of the 2023 Montana Administrative Register, Issue Number 19.

2. The department has adopted the following rules as proposed: NEW RULE IV (36.12.1304) and NEW RULE V (36.12.1305).

3. The department has amended the following rules as proposed: ARM 36.12.102, 36.12.110, 36.12.111, 36.12.112, 36.12.113, 36.12.116, 36.12.117, 36.12.1501, 36.12.1601, 36.12.1703, 36.12.1706, 36.12.1707, 36.12.1903, and 36.12.1904.

4. The department has repealed the following rules as proposed: ARM 36.12.1301, 36.12.1701, 36.12.1705, and 36.12.1901.

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

NEW RULE I (36.12.123) VARIANCE REQUESTS (1) and (2) remain as proposed.

(3) The department shall grant or deny the variance within 30 business days of receipt of the written request. ~~The department's grant of a variance request may impose conditions necessary to ensure the application materials and data provided is sufficient to evaluate the applicable criteria.~~ The department may only grant a variance request if it determines the application materials and data provide sufficient

information to complete any necessary technical analyses and to evaluate the applicable criteria.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

NEW RULE II (36.12.1302) PREAPPLICATION MEETING (1) and (2) remain as proposed.

(3) A preapplication meeting must be documented by a department-provided ~~checklist~~ preapplication meeting form that identifies:

(a) and (b) remain as proposed.

(c) any additional information necessary for completion of the technical analyses identified by the ~~checklist~~ preapplication meeting form under (3)(a).

(4) If the technical analyses are to be completed by the department, the 45-day department deadline for completion of the technical analyses will be set upon receipt of the preapplication fee, receipt of the information provided for in (3)(b) and (c), and signed preapplication ~~checklist~~ meeting form. These items must be received within 180 days of the preapplication meeting.

(5) If the technical analyses are to be completed by the applicant, the 45-day department deadline for scientific credibility review of technical analyses (ARM 36.12.1303(8)) will be set upon receipt of the preapplication fee, receipt of the applicant's technical analyses, and signed preapplication ~~checklist~~ meeting form. These items must be received within 180 days of the preapplication meeting.

(6) remains as proposed.

(7) The preapplication meeting procedure for a combined permit and change application documented on the preapplication ~~checklist~~ meeting form, will be conducted as follows:

(a) through (8) remain as proposed.

AUTH: 85-2-302, MCA
IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

NEW RULE III (36.12.1303) TECHNICAL ANALYSES (1) remains as proposed.

(2) For surface water permit applications, the following technical analyses are required:

(a) a surface water analysis pursuant to ARM 36.12.1702, which must include:

(i) through (b) remain as proposed.

(3) For surface water change applications, the following technical analyses are required:

(a) a historical use analysis pursuant to requirements in ARM 36.12.1902;

(b) remains as proposed.

~~(c) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to affected hydraulically connected surface water(s); and~~

~~(d)~~(c) for irrigation water rights changing the place of use or purpose, a return flow analysis of historical return flows and projected return flows for the amount of water being changed. This analysis must include:

(i) and (ii) remain as proposed.

(iii) if water rights are identified which will be impacted by a change in return flow, the return flow analysis must include a monthly breakdown of the rate and timing of return flow and evaluate impacts to the identified rights~~.~~;

(d) for applications with proposed mitigation, an analysis of the net effect to hydraulically connected surface water(s); and

(e) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to hydraulically connected surface water(s).

(4) For groundwater permit applications in an open basin, the following technical analyses are required:

(a) a groundwater analysis pursuant to ARM 36.12.1703, which must include:

(i) through (v) remain as proposed.

(vi) all groundwater rights with points of diversion within the 0.01-foot drawdown contour or area of potential impact;

(vii) through (x) remain as proposed.

(b) a surface water depletion analysis, which must include:

(i) ~~all~~ hydraulically connected surface water(s) to the source aquifer for the proposed point of diversion; and

(ii) through (d) remain as proposed.

(5) For groundwater change applications, the following technical analyses are required:

(a) a historical use analysis pursuant to requirements in ARM 36.12.1902;

(b) for applications changing the point of diversion, a groundwater analysis, which must include:

(i) through (vi) remain as proposed.

(c) for applications changing the point of diversion or place of use, surface water depletion analysis, which must include:

(i) ~~all~~ hydraulically connected surface water(s) to the source aquifer for the proposed point of diversion; and

(ii) and (iii) remain as proposed.

(d) for irrigation water rights changing the place of use or purpose, a return flow analysis of historical return flows and projected return flows for the amount of water being changed. This analysis must include:

(i) and (ii) remain as proposed.

(iii) if water rights are identified which will be impacted by a change in return flow, the return flow analysis must include a monthly breakdown of the rate and timing of return flow and evaluate impacts to the identified rights~~.~~;

(e) for applications with proposed mitigation, an analysis of the net effect to hydraulically connected surface water(s); and

(f) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to hydraulically connected surface water(s).

(6) For groundwater permit applications in a closed basin, in addition to technical analyses required under (4), ~~a hydrogeologic report conducted pursuant to 85-2-361, MCA,~~ the following technical analyses are required:

(a) hydrogeologic report conducted pursuant to 85-2-361, MCA. ~~for applications with proposed mitigation, an analysis of the net effect to hydraulically connected surface water(s);~~

~~(b) for applications where aquifer recharge is proposed for mitigation, an analysis of the monthly accretions to affected hydraulically connected surface water(s).~~

(7) remains as proposed.

(8) The department will evaluate technical analyses completed by the applicant for scientific credibility. The scientific credibility review will evaluate the methodology, quality of the analysis, and relevance of the data used for the technical analyses.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

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

36.12.101 DEFINITIONS In addition to definitions provided for in ~~82-2-102~~ 85-2-102, MCA, and unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act, and as used in these rules:

(1) through (80) remain as proposed.

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA
IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-351, 85-2-360, 85-2-361, 85-2-362, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

36.12.103 FORMS AND SPECIAL FEES (1) through (2)(r) remain as proposed.

(s) $150 for each exempted water right on Form No. 642, DNRC Ownership Update, Split ~~or Split~~ and Sever of a Water Right;

(t) through (4) remain as proposed.

AUTH: 85-2-113, MCA
IMP: 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-426, 85-2-436, 85-20-401, MCA

36.12.121 AQUIFER TESTING REQUIREMENTS (1) and (2) remain as proposed.

(3) Minimum testing procedures are as follows:

(a) through (d) remain as proposed.

(e) Minimum duration of pumping during an aquifer test must be 24 hours for a proposed pumping rate and volume equal to or less than 150 GPM or 50 acre-feet, or 72 hours for a proposed pumping rate and volume greater than 150 GPM or 50 acre-feet.

(i) At a minimum ~~if a variance from (e) is granted~~, an eight-hour drawdown and yield test is required on all new production wells.

(ii) and (iii) remain as proposed.

(f) One or more observation wells must be completed in the same source aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well hydraulics do not affect the observation well.

(g) through (4) remain as proposed.

AUTH: 85-2-113, 85-2-370, MCA
IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

36.12.1401 PERMIT AND CHANGE APPLICATION MODIFICATION

(1) remains as proposed.

(2) Modification of an element of a permit or change application requires an application amendment Form No. ~~656~~ 655 to be submitted to the department which identifies the elements being modified;

(3) through (6) remain as proposed.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, MCA

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY (1) Physical availability for perennial or intermittent streams will be determined based on monthly flow rate and volume.

(a) If stream gage records are available, or the source has been otherwise measured, or quantified, those measurement records will be used to quantify physical availability using the median of the mean monthly flow rate and volume during the proposed months of diversion.

(b) If measurement records pursuant to (1)(a) are not available, mean monthly flow rate and volume of water physically available ~~physical availability~~ may be estimated using a department-accepted method in conjunction with applicant collected flow measurements to validate the estimation technique. The applicant must collect a minimum of three measurements that reflect high, moderate, and low flows during the period of diversion. The applicant shall explain how the measurements are representative of high, moderate, and low flows.

(2) through (7) remain as proposed.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-311, MCA

36.12.1704 PERMIT APPLICATION - LEGAL AVAILABILITY (1) The department will identify and quantify the existing legal demands of water rights on the source of supply and those waters to which it is tributary and which the department determines may be affected by the proposed appropriation. ~~Legal demands will be identified based on the water right records in the Water Rights Information System.~~

(a) For groundwater appropriations, this shall include identification and quantification of existing legal demands of water rights for any surface water source that the department determines will be depleted as a result of the groundwater appropriation.

(2) The department will compare the physical water supply at the proposed point of diversion and the legal demands of water rights within the area of potential impact to determine if water is legally available for the proposed permit. For groundwater permits, the department will compare the physical water supply and existing legal demands of water rights for impacted groundwater sources and surface water sources it determines will be depleted pursuant to (1)(a), to determine if water is legally available.

(a) and (b) remain as proposed.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

(1) Water may be appropriated for beneficial use:

(a) by a governmental entity for the public;

(b) by a person for the sale, rent, or distribution to others; or

(c) by a person for the person's own use, unless provided otherwise by statute; or

(d) for other person's use, according to law.

~~(1)~~(2) The applicant must explain the following:

(a) and (b) remain as proposed.

~~(2)~~(3) The applicant does not need to explain that the flow rate or volume for each purpose is reasonable if:

(a) remains as proposed.

(b) there are no other associated or overlapping water rights appurtenant to the proposed place of use.~~; or~~

~~(c) the purpose of use, place of use, and operation of the proposed project is not changing from that found by the department's historical use analysis.~~

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

7. 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: One commenter expressed concern that the amendment to ARM 36.12.1401(3) will reset the timelines for any modification of any element of an application, however slight. The commenter believes that the resetting of timelines should be limited to modification of a significant element of an application and that the department should define what constitutes a significant element of an application.

RESPONSE 1: The department disagrees for the following reason: Modification of any "element" (as defined in amended ARM 36.12.101(22)) of an application is significant, particularly as it relates to the technical analysis required under NEW RULE III. The timelines for processing an application would be reset but the expedited timelines under the pre-application meeting rules would remain in effect if the technical analyses did not require amendment. It is necessary to reset timelines to give the department time to review the modified application and update any impacted analyses and the decision document.

COMMENT 2: One commenter expressed concern that NEW RULE III(4)(a)(v) references all groundwater rights within the 0.01-foot drawdown contour. The commenter believes this rule should specify all groundwater rights with a point of diversion within the 0.01-foot drawdown contour (rather than place of use).

RESPONSE 2: The department disagrees for the following reason: NEW RULE III(4)(a)(v) does not reference all groundwater rights within the 0.01-foot drawdown contour. NEW RULE III(4)(a)(v) is for calculation of annual groundwater flux. Nothing in this rule is dependent on points of diversion or places of use for groundwater rights.

COMMENT 3: One commenter expressed concern that NEW RULE III(4)(a)(vi) references all groundwater rights within the 0.01-foot drawdown contour or area of potential impact. The commenter believes this rule should specify all groundwater rights whose point of diversion is within the 0.01-foot drawdown contour (rather than place of use).

RESPONSE 3: The department agrees and is modifying NEW RULE III(4)(a)(vi) to read: "all groundwater rights with points of diversion within the 0.01-foot drawdown contour or area of potential impact;".

COMMENT 4: Three comments were received regarding NEW RULE III (4)(b)(i) and (5)(c)(i) that refer to "all hydraulically connected surface water(s) …" A commenter stated that this reference is too broad and should be limited to the parameters noted in NEW RULE III(4)(a)(vi). The comments suggest this phrase should be modified to clarify that the depletion analysis should only be undertaken for those surface water sources that will be depleted by the proposed groundwater appropriation (see also ARM 36.12.1704(1)(a)). The comments suggest that the department instead insert "within the 0.01ft drawdown contour."

RESPONSE 4: The department agrees that the term is too broad and is modifying NEW RULE III(4)(b)(i) and (5)(c)(i) to remove the word "all" The department disagrees with the suggestion that the rule use the 0.01-foot drawdown contour because doing so would overlook pre-stream capture.

COMMENT 5: One commenter expressed concern that NEW RULE III(5) might be required for a simple groundwater change application.

RESPONSE 5: The department agrees that NEW RULE III(5)(b) and (c) should not always be required and added for applications changing the point of diversion, to NEW RULE III(5)(b), and for applications changing the point of diversion or place of use, to NEW RULE III(5)(c).

COMMENT 6: One commenter expressed concern that observation wells under the amendment to ARM 36.12.121(3)(f) could now be located within the cone of depression. The commenter maintains "…and far enough that well hydraulics do not affect the observation well" should not be deleted from the rule.

RESPONSE 6: The department agrees, and the language will not be removed from rule.

COMMENT 7: Four commenters expressed concern about the term "scientific credibility review" in NEW RULE II(5). Commenters believe the term "scientific credibility review" contained in NEW RULE II(5) is an undefined term, and should be removed, or modified to include a direct cross reference to NEW RULE III(8). The commenters believe a more accurate explanation of what a "scientific credibility review" entails to satisfy departmental standards should be set forth in rule. One commenter believes it is likely not necessary to include clarification directly in the rule, but for applicants it would be beneficial to understand what level of review they are being held to in the process.

RESPONSE 7: The department agrees. The department added a direct cross reference in NEW RULE II(5) to NEW RULE III(8). The department modified NEW RULE III(8) to include: The scientific credibility review will evaluate the methodology, quality of the analysis, and relevance of the data used for the technical analyses.

COMMENT 8: Three comments expressed concern regarding the term "historical use analysis" contained in NEW RULE III(3)(a), (5)(a), and the amendment to proposed ARM 36.12.1801(2)(c). Commenters believe the term "historical use analysis" in NEW RULE III(3)(a) and (5)(a) is undefined and these rules should be modified to directly cross reference ARM 36.12.1902.

RESPONSE 8: The department agrees that it is appropriate to reference ARM 36.12 1902 under which historical use is detailed. The department added a reference to ARM 36.12.1902 and NEW RULE III(3)(a) and (5)(a). The department removed ARM 36.12.1801(3)(c) per another public comment.

COMMENT 9: One commenter expressed concern that the term "area of potential impact" used in NEW RULE III(2)(b), (4)(a)(vi) and (4)(d), and the amendment to ARM 36.12.1704(2) is undefined, vague, and overbroad. The commenter states that the term should either be defined or the language modified to clarify what precisely is requested under the analysis. The commenter notes that NEW RULE III(4)(a)(vi) requires an analysis showing "all groundwater rights within the 0.01-foot drawdown contour or area of potential impact" and believes that 0.01-foot drawdown contour is an established numeric basis for most of the groundwater data analysis in NEW RULE III. The commenter expressed concern that the applicant might be unable to use determinations of hydrogeologic boundaries of the aquifer to guide their analysis of potentially impacted water rights and that the term "area of potential impact" could allow the department discretion to broadly expand beyond the 0.01-foot drawdown contour.

RESPONSE 9: The department disagrees. The term "area of potential impact" is included in 85-2-311(1)(a)(ii)(B), MCA. The amendment to ARM 36.12.1704 combines the existing language from ARM 36.12.1704 and 36.12.1705. The amendment to ARM 36.12.1704(2) uses the same terminology as existing ARM 36.12.1705(1). The amendment will not change the method of comparing physical water supply at the point of diversion and the legal demands for permits.

NEW RULE III TECHNICAL ANALYSES lists the analyses required for criteria analysis and incorporates the terminology in ARM 36.12.1704. Use of the term "area of potential impact" is reasonable because it allows for flexibility to use hydrogeologic boundaries in cases where they are known, or to use robust individual studies in areas such as the Lower Yellowstone Buried Channel Aquifer of eastern Montana or the Deep Aquifer in the Flathead Valley. An all-encompassing, universally applicable definition of "area of potential impact" is not feasible.

COMMENT 10: One commenter expressed concern that NEW RULE V(2)(a) could be interpreted as either requiring or allowing a change application for elements of a water right such as flow, volume, or period of use (which are "elements" of a water right under ARM 36.12.101(24)), despite statute requiring a change application only for changes to point of diversion, place of use, purpose of use, or place of storage (85-2-102(7)(a), MCA). The commenter recommends re-phrasing NEW RULE V(2)(a) to state "the water rights element(s) under the proposed change."

RESPONSE 10: The department disagrees. The water right element(s) proposed for change are limited to the four elements that require a change authorization pursuant to statute. The language in the proposed rule is clear.

COMMENT 11: One commenter expressed concern that the amendments to ARM 36.12.1401 are confusing as to what constitutes a modification to an element of a permit or change application. The commenter supports the proposed changes but seeks greater clarification.

RESPONSE 11: The department provides the following clarification. "Element" is defined in amended ARM 36.12.101(22). A modification of an element includes any increase or decrease in what the applicant is requesting. It is necessary to reset timelines to give the department time to review the modified application and update any impacted analyses and the decision document. See also Response to Comment 1.

COMMENT 12: One commenter expressed concern that ARM 36.12.1702(1) and (4) refer to "monthly flow rate" which is an ambiguous term in both instances. The commenter suggested that based on NEW RULE III(2)(a)(i) and (ii), that ARM 36.12.1702(1) should be modified to read "calculated median of the mean monthly flow rate" and ARM 36.12.1702(4) should be modified to read "estimated mean monthly flow rate."

RESPONSE 12: The department disagrees that reference to "monthly flow rate" in the proposed amendment to ARM 36.12.1702(1) is ambiguous. The language is intended to provide a broad requirement that applies to all perennial and intermittent surface water sources. The subsections of the proposed amendments to ARM 36.12.1702 provide detailed explanations of the type of information required to satisfy the general monthly flow rate requirement. The department agrees that the subsections of ARM 36.12.1702(1) could be clearer. The department is updating ARM 36.12.1702(1)(a) to state that measurement records will be used to quantify physical availability using the median of the mean monthly flow rate and volume during the proposed months of diversion. The department is updating ARM 36.12.1702(1)(b) to state that if measurement records pursuant to (1)(a) are not available, mean monthly flow rate and volume of water physically available may be estimated using a department-accepted method in conjunction with applicant-collected flow measurements to validate the estimation technique. The department will not be changing ARM 36.12.1702(4) because the source type could influence how the monthly flow rate and volume are quantified. In some cases, an estimation technique calculating mean flow and volume may be applicable but in other cases, physical availability may only be able to be determined using the measurements provided.

COMMENT 13: One commenter seeks greater clarification about the meaning of "department-approved location on the source supply" in the amendment to ARM 36.12.1702(6). The commenter seeks clarification about how and when in the process is that approval determined, and how the approval affects the timelines that are in statute and now proposed rule.

RESPONSE 13: In practice, the term means that the applicant must consult with the department regarding the location at which measurements are to be taken. This consultation could occur at an informal scoping meeting or the preapplication meeting. If an applicant completes a preapplication meeting and it is identified that they will need to collect measurements that cannot be completed within the 180-day

period after the preapplication meeting, the applicant will have to complete a new preapplication meeting.

COMMENT 14: Four comments were received questioning the proposed amendment to ARM 36.12.1704(1) that states "Legal demands will be identified based on the water right records in the Water Rights Information System." A commenter suggests that it is more appropriate to leave specific reference of the Water Rights Information System out of the rule at this time and another commenter believed that the "Water Rights Information System" is a vague and undefined term. The commenter stated that while the online website maintained by DNRC appears to be the "Water Rights Information System," it appears DNRC custom is to use the DNRC database, which is likely satisfactory as a DNRC tool, but should not be regulatorily defined to be the only record of water rights which DNRC relies upon for its legal availability analysis.

RESPONSE 14: The department agrees with the comments and removed the sentence in amended ARM 36.12.1704(1) referring to the Water Rights Information System.

COMMENT 15: One commenter suggested that ARM 36.12.1704(1), (1)(a), and (2) should be modified to specifically refer to "legal demands of water rights" because 85-2-311(1)(a)(ii)(B) and (C), MCA was amended in 2021 to clarify that legal availability is based upon "legal demands of water rights" and ARM 36.12.1704(1), (1)(a), and (2) implement 85-2-311, MCA.

RESPONSE 15: The department agrees that consistency with the wording in Montana Code Annotated is desirable. The amendment to ARM 36.12.1704 has been updated to state "legal demands of water rights."

COMMENT 16: Three comments were received about the amendments to ARM 36.12.1704(2) raising concern that this statement conflicts with 85-2-360(3)(b), MCA, that allows the department to issue a permit if adverse effect is offset through an aquifer recharge or mitigation plan – not depletion.

RESPONSE 16: The amendment to ARM 36.12.1704(2) combines the current requirements of ARM 36.12.1704(3) (requires the "identification of existing legal demands on any surface water source that could be depleted as a result of the groundwater appropriation.") and the current requirements of ARM 36.12.1705(2) (requires the department to "compare the physical water supply for any surface water source in which water flow could be reduced by any amount as a result of the groundwater appropriation and the legal demands within the area of potential impact.") The amendment does not substantively alter the requirements of the previous rule and is consistent with 85-2-311(1)(a), MCA.

The amendment to ARM 36.12.1704(2) applies to the legal availability criterion. Evaluation of depletion to hydrologically connected surface water sources for legal availability does not determine adverse effect and does not conflict with the

statement in 85-2-360(3)(a), MCA, that "a prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur."

COMMENT 17: A commenter was concerned that both amended ARM 36.12.1702(4) and (5) and amended ARM 36.12.1703(1) require measurements up to once per month over a year, which may conflict with NEW RULE II(4) and (5), which require all required information be submitted within 180 days of the preapplication meeting. NEW RULE II would close the deadline for submission of analyses – including flow measurements – after 180 days, even if the measurements could not be physically taken to satisfy ARM 36.12.1703(1) or 36.12.1702(4) or (5) during that time period.

RESPONSE 17: A meeting with an applicant prior to collection of necessary measurements is considered a scoping meeting. A preapplication meeting should not be scheduled until after measurements are collected. 180 days is the limit for which the discussions and initial information shared at a preapplication meeting is valid. In addition, technical analyses cannot be completed until all necessary measurements have been completed. If an applicant completes a preapplication meeting and it is identified that they will need to collect measurements that cannot be completed within the 180-day period after the preapplication meeting, the applicant will have to complete a new preapplication meeting.

COMMENT 18: A commenter questioned the use of "may" instead of "shall" in amended ARM 36.12.1704(2)(a) and (b) regarding the use of mitigation or aquifer recharge plans and additional water right information. Second, in new (2)(a) and (b) the commenter is curious to better understand the distinction of using the word "may" versus "shall" for both consideration of a mitigation or aquifer recharge plan and additional water rights information as evidence of legal availability.

RESPONSE 18: Use of the word "may" in this context provides the department discretion to consider whether a mitigation plan, aquifer recharge plan, or additional water right information provided by an applicant is evidence that establishes water is legally available. Use of the term "shall" in this context would require the department to consider this information as evidence that establishes water is legally available regardless of its credibility.

COMMENT 19: A commenter suggested relaxing the 5% threshold requirement in amended ARM 36.12.121(3)(a), stating they believe although a constant pumping rate is the goal, it is not required for analysis of the pumping test, especially when the timing and magnitude of pumping rate change are recorded, citing as an example Kruseman and de Ridder, 19901; Duffield, 20232. The commenter states that pumping test analysis methods, including those in AQTESOLV software used by DNRC, can account for variable pumping rates. Therefore, the commenter feels that the 5% requirement language may put an unnecessary burden on applicants (in the form of unnecessarily or infeasibly strict testing protocol) and DNRC (e.g., additional applicant variance requests when the test protocol is not or cannot be met) without improving test or analysis results.

RESPONSE 19: Existing ARM 36.12.121(3)(a) requires "constant discharge rate," and as a result many applicants request a variance from this rule because "constant" is not defined. Allowing a +/- 5% deviation from the average pumping rate provides a conservative definition of constant rate that most pump tests would satisfy. If a pump test exceeds a +/- 5% deviation from the average pumping rate, the applicant can still apply for a variance.

COMMENT 20: A commenter suggests that the wording of amended ARM 36.12.121(3)(e)(i) and (ii) be changed to remove the word "all." The commenter suggests, instead, language that would allow, if a variance is granted from (e), that eight-hour drawdown and yield tests be performed on new production wells until the overall peak flow rate being requested in the application is reached (instead of being required on **all** new production wells). The commenter suggests this change apply to both (i) and (ii). The commenter believes that the proposed language as it stands, and as demonstrated by this example, would be unduly burdensome on an owner/applicant. Testing more wells beyond the point at which the peak overall pumping rate is reached seems excessive and unnecessary.

RESPONSE 20: The department agrees in part that in specific circumstances an eight-hour drawdown and yield test would not be necessary for all production wells. Rather than accepting the commenter's proposed language, the department has removed the phrase "if a variance from (e) is granted" from ARM 36.12.121(3)(e)(i). This maintains an eight-hour drawdown standard for all production wells but allows for a variance in specific circumstances.

COMMENT 21: A commenter expressed concern that ARM 36.12.1801 facially applies to both change applications and applications for new appropriations and that ARM 36.12.1801(2)(c) requires a historical use analysis, which has never been required of applicants for new appropriations, as no historical use exists. The commenter suggested that ARM 36.12.1801(2)(c) be amended to make clear it applies only to change applications.

RESPONSE 21: The department agrees in part. The comment raises a valid concern about historical use analysis being completed for a new permit. Upon further review, the proposed language could lead to confusion as to when the proposed amendment to the existing rule would apply in the event the applicant performs the historical use analysis. The department foresees implementation concerns with this proposed amendment to the existing rule and is removing it. Note that existing ARM 36.12.1801(1) was added back based on another public comment, so ARM 36.12.1801(3)(c) – rather than ARM 36.12.1801(2)(c) – is removed based on this response.

COMMENT 22: One commenter expressed concern over what happens if the department misses a timeline under the new statutes.

RESPONSE 22: No rule changes with respect to this comment are proposed.

COMMENT 23: Four comments were received supporting the increase in filing fees under proposed ARM 36.12.103, and one comment was received supporting proposed amendments to ARM 36.12.110.

RESPONSE 23: The department appreciates this feedback.

COMMENT 24: Two comments were received on NEW RULE I recommending that criteria be established for consideration of variance requests.

RESPONSE 24: The department agrees and is modifying NEW RULE I(3) to set a standard for approval. The department is removing "The department's grant of a variance request may impose conditions necessary to ensure the application materials and data provided is sufficient to evaluate the applicable criteria" and is instead adding The department may only grant a variance request if it determines the application materials and data provide sufficient information to complete any necessary technical analyses and to evaluate the applicable criteria.

COMMENT 25: Two comments were received about the amendments to ARM 36.12.111. The commenters recognize the effort to allow aerial photos from other sources but raise concern about lack of detail on what is considered adequate mapping. The commenters raised a specific concern that a hand-drawn map would meet the requirements and that, in most circumstances, this should not be considered adequate.

RESPONSE 25: The department disagrees. This rule still requires a north arrow, scale bar, section number and corners marked, and township and range identified. The rule requires maps or aerial photographs with these specific requirements. If an applicant hand draws the required elements onto a printed topographic map or aerial photograph, the map should be considered adequate.

COMMENT 26: Two comments were received on the amendments to ARM 36.12.1703, which require monthly measurement of permits proposing to use a developed spring as a means of diversion. The commenters were concerned about not allowing a variance for the monthly measurement requirement due to year-round use, potential safety concerns, and other unknowns.

RESPONSE 26: The department disagrees. Monthly measurement is the only way to quantify physical availability of a developed spring.

COMMENT 27: Two comments were received on ARM 36.12.1801, raising concern that removing who can appropriate water for beneficial use in ARM 36.12.1801(1) could inadvertently cause a problem with water for sale, rent, or distribution.

RESPONSE 27: The department agrees and will leave the language in ARM 36.12.1801(1) about who can appropriate water for beneficial use in the rule.

COMMENT 28: Two comments noted that amended ARM 36.12.1401(2) incorrectly refers to Form No. 656 instead of Form No. 655.

RESPONSE 28: The department agrees and has fixed this error by changing Form No. 656 to Form No. 655 in ARM 36.12.1401(2).

8. In addition to edits made in response to comments, the department is making the following changes to fix errors in the proposed rules:

The department has updated NEW RULE II(4) to state the deadline for technical analyses is set upon receipt of information under (3)(b) and (c). Aquifer testing, measurements, variances, and mitigation, if required, are necessary for completion of the technical analyses.

The department has updated the references of "preapplication checklist" in NEW RULE II to instead state "preapplication meeting form," which is more consistent with department naming conventions.

The department has updated the statutory reference under amended ARM 36.12.101 to 85-2-102, MCA. The proposed amendment to ARM 36.12.101 incorrectly referenced 82-2-102, MCA.

The department has amended ARM 36.12.103(2)(s) to accurately list the form name as "DNRC Ownership Update, Split and Sever of a Water Right," which matches the name of the same form in amended ARM 36.12.102(2)(aa).

The department has updated NEW RULE III to fix an error in the placement of the technical analyses for mitigation plans and aquifer recharge, which were misplaced under the requirements for a groundwater permit application in a closed basin instead of under the requirements for change applications. NEW RULE III(6) is updated to no longer include analyses for proposed mitigation or aquifer recharge, and instead states that the technical analyses required for a groundwater permit in a closed basin includes a hydrogeologic report conducted pursuant to 85-2-361, MCA, in addition to the technical analyses required for a groundwater permit in an open basin under NEW RULE III(4). The technical analyses for proposed mitigation or applications where aquifer recharge is proposed for mitigation is moved to NEW RULE III(3)(d) and (e) for surface water change applications and to NEW RULE III(5)(e) and (f) for groundwater change applications. The technical analysis for applications where aquifer recharge is proposed for mitigation was previously included as NEW RULE III(3)(c) and is moving to (3)(e) to maintain consistent formatting between NEW RULE III(3) and (5).

The department added a reference to ARM 36.12.1703 in NEW RULE III(4)(a) to connect the groundwater analysis to the requirements in rule for physical groundwater availability.

The department added a reference to ARM 36.12.1702 in NEW RULE III(2)(a) to connect the surface water analysis to the requirements in rule for physical surface water availability.

9. The effective date of this rulemaking is January 1, 2024.

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State December 12, 2023.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.22.1242 pertaining to reports by producers, tax report, and tax rate	)))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On October 20, 2023, the Board of Oil and Gas Conservation and the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-220 pertaining to the proposed amendment of the above-stated rule at page 1290 of the 2023 Montana Administrative Register, Issue Number 20.

2. A public hearing was not contemplated or officially requested.

3. The department has amended ARM 36.22.1242 as proposed.

4. The department has thoroughly considered the written comment received. A summary of the comment received and the department's response is as follows:

COMMENT: The privilege and license tax are important to local communities in gas and oil country. The tax is used to mitigate the boom-and-bust cycles affecting oil and gas cities and towns and to meet other local needs of residents of those communities. Reducing the share of the tax for administration of the board means that cities and towns will receive a greater share of the privilege and license production tax to help meet those critical local demands. The Montana League of Cities and Towns supports this proposal and thanks the Board of Oil and Gas Conservation for their dedication in administering this important program.

RESPONSE: The department agrees.

5. The effective date of this rulemaking is April 1, 2024.

/s/ Steve Durrett
Steve Durrett, Chair
Board of Oil and Gas Conservation

/s/ Amanda Kaster
Amanda Kaster, Director
Department of Natural Resources and Conservation

/s/ Liz Leman
Liz Leman
Rule Reviewer

Certified to the Secretary of State on December 12, 2023.

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

In the matter of the amendment of ARM 37.12.401 pertaining to the increase of laboratory fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1029 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1007 of the 2023 Montana Administrative Register, Issue Number 17.

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

3. No comments or testimony were received.

4. The rule amendment is effective January 1, 2024.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

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

In the matter of the amendment of ARM 37.27.902, 37.88.101, and 37.89.201 pertaining to chemical dependency programs and Medicaid mental health services	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 21, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1033 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 693 of the 2023 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 37.27.902, 37.88.101, and 37.89.201.

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 several comments asking for clarifying language to the medical necessity criteria for Program of Assertive Community Treatment (PACT) and Montana Assertive Community Treatment (MACT) services. One commenter requested that "Medical Necessity for both PACT and MACT should be the same as they are both Assertive Community Treatment programs." One commenter proposed language allowing the service for "a stable client who is at serious risk of involuntary hospitalization due to their chronic diagnosis without the help of the PACT team." Another commenter requested "additional clarification for continued stay reviews for PACT, MACT, and Community Maintenance Program (CMP) services, specifically for clients being allowed to maintain these services if the service is preventing a client from entering a higher level of care."

RESPONSE 1: The department agrees with commenters that medical necessity criteria should be aligned between MACT and core PACT services. The department also agrees the current medical necessity criteria language is not reflective of support provided by ongoing services. Medical necessity criteria are referenced under utilization management and will be amended to reflect different criteria for "admission" and "continued services." However, there are differences in medical necessity criteria for InPACT and CMP in Policy 460 that vary from PACT and MACT.

COMMENT 2: Multiple commenters requested the department consider extending the number of days before a continued stay request is required for PACT and MACT, policies 460 and 455.

RESPONSE 2: The department reviewed data gathered by its contracted quality improvement organization and agrees to extend the timeframe. Policy 460 and Policy 455 are amended to provide, "Continued stay reviews are required every 270 days."

COMMENT 3: A commenter recommended the department amend Policy 455 under "Provider Requirements" by combining (g) with (h) and include "preferred" to these roles to allow flexibility for MACT programs.

RESPONSE 3: The department acknowledges receipt of these comments. This is outside the scope of this rulemaking as there were no proposed changes to these requirements for MACT in Policy 455.

COMMENT 4: A commenter requested that continued stay requests for CMP be required every two years because CMP is meant to be a long-term program.

RESPONSE 4: Under the policy, CMP is intended to provide support for members who require long-term, ongoing support. Continued stay requests for CMP are only required every 365 days and members can continue in the service, provided they meet medical necessity criteria. The department will amend the medical necessity criteria for CMP in Policy 460 to better reflect the nature of this service and alleviate provider concerns.

COMMENT 5: A commenter recommended the required contacts under medical necessity criteria for CMP be changed from "the member requires at least four contacts per month" to "the member requires four to eleven contacts per month."

RESPONSE 5: The department acknowledges receipt of this comment. The department does not intend to change this language because the suggested "four to eleven contacts" is already covered under the current requirement of "at least four contacts."

COMMENT 6: A commenter requested the department remove InPACT as a tier of PACT because it has not been a successful tier due to requiring services in a Behavioral Health Group Home (BHGH) setting, which historically has a long waitlist without InPACT services.

RESPONSE 6: The department acknowledges receipt of this comment. However, this comment is outside the scope of this rulemaking as there are no proposed changes resulting in the removal of services.

COMMENT 7: A commenter noted that Policy 460 under "Provider Requirements" incorrectly lists the Tenancy Specialist role under (8) when it should be listed under (7).

RESPONSE 7: The department agrees with the commenter and will amend policy 460 to reflect correct numbering under "Provider Requirements."

COMMENT 8: Two commenters stated that rate changes from a previous rulemaking reduced the reimbursement for co-occurring clients receiving substance use disorder (SUD) Intensive Outpatient (ASAM 2.1) services.

RESPONSE 8: This comment, made by two commenters, is outside the scope of this rulemaking. The department amended policy during the previous rulemaking to allow co-occurring mental health services to be billed concurrently with the weekly bundled rate for ASAM 2.1. The bundled rate was developed by the contractor that performed the provider rate review for the department. However, the department will take the comment under consideration.

COMMENT 9: A commenter stated that telehealth services are simply another way of meeting with and treating a patient. Suggesting telehealth approaches are substandard – or the exception to the rule – discredits the benefits that telehealth has provided, especially in recent years in addressing challenges presented by the COVID-19 pandemic and ongoing health care professional shortages. If the telehealth encounter can deliver the same standard of care as a similar in-person encounter, there is no difference in the quality of care delivered and state policy should therefore support patient choice and practitioner discretion. The commenter encourages the department to consider minor changes to the proposed amendments to the draft provider manuals that will more accurately reflect telehealth's equal standing in the delivery of health care services and instead empower the provider to choose the care delivery that best meets the needs of the patient and their individual circumstances.

RESPONSE 9: The department acknowledges the commenter's feedback and is committed to expanding access to services through telehealth. However, our comprehensive benefit package includes services that are intended to be delivered in person due to the nature of the service (for example, skill acquisition and personal care services, assertive community treatment).

COMMENT 10: A commenter requested that "psychosocial rehabilitation" and "Community Based Psychiatric Rehabilitation Support Services – CBPRS (420)" be differentiated, so that clients in PACT/MACT may receive day treatment services concurrently. These services are conducted very differently in these different programs, and members have historically benefited greatly from being able to attend "psychosocial rehabilitation" services internally with other PACT members, in conjunction with CBPRS functions externally with other members of BHGH, SDMI HCBS, and Day Treatment programs separately.

RESPONSE 10: This comment is outside the scope of this rulemaking as there are no proposed changes regarding Policy 230, which discusses the delivery of concurrent services.

COMMENT 11: A commenter requested that Policy 460 under "Service Requirements" regarding core PACT services not encompass IOP services under "substance use disorder treatment." SUD IOP is considered a concurrent service in Policy 230 and not billable concurrently with PACT services. PACT co-occurring employees are not equipped to provide substance use therapy when providing SUD services to the number of PACT/MACT clients on their caseload to the extent that IOP requires, and therefore PACT/MACT clients should be permitted to receive both PACT/MACT and IOP services concurrently.

RESPONSE 11: This comment is outside the scope of this rulemaking as there were no proposed changes to Policy 230, which discusses the delivery of concurrent services.

COMMENT 12: A commenter requested that prior authorization not be required for PACT services.

RESPONSE 12: The department acknowledges receipt of this comment. The department is making changes to clarify the medical necessity criteria which is expected to better reflect the nature of this service and alleviate provider concerns. Additionally, the department reviewed data from its contracted quality improvement organization and will amend Policy 460 to reflect "Prior authorization is required, and be approved for up to 270 days." Please see response #1 for additional information.

COMMENT 13: Two commenters requested that services provided to members during the appeal process for denied prior authorizations or continued stay reviews be reimbursed throughout the appeal process, potentially with a partial approval/extension.

RESPONSE 13: Montana Medicaid reimburses for medically necessary services provided to members. If the appeal process results in a denial being reversed, then the provider would be able to bill for services provided to a member.

COMMENT 14: A commenter recommended the department amend Policy 445 to allow prior authorization up to 120 days. Most providers are requesting additional continued stay reviews for every member due to taking over 60 days to stabilize a member referred from institutional care into community-based care. The commenter also recommended that the required number of days before a member is referred to the SDMI waiver be changed from 120 days to 180 days.

RESPONSE 14: The department agrees with the commenter. Policy 445 will be amended to reflect the increased timeframe of 120 days of service.

COMMENT 15: A commenter recommended the department amend the SDMI Level of Impairment (LOI) requirement under service requirements for BHGH to include upon admission and annual review instead of updated with each treatment plan review.

RESPONSE 15: The department agrees with the commenter. Policy 445 will be amended to reflect that the LOI must be updated annually, which aligns with other policies.

4. These rule amendments are retroactively effective May 12, 2023.

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

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401, 42.19.402, 42.19.405, and 42.19.407 pertaining to residential property tax assistance program improvements	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 3, 2023, the Department of Revenue published MAR Notice No. 42-1068 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1535 of the 2023 Montana Administrative Register, Issue Number 21.

2. On November 27, 2023, the department held a public hearing to consider the proposed amendment. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support or opposition to the proposed amendment.

3. The department has amended ARM 42.19.401, 42.19.402, 42.19.405, and 42.19.407 as proposed.

/s/ Todd Olson	/s/ Scott Mendenhall for
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 12, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.155 and 42.22.1311 pertaining to 2024 Personal Property Depreciation Schedules and Trend Tables	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 3, 2023, the Department of Revenue published MAR Notice No. 42-1069 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1546 of the 2023 Montana Administrative Register, Issue Number 21.

2. On November 27, 2023, the department held a public hearing to consider the proposed amendment. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support or opposition to the proposed amendment.

3. The department has amended ARM 42.21.155 and 42.22.1311 as proposed. The 2024 version of the Personal Property Depreciation Schedules and Trend Tables publication (publication) has been adopted as proposed.

4. The effective date of the department's amendments and publication is January 1, 2024.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State December 12, 2023.

VOLUME NO. 59 OPINION NO. 2

MONTANA CONSUMER LOAN ACT: §§ 32-5-101 et seq.
MONTANA DEFERRED DEPOSIT LOAN ACT: §§ 31-1-701 et seq.

HELD: Earned Wage Access providers do not need to be licensed by the Montana Division of Banking and Financial Institutions under the Montana Consumer Loan Act and Montana Deferred Deposit Loan Act to provide Earned Wage Access products.

December 22, 2023

Matt Regier
Speaker
Montana House of Representatives
P.O. Box 9763
Kalispell, MT 59904

Speaker Regier:

You requested an Attorney General Opinion regarding whether certain income-based advance programs constitute loans under two Montana statutory schemes. In preparing this opinion I have considered the analysis in your legal memorandum accompanying your request and additional research on the topic.

By virtue of your office, you are entitled to request such an opinion pursuant to MCA § 2-15-501(7). Therefore, I have restated your question presented and provided a short answer as follows:

> **Question Presented:** Whether an Earned Wage Access ("EWA") product meets the definition of: (1) "consumer loan" in MCA § 32-5-102(2)(a) requiring licensure by the Montana Division of Banking and Financial Institutions under MCA § 32-5-103; or (2) "deferred deposit loan" under MCA § 31-1-703 requiring licensure under MCA § 31-1-795.
>
> **Short Answer:** No. So long as the EWA product is fully non-recourse; does not condition an income-based advance on any interest, fees, or other consideration or expenses; and limits income-based advances to income already earned by the consumer.

I. Background

Nearly two-thirds of private employers use biweekly, semimonthly, or monthly pay periods. 85 Fed. Reg. 79404 (Dec. 10, 2020) (Consumer Financial Protection

Bureau ("CFPB") advisory opinion on Earned Wage Access products).[1] This creates a lag between income earned and payment of that income. For some workers, this lag creates financial hardship because bills and expenses come due before the payment of earned income. 85 Fed. Reg. 79404 n.3. These workers also suffer from a lack of access to traditional lending—through banks or other non-payday lenders. Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed, Report to Congressional Committees, GAO-23-105536 at 3–4 (March 2023) ("GAO").

EWA products provide customers access to income that has been earned but not yet paid. GAO at 6; *see also* 85 Fed. Reg. 79405. EWA consumers tend to be lower income individuals. GAO at 24. The GAO reported, for example, that between 75% and 97% of EWA consumers reported earning less than $50,000 per year, with one EWA provider reporting that about 78% of its users earned less than $25,000 per year. GAO at 24. EWA products, therefore, "have emerged as a potential solution to help consumers underserved by traditional financial institutions." GAO at 1. While EWA products contain some risks to consumers, GAO at 23–24, they provide an alternative to more costly services like payday loans to cover short-term liquidity issues. 85 Fed. Reg. 79405; GAO at 50, Table 5 (comparing consumer costs of EWA products to payday loans).

In general, an EWA product allows a consumer to access a portion of their earned income, either as a percentage of earned income or a set amount, prior to payday. On payday, the advance is then repaid through an employer payroll deduction or through debit from the consumer's bank account. GAO at 21. EWA products vary in fee structure, voluntary gratuities, upcharges, and disbursement of funds. GAO at 21, 50.

The GAO noted that the regulatory structure governing EWA products could use additional clarity. GAO at 35. Recently, other states have stepped in to provide that clarity either through legislation or agency opinions. *E.g.*, S.B. 290, 82nd Session (Nev. 2023); Ariz. Att'y Gen. Op. I22-005.

II. Material Facts

This Opinion assumes the following material facts based on your memorandum:

(1) The EWA product is fully non-recourse. *See* Memorandum at 1.[2]

---

[1] The CFPB advisory opinion concerns whether EWA products constitute "credit" for the purposes of the Truth in Lending Act. 85 Fed. Reg. 79404. CFPB's opinion is limited to a set of assumed facts. *Id.* at 79405–06. As detailed below, Montana law does not depend upon an identical set of facts. As such, while CFPB's opinion provides persuasive arguments, this opinion should not be read as depending upon CFPB's advisory opinion.

[2] An EWA product is fully non-recourse where the provider obtains no legal or contractual right to repayment against the consumer, does not engage in any debt

(2) The EWA provider does not condition access to advances on the payment of any mandatory interest, fee, or other compensation. *See* Memorandum at 2.
(3) A consumer may not receive an advance with a cash value in excess of the consumer's accrued income.

III. Montana Consumer Loan Act

A. Background

Whether an EWA provider is required to obtain a license from the Department of Administration to offer EWA products to Montanans is a matter of statutory interpretation. Courts interpret statutes by first looking at the plain language. *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003. Where "the legislature has not defined a statutory term, [courts] consider the term to have its plain and ordinary meaning." *State v. Alpine Aviation, Inc.*, 2016 MT 283, ¶ 11, 385 Mont. 282, 384 P.3d 1035. There is no need to "interpret the statute further if the language is clear and unambiguous." *Mont. Sports Shooting Ass'n*, ¶ 11.

Montana regulates consumer loans through the Montana Consumer Loan Act. MCA §§ 32-5-101 et seq. "[A] person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter." MCA § 32-5-103(1). A "consumer loan" means "credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate." MCA § 32-5-102.

The Montana Consumer Loan Act does not define "loan" or "credit." But, elsewhere, Montana law defines a "loan of money" as "a contract by which a person delivers a sum of money to another person and the other person agrees to return at a future time a sum equivalent to that which the other person borrowed." MCA § 31-1-101. "Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing." MCA § 31-1-103; *see also* MCA § 31-1-106 ("unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all money at the rate of 10% a year after it becomes due"). A loan, therefore, includes a right to repayment and a presumption that the loan carries interest, or other fees, as a condition of the loan of money.

---

collection activities with regard to any unpaid balance, does not sell or assign any unpaid balance to a third party, and does not report non-payment to any consumer credit reporting agency.

The Department has not defined "loan" or "credit" within its administrative rules for consumer loan licensees. Mont. Admin. R. Chapter 2.59 Subchapter 3. But like the Montana Code Annotated, the Department did define "loan" or "extension of credit" elsewhere. *See* Mont. Admin. R. 2.59.116 (a "loan" or "extension of credit" means "a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf."). That definition also incorporates a right to repayment.

Finally, Black's Law defines "loan" as "an act of lending; a grant of something for temporary use" or "a thing lent for the borrower's temporary use; especially, a sum of money lent at interest." Black's Law Dictionary, at 947 (7th ed. 1999). This definition too incorporates a right to repayment as well as the presumption of interest.

Federal authorities provide persuasive guidance on whether an EWA product constitutes a "loan." In particular, the CFPB has specifically exempted EWA advances from its Payday Lending Rule. *See* Bureau of Consumer Financial Protection, 82 Fed. Reg. 54472 (Nov. 17, 2017) codified at 12 C.F.R. Part 1041. Although the Payday Lending Rule has been largely invalidated, portions of the original Rule remain in effect. In particular, the Payday Lending Rule explicitly exempts from coverage certain types of liquidity, including "wage advance programs" and "no-cost advances." 12 C.F.R. § 1041.3(d)(7), (8).

Specifically, "wage advance programs" are defined as:

> Advances of wages that constitute credit if made by an employer, as defined in the Fair Labor Standards Act, 29 U.S.C. 203(d), or by the employer's business partner, to the employer's employees, provided that:
>
> > (i) The advance is made only against the accrued cash value of any wages the employee has earned up to the date of the advance; and
> >
> > (ii) before any amount is advanced, the entity advancing the funds warrants to the consumer as part of the contract between the parties:
> >
> > > (A) That is has no legal or contractual claim or remedy against the consumer based on the consumer's failure to repay in the event the amount advanced is not repaid in full; and
> > >
> > > (B) That, with respect to the amount advanced to the consumer, will not engage in any debt collection activities if the advance is not deducted directly from wages or otherwise repaid on the scheduled date, place the amount advanced as a debt with or sell it to a third party, or report to a consumer reporting agency concerning the amount advanced.

12 C.F.R. § 1041.3(d)(7).

In promulgating the Rule, the CFPB explained that:

> some efforts to give consumers access to accrued wages may not be credit at all. For instance, when an employer allows an employee to draw accrued wages ahead of a scheduled payday and then later reduces the employee's paycheck by the amount drawn, there is a quite plausible argument that the transaction does not involve "credit" because the employee may not be incurring a debt at all. This is especially likely where the employer does not reserve any recourse upon the payment made to the employee other than the corresponding reduction in the employee's paycheck.

82 Fed. Reg., 54548, 54547.

Similarly, "no-cost advances" are defined as:

> Advances of funds that constitute credit if the consumer is not required to pay any charge or fee to be eligible to receive or in return for receiving the advance, provided that before any amount is advanced, the entity advancing the funds warrants to the consumer as part of the contract between the parties:
>
> > (i) That is has no legal or contractual claim or remedy against the consumer based on the consumer's failure to repay in the event the amount advanced is not repaid in full; and
> >
> > (ii) That, with respect to the amount advanced to the consumer, will not engage in any debt collection activities if the advance is not deducted directly from wages or otherwise repaid on the scheduled date, place the amount advanced as a debt with or sell it to a third party, or report to a consumer reporting agency concerning the amount advanced.

12 C.F.R. § 1041.3(d)(8).

In drafting this language, the CFPB noted its discussions with EWA providers and explained that these companies:

> are providing products or services that allow consumers to draw on wages they have earned but not yet been paid. Some of these companies are providing advances of funds and are doing so without charging any fees or finance charges, for instance by relying on voluntary tips…. After further weighing the potential benefits to consumers of this relatively new approach, the Bureau has decided to create a specific exclusion in § 1041.3(d)(8) of the final rule to apply to no-cost advances, regardless of whether they are offered by an employer or its business partner….

82 Fed. Reg., 54472, at 54548.

Clarifying that no-cost advances are "likely to benefit consumers," the Bureau concluded that such products are "unlikely to lead to the risks and harms [associated with traditional payday loans]", such as "default, delinquency, and re-borrowing." *Id*. at 54548, 54554; *see also* 12 CFR part 1026, Supp. I, Cmmt 2(a)(14)-1.

The Federal Reserve Board of Governors has also concluded that credit is not extended when a consumer borrows against the accrued cash value of an insurance policy. 46 Fed. Reg. 20848, 20851 (Apr. 7, 1981). Under reasoning similar to that presented in the Payday Lending Rule, the accrued cash value of income is effectively the worker's own money and providing no-cost access to that income does not constitute a loan. 12 C.F.R. § 1041.3(d)(7), (8); 12 CFR part 1026, Supp. I, Cmmt 2(a)(14)-1; *see also* Ariz. Att'y Gen. Op. I22-005.

B. EWA products are not "loans" under the Montana Consumer Loan Act.

Subject to the assumed material facts, an EWA product does not meet the definition of loan under the Montana Consumer Loan Act. First, EWA providers do not possess a right to repayment for income-based advances. *See Firelight Meadows, LLC v. 3 Rivers Telephone Coop., Inc.*, 2008 MT 202, ¶ 22, 344 Mont. 117, 186 P.3d 869 ("the essential and characteristic feature of a loan is that the money must be absolutely returnable") (internal quotation omitted). Second, an EWA product grants consumers access to income already earned and thus does not qualify as a loan. *See Firelight Meadows, LLC*, ¶ 22 (A "loan … must be a temporary letting of money for temporary use."); *see also* 85 Fed. Reg. 79404, 79406, n.24 (an EWA product "functionally operates like an employer that pays its employees earlier than the scheduled payday" not a loan). Finally, an EWA product does not condition the advance on any "interest, fees, other consideration, or expense" and thus falls outside MCA § 32-5-103(1).

1. EWA products do not contain a right to repayment.

A "consumer loan," MCA § 32-5-103(1), for money carries a similar meaning to a "loan of money" under MCA § 31-1-101. A "loan for money" means "a contract by which one delivers a sum of money to another and the latter agrees to return at a future time *a sum equivalent* to that which he borrowed." *Firelight Meadows, LLC*, ¶ 22 (quoting MCA § 31-1-101) (emphasis in original). "[I]f the obligation to return is based on a contingency or on a certain condition which may or may not happen or occur, the transaction is not a loan." *Id.* (quoting *Rae v. Cameron*, 112 Mont. 159, 167, 114 P.2d 1060, 1064 (1941). "The essential and characteristic feature of a loan is that the money must be absolutely returnable." *Id.* (internal quotation omitted).

A fully non-recourse EWA product does not meet this definition because the income-based advance is not "absolutely returnable." *Firelight Meadows, LLC*, ¶ 22; 85 Fed.

Reg. 79407 (EWA "[p]roviders have no rights against the employee in the event of nonpayment"); 12 C.F.R. § 1041.3(d)(7), (8); supra n. 2. Without this essential characteristic, an EWA product cannot properly be considered a loan.

2. EWA products do not extend credit because the income is already owed to the consumer.

A "loan … must be a temporary letting of money for temporary use." *Firelight Meadows, LLC*, ¶ 22; *see also* Mont. Admin. R. 2.59.116; 85 Fed. Reg. 79406 n. 27; Black's Law Dictionary, at 947 (7th ed. 1999) (definition of "loan").

An EWA product that limits income-based advance amounts to income already earned, does not extend credit, or loan money, because it allows a consumer to access the consumer's own income. As the Board of Governors of the Federal Reserve System explained, "credit has not been extended because the consumer is, in effect, only using the consumer's own money." 46 Fed. Reg. 20848, 20851 (Apr. 7, 1981); *accord Firelight Meadows, LLC*, ¶ 22. EWA products do not, in this sense, temporarily let money or extend credit, since they grant a consumer access to income to which the consumer is already entitled. A no-cost, fully non-recourse EWA product simply has the effect of changing a worker's payday.

3. EWA products are not conditioned on "interest, fees, other consideration, or expense."

"[A] person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter." MCA § 32-5-103(1). "Interest means the compensation allowed by this chapter for the use, forbearance, or detention of money." MCA § 32-5-102(4). Consideration means "something of value (such as an act, a forbearance, or a return promise) received by a promisor from a promise." Black's Law Dictionary, at 300 (7th ed. 1999). Expense means "an expenditure of money, time, labor, or resources to accomplish a result." Black's Law Dictionary, at 598 (7th ed. 1999). And fee means "a charge for labor or services, especially professional services." Black's Law Dictionary, at 629 (7th ed. 1999).

The statute unambiguously links the receipt of interest, fees, consideration, or expenses to providing loans. For the reasons previously stated, an EWA product is not a loan. *Supra* Part.III.B.1–2.

Next, the definitions of "interest," "fees," "consideration," and "expense" do not include voluntary tips. First, voluntary tips are not interest because the tip does not grow commensurate with the length of time between the advance and the consumer's ordinary payday. Second, so long as the tip is not required to receive an advance, then the tip is not part of an exchange for a promise, an expenditure of money to accomplish a result, or a charge for labor or services. The voluntary nature of the tip places it outside the type of compensation governed by the statute.

The CFPB reached a similar conclusion in a recent advisory opinion. 85 Fed. Reg. 79407 ("The absence of interest and other fees demonstrates that [EWA] Providers are not taking on the type of credit risk characteristic of a typical credit transaction."). The CFPB Payday Lending Rule also supports this understanding: so long as the consumer "is not required to pay any charge or fee to be eligible to receive or in return for receiving the advance" then the provider is not extending credit. 12 C.F.R. § 1041.3(d)(8).

Certain ancillary service charges are also excluded from the definitions of "interest," "fees," "consideration," and "expense" under this reasoning. Where the consumer "is not required to pay any charge or fee to be eligible to receive or in return for receiving the advance," 12 C.F.R. § 1041.3(d)(8), then compensation rules do not come into effect because the income-based advance may be received regardless of payment. In other words, if the EWA product does not condition the amount of the advance, or the advance itself, on payment of an ancillary service charge, then the ancillary service charge is not compensation within the meaning of MCA § 32-5-103(1).

IV. Montana Deferred Deposit Loan Act

The Montana Deferred Deposit Loan Act requires a license to "engage in or offer to engage in the business of making deferred deposit loans." MCA § 31-1-705. A deferred deposit loan is defined as:

> an arrangement, … in which:
>
> (a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;
>
> (b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or
>
> (c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

MCA § 31-1-703(5). Only MCA § 31-1-703(5)(c) is at issue here.

For reasons previously stated, subject to the assumed material facts, EWA products are not loans. *See Supra* Part.III. Non-recourse EWA products lack the essential characteristics of a loan and fall outside the scope of the Montana Deferred Deposit Loan Act. *Firelight Meadows, LLC*, ¶ 22. Further, as stated, voluntary tips and voluntary ancillary services are not fees, interest, or other consideration. *Supra* Part.III.B.3.

The Act's purpose is to "protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated." MCA § 31-1-702(1). No-cost, fully non-recourse EWA products provide an alternative to the types of loans the Act is designed to regulate. GAO at 50, Table 5 (EWA products cost consumers less than comparable payday loans). Fully non-recourse EWA products, *see supra* n. 2, avoid many of the abuses in the payday loan marketplace such as high interest rates, debt collection practices, credit reporting, and extensive sequences of reborrowing. The CFPB excluded EWA products from its Payday Lending Rule on this basis. 12 C.F.R. § 1041.3(d)(7), (8); *see also e.g.*, *United Holdings Group*, Division of Banking and Financial Institutions Case No. M2014-25 (June 10, 2014) (deferred deposit loans and payday loans are synonymous). EWA products fall outside the type of payday loans the Montana Deferred Deposit Loan Act intends to regulate.

THEREFORE, IT IS MY OPINION:

> Subject to the assumed material facts, EWA products are not "consumer loans" under MCA § 32-5-102 or "deferred deposit loans" under MCA § 31-1-703. As such, EWA providers whose products comply with the assumed material facts in this opinion do not need to be licensed by the Montana Division of Banking and Financial Institutions to provide EWA products under those acts.

Sincerely,

/s/ Austin Knudsen
AUSTIN KNUDSEN
Attorney General

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

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

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period June 23, 2023, through December 8, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-59-639 Bank Semiannual Assessments, p. 599, 869
2-59-640 Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators, p. 602, 870

(Public Employees' Retirement Board)
2-43-641 Application Process for Disability Benefits, p. 1201, 1428

(Montana Tax Appeal Board)
2-51-629 Model Procedural Rules - Orders of the Board - Decision by the Board, p. 596, 868

AGRICULTURE, Department of, Title 4

4-23-277 Nonrefundable Application Fees, p. 923
4-23-279 Annual Report and Assessment Fees, p. 925
4-23-280 State Grain Lab Fee Schedule, p. 927, 1599
4-23-281 Updating Administrative Rule References and Citations, p. 1576
4-23-282 Seed Rules, p. 1587

STATE AUDITOR, Office of, Title 6

COMMERCE, Department of, Title 8

EDUCATION, Title 10

(Board of Public Education)

(Office of Public Instruction)

(Montana State Library)

FISH, WILDLIFE AND PARKS, Department of, Title 12

LIVESTOCK, Department of, Title 32

32-23-338 Issuance of Permits, p. 688, 1189
32-23-339 Diagnostic Laboratory Fees, p. 690, 1190
32-23-340 Records to Be Kept, p. 860, 1735
32-23-342 Testing Within the DSA, p. 1282, 1755
32-23-343 Garbage Feeding, p. 1284, 1756
32-23-344 Animal Health Division Fees, p. 1287, 1757

MILITARY AFFAIRS, Department of, Title 34

34-11 Application of Reimbursement for Service Members' Group Life Insurance Premiums, p. 863, 1191

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-217 Bitterroot Valley Sanitary Landfill Controlled Groundwater Area, p. 514, 1018
36-22-218 Navigable Waterways, p. 758, 1562
36-22-219 Water Right Permitting, p. 1151
36-22-221 State Land Leasing, p. 1523

(Board of Oil and Gas Conservation)
36-22-220 Adoption of Forms - Reports by Producers, Tax Report, and Tax Rate, p. 1290

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1009 Community First Choice Services and Self-Directed Personal Care Services, p. 1593
37-1017 Emergency Medical Services, p. 620, 1020
37-1025 Developmental Disabilities Program Incident Reporting and Handling, p. 865
37-1026 Trauma Facility Designation, p. 1001, 1622
37-1028 Applied Behavior Analysis Services, p. 468, 902
37-1029 Increase of Laboratory Fees, p. 1007
37-1030 Hospice Reimbursement, p. 472, 672
37-1031 Children's Mental Health Services, p. 1528, 1737
37-1033 Chemical Dependency Programs - Medicaid Mental Health Services, p. 693
37-1035 Medicaid Home and Community-Based Services Program, p. 643, 1624
37-1036 Developmental Disabilities Program Reimbursement for Services, p. 698, 1023
37-1037 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 646, 1025, 1563
37-1038 Nursing Facility Reimbursement, p. 663, 1032

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 2023 appear. Potential vacancies from January 1, 2024 through January 31, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2023.

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

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Crime Control			
Ms. Amanda Bremner	Governor	New	11/13/2023
Billings			1/1/2027
Qualifications (if required):	Tribal Representative		
Mr. Scott Twito	Governor	W. Glade	11/13/2023
Billings			1/1/2025
Qualifications (if required):	Montana County Attorney's Association Representative		
Committee on Telecommunications Access Services for Persons With Disabilities			
Dr. Lisa Cannon	Governor	Reappointed	11/13/2023
Clancy			7/1/2026
Qualifications (if required):	Licensed Audiologist		
Ms. Ashlee Logan	Governor	New	11/13/2023
Columbia Falls			7/1/2026
Qualifications (if required):	Disabilities Community (Deaf or hard of hearing)		
Mr. Cameron C. Tulloch	Governor	Reappointed	11/13/2023
Bozeman			7/1/2026
Qualifications (if required):	Disabilities Community (Deaf or hard of hearing)		

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Committee on Telecommunications Access Services for Persons With Disabilities Cont.			
Ms. Barbara Varnum Polson	Governor	Reappointed	11/13/2023 7/1/2026
Qualifications (if required): Person without a disability, senior citizen			
Geospatial Information Advisory Council			
Mr. Allen J. Armstrong Billings	Governor	K. Loberg	11/13/2023 7/1/2024
Qualifications (if required): Employed by U.S. Department of Agriculture (Natural Resources Conservation Service)			
Maureen Celander Miles City	Governor	Ken Miller	11/13/2023 7/1/2025
Qualifications (if required): County/municipal govt-land info system			
Mr. Brian Collins Missoula	Governor	Reappointed	11/13/2023 7/1/2024
Qualifications (if required): Department Director who may send a designee			
Brian DeMarco Cut Bank	Governor	C. Healy	11/13/2023 7/1/2025
Qualifications (if required): Tribal Govt Representative			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Geospatial Information Advisory Council Cont.			
Mr. Valentijn Hoff	Governor	Reappointed	11/13/2023
Missoula			7/1/2024
Qualifications (if required): MUS Representative			
Mrs. Lee Macholz	Governor	Reappointed	11/13/2023
Missoula			7/1/2026
Qualifications (if required): County/municipal govt - land information system			
Mr. Eric Spangenberg	Governor	Reappointed	11/13/2023
Helena			7/1/2025
Qualifications (if required): Montana Association of GIS Professionals Representative			
Mr. Dan Stahly	Governor	Reappointed	11/13/2023
Bozeman			7/1/2026
Qualifications (if required): Mt Assn of Registered Land Surveyors Rep			
Montana Arts Council			
Mr. Steve Zabel	Governor	Reappointed	11/13/2023
Bozeman			2/1/2028
Qualifications (if required): Keen interest in one or more of the arts			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Teachers' Retirement System Board (TRS)			
Mr. Elliott Crump	Governor	S. Dubbs	11/13/2023
Shelby			7/1/2028
Qualifications (if required): Administrator and Member			
Tourism Advisory Council			
Mr. Matthew Gebo	Governor	Rhonda Fitzgerald	11/1/2023
Whitefish			7/1/2025
Qualifications (if required): Glacier Country Representative			
Western Interstate Commission for Higher Education (WICHE)			
Maryrose Beasley	Governor	Sheila Stearns	11/13/2023
Roundup			7/1/2026
Qualifications (if required): Engaged in a professional occupation			

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2024 THROUGH JANUARY 31, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Horse Racing		
Mr. John Hayes, Great Falls	Governor	1/1/2024
Qualifications (if required): District 3 member		
Ms. Jody Smith, Miles City	Governor	1/1/2024
Qualifications (if required): District 1 member		
Board of Personnel Appeals		
Ms. Anne L. MacIntyre, East Helena	Governor	1/1/2024
Qualifications (if required): Presiding Officer with general labor-management experience		
Mr. Brian Hopkins, Great Falls	Governor	1/1/2024
Qualifications (if required): Attorney and general labor management		
Education Commission of the States		
Ms. Allison Horne, East Helena	Governor	1/4/2024
Qualifications (if required): Educator engaged in the field of K-12 education		
Judicial Nominations Commission		
Ms. Janice K. Bishop, Missoula	Governor	1/1/2024
Qualifications (if required): Lay member		

MONTANA ADMINISTRATIVE REGISTER

2023 ISSUE NO. 24
DECEMBER 22, 2023
PAGES 1769-1921

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620