



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

June 17, 2022

Economic Affairs Interim Committee
Montana State Legislature
PO Box 201706
Helena, MT 59620-1706

Dear Committee Members,

I write to clarify the record with respect to the Department and this committee's actions involving MAR Notice No. 42-1048. At the June 14, 2022 Economic Affairs Interim Committee meeting, this committee expressed concern that it had not been provided an opportunity to review MAR Notice No. 42-1048, and its concern that there was not a Department representative available at the meeting to answer any questions regarding that notice.

MAR Notice No. 42-1048 contains one rule that establishes the procedure for the package and label application and review process. As this committee is aware, § 16-12-208, MCA, requires licensees to submit applications for the approval of each label, package, and exit package that it intends to utilize and to secure approval from the Department prior to making products available for sale to customers. Section 16-12-112, MCA, provides the Department with rulemaking authority for this process.

The Department first provided the rule notice to this committee on February 1, 2022, by sending an email to Ms. Sullivan and Mr. Walker. The Department was present at this committee's February 10, 2022 meeting to stand for any questions from the committee. The committee asked no questions.

Hearing no concerns from this committee, the Department filed MAR Notice No. 42-1048 with the Secretary of State's Office, which published the notice in the February 25, 2022, Montana Administrative Register. The Department held a public hearing on March 22, 2022, wherein it received extensive public comment. The Department made substantial changes to the proposed rule resulting from these comments. Due to the substantial changes, the Department elected to file an amended notice of public hearing

and proposed adoption to afford this committee and the public with an additional opportunity to comment.

The Department provided the amended proposed rule to this committee on April 19, 2022, again by sending an email to Ms. Sullivan and Mr. Walker. The Department was present at the April 20, 2022, committee meeting to stand for questions, and the committee made the proposed rule available for attendees at the meeting. MAR Notice No. 42-1048 was included in the committee's Administrative Rulemaking and Rule Review memo, and the notice itself was provided to the committee. Again, this committee had no questions or comments.

The Department filed the amended proposed version of the rule with the Secretary of State who in turn published it in the April 29, 2022 Montana Administrative Register. It received public comment through May 6, 2022. Although the Department received some public comment in response to its amended proposed rule, the Department did not make any additional changes. Its reasoning is available in responses to comments in the Notice of Adoption, found in the June 10, 2022 Montana Administrative Register. This rule became effective June 11, 2022 and is expected to be codified at ARM 42.39.320.

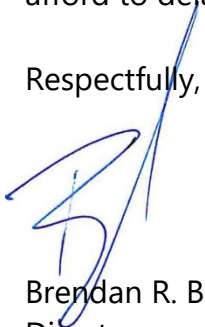
The Department's rulemaking under MAR Notice No. 42-1048 complied in every aspect with the Montana Administrative Procedures Act, and this committee was afforded multiple opportunities to review and discuss the proposed rule. This committee did not engage in any discussion of this rule throughout the process.

The Department was understandably unaware that it should be present at the June 14, 2022, committee meeting to discuss a rule that had already taken effect and that this committee had two previous opportunities to discuss. The Department remains available to committee members to answer questions and concerns outside of interim committee meetings.

The Department understands that this committee made a formal objection to the rule under § 2-4-406, MCA. The Department will watch for receipt of this committee's written objection to the new rule adopted under MAR Notice No. 42-1048 and appreciates that it will have the opportunity to respond. In the meantime, the Department will continue with its implementation of the rule, which was already underway before this committee entered its objection. Under the new rule, licensees must submit all label, package, and exit package applications by August 1, 2022, to ensure that all packaging and labeling is reviewed, approved, and fully compliant with the Marijuana Regulation and Taxation Act and rules of the Department by January 1,

2023. We at the Department are charged with the very important task to ensure the public's safety and to implement HB 701. The public and the Department simply cannot afford to delay its implementation of this process.

Respectfully,



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