ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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PROPOSAL NOTICE SECTION

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and New Rule II and the amendment of ARM 10.55.601 through 10.55.606, 10.55.701 through 10.55.711, 10.55.713 through 10.55.717, 10.55.801 through 10.55.805, 10.55.901 and 10.55.902, 10.55.904 through 10.55.910, 10.55.1001, and 10.55.1003 relating to accreditation standards	)))))))))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 26, 2012 the Board of Public Education published MAR Notice No. 10-55-262 pertaining to the proposed adoption and amendment of the above-stated rules at page 1401 of the 2012 Montana Administrative Register, Issue Number 14.

2. The Board of Public Education 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 5:00 p.m. on August 17, 2012, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

3. This amendment provides notice that due to concerns regarding the potential number of people attending the hearing, the hearing location has been moved from the OPI conference room at 1300 11th Avenue, Helena, Montana, to the Helena Regional Airport, 2nd Floor conference room. The time of hearing remains the same: 1:30 p.m. on August 20, 2012.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., August 23, 2012.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State July 30, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On September 7, 2012, at 2:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., August 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2009~~ 2010, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2006 edition of the USC and Supplement ~~II~~ IV (~~2009~~ 2010);

(c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2009~~ 2010, edition of the Administrative Rules of Montana (ARM).

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

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal and state statutes and regulations that are incorporated by reference in the rules. The board is proposing to amend ARM 17.8.102(1) to adopt revisions which were published in the July 1, 2010, edition of the Code of Federal Regulations (CFR), the 2006 edition of the United States Code (USC) Supplement IV (2010), and the 2010 edition of the Administrative Rules of Montana (ARM). The board adopts and incorporates by reference federal regulation to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations,

to maintain primacy, to maintain federal delegation of Montana's air quality program, and to implement federal emission standards pursuant to a federal program of emissions control.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 14, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, July 30, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1304, 17.30.1310, and 17.30.1322 pertaining to Montana pollutant discharge elimination system permits, permit exclusions, and application requirements and repeal of ARM 17.30.1303 pertaining to incorporations by reference	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL (WATER QUALITY)

TO: All Concerned Persons

1. On September 5, 2012, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, 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 public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., August 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) through (4) remain the same.

(5) "Application" means the department's standard form for applying for a permit including any additions, revisions, or modifications to the forms.

(5) through (11) remain the same, but are renumbered (6) through (12).

(13) "Concentrated animal feeding operation" (CAFO) is defined in 75-5-801, MCA.

(12) remains the same, but is renumbered (14).

(15) "Conventional pollutant" is defined in ARM 17.30.1202.

(16) "Cooling water" is defined in ARM 17.30.1202.

(17) "Cooling water intake structure" is defined in ARM 17.30.1202.

(13) through (15) remain the same, but are renumbered (18) through (20).

(21) "Discharge," when used without qualification, means the discharge of a pollutant.

(16) through (18) remain the same, but are renumbered (22) through (24).

(25) "Effluent limitation" is defined in ARM 17.30.1202.

(19) remains the same, but is renumbered (26).

~~(20)~~ (27) "Effluent standards" ~~means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters~~ is defined in 75-5-103, MCA, and is synonymous with the term "effluent limitation," as defined in ARM 17.30.1202, with the exception that it does not include a schedule of compliance.

(28) "Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

(21) through (26) remain the same, but are renumbered (29) through (34).

~~(27)~~ (35) "Hazardous substance" means any ~~substance~~ element or compound designated by EPA ~~under 40 CFR Part 116~~ pursuant to section 311(b)(2)(a) of the federal Clean Water Act and listed in 40 CFR 116.4.

(36) "Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

(28) through (36) remain the same, but are renumbered (37) through (45).

(46) "New facility" is defined in ARM 17.30.1202.

(37) through (58) remain the same, but are renumbered (47) through (68).

(69) "Source water" means the state water body (state surface waters) from which the cooling water is drawn.

(59) remains the same, but is renumbered (70).

(71) "Storm water" is defined in ARM 17.30.1102.

(72) "Storm water discharge associated with an industrial activity" is defined in 40 CFR 122.26(b)(14).

(73) "Storm water discharge associated with small construction activity" is defined in 40 CFR 122.26(b)(15).

(60) remains the same, but is renumbered (74).

~~(61)~~ (75) "Toxic pollutant" means any pollutant ~~listed as toxic pursuant to section 1317(a)(1)~~ designated by EPA under section 307(a)(1) of the federal Clean Water Act and ~~set forth~~ listed in 40 CFR ~~129~~ 401.15.

(62) and (63) remain the same, but are renumbered (76) and (77).

(78) "Variance" is defined in ARM 17.30.1202.

(79) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured by a toxicity test.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the definitions in ARM 17.30.1304 in order to add definitions explaining technical terms that are used in the application requirements also being proposed for adoption in this rulemaking. In addition, the board is proposing to amend some of the current definitions in ARM 17.30.1304 to correct errors, ensure consistency with statutory definitions, and provide consistency among the definitions appearing in ARM 17.30.1202,

17.30.1102, and 17.30.1304.

17.30.1310 EXCLUSIONS (1) The following discharges do not require MPDES permits:

~~(1)~~ (a) ~~D~~discharges of dredged or fill material into waters of the United States ~~which~~ that are regulated under section 404 of the federal Clean Water Act~~.~~;

~~(2)~~ (b) ~~T~~the introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to state waters are eliminated (see also ARM 17.30.1350(2)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works~~.~~;

~~(3)~~ (c) ~~A~~any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 et seq. (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Parts 153-157 (Pollution by Oil and Hazardous Substances)~~.~~;

~~(4)~~ (d) ~~A~~any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in ARM 17.30.1304~~(3)~~(15), discharges from concentrated aquatic animal production facilities as defined in ARM 17.30.~~1304(6)~~ 1331(1), discharges to aquaculture projects as defined in ARM 17.30.1304(5), and discharges from silvicultural point sources as defined in ARM 17.30.1304~~(56)~~(65)~~.~~;

~~(5)~~ (e) ~~R~~return flows from irrigated agriculture~~.~~;

~~(6)~~ (f) ~~D~~discharges into a privately owned treatment works, except as the department may otherwise require under ARM 17.30.1344~~.~~; and

~~(7)~~ (g) ~~The board hereby adopts and incorporates herein by reference 40 CFR Part 300 and 33 CFR 153.101 which are federal agency rules setting forth requirements concerning releases of hazardous wastes or petroleum products. See ARM 17.30.1303 for complete information about all materials incorporated by reference.~~ discharges from a water transfer. Water transfer means an activity that conveys or connects waters of the state without subjecting the transferred water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1310(4) (renumbered (d)) in order to correct the citations to the various definitions referenced in that provision. The board is further proposing to eliminate the incorporation of federal rules in ARM 17.30.1310(7) (renumbered (g)), since the department does not implement these federal rules under the Montana Pollutant Discharge Elimination System (MPDES) permit program. Although the existing permit exclusion in ARM

17.30.1310(3) (renumbered (c)) requires a discharge to be in compliance with 40 CFR Part 300 and 33 CFR 153.01 in order to qualify for the exclusion, incorporating these rules by reference is not necessary to determine whether the discharge is in compliance with the federal rules.

Finally, the board is amending ARM 17.30.1310(7) (renumbered (g)) to add a new discharge to the current list of discharges that are not required to obtain an MPDES permit. The proposed amendment specifies that a discharge from a water transfer that conveys or connects waters of the state does not need an MPDES permit. The proposed amendment further specifies that the exclusion does not apply if pollutants are added to the transferred water or if the transferred water is used for other purposes prior to being discharged. The board is proposing this amendment to be consistent with the U.S. Environmental Protection Agency's (EPA's) recent promulgation of a rule clarifying that water transfers, as defined in the board's proposed amendment, are not subject to NPDES permits. This amendment is necessary in order to maintain consistency between the state and federal permit program and to avoid being more stringent than applicable federal regulations.

17.30.1322 APPLICATION FOR A PERMIT (1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under ARM 17.30.1341, excluded under ARM 17.30.1310, or a user of a privately owned treatment works unless the department requires otherwise under ARM 17.30.1344, shall submit a complete application ~~(which must include a BMP program if necessary under 40 CFR 125.102)~~ to the department in accordance with this rule and ARM 17.30.1364 and 17.30.1365, 17.30.1370 through 17.30.1379, and 17.30.1383.

(a) All applicants for MPDES permits shall submit applications on department permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting the Water Protection Bureau at (406) 444-3080; Department of Environmental Quality, Water Protection Bureau, 1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901; or on the department's web site at http://deq.mt.gov/default.mcpx.

(b) All applicants, other than publicly owned treatment works (POTWs), shall submit Form 1.

(c) Applicants for new and existing POTWs shall submit the information required in (12) using Form 2A.

(d) Applicants for concentrated animal feeding operations or concentrated aquatic animal production facilities shall submit Form 2B.

(e) Applicants for existing industrial facilities, including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities, shall submit Form 2C.

(f) Applicants for new industrial facilities that discharge process wastewater shall submit Form 2D.

(g) Applicants for new and existing industrial facilities that discharge only non-process wastewater shall submit Form 2E.

(h) Applicants for new and existing facilities, whose discharge is composed entirely of storm water associated with industrial activity, shall submit Form 2F,

unless exempted by (11)(b) through (d). If the discharge is composed of storm water and non-storm water, the applicant shall also submit Forms 2C, 2D, and/or 2E, as appropriate, in addition to Form 2F.

(i) Applicants for new cooling water intake structures shall submit the information required in (17) in addition to any forms required in (e) through (g).

(2) remains the same.

(3) Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180-day requirement to avoid delay. See also ~~(11)~~ (13) through (15) requiring time frames where a variance may be available.

(4)~~(a)~~ Any ~~POTW~~ permittee with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the department. ~~(~~The department may not grant permission for applications to be submitted later than the expiration date of the existing permit.~~)~~

~~(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires except that:~~

~~(i) the department may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.~~

(5) remains the same.

(6) All applicants for MPDES permits, other than POTWs, shall provide the following information to the department, using the department's application ~~form~~ Form 1 ~~provided by the department.~~ ~~(a~~Additional information required of applicants is set forth in (7) through (~~14~~ 17)~~)~~:

(a) through (f) remain the same.

(g) a topographic map, ~~(~~or other map if a topographic map is unavailable~~)~~, extending one mile beyond the property boundaries of the source, depicting:

(i) the facility and each of its intake and discharge structures;

(ii) each of its hazardous waste treatment, storage, or disposal facilities;

(iii) each well where fluids from the facility are injected underground; and

(iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

(h) a brief description of the nature of the business~~; and~~

~~(i) the following POTWs shall provide the results of valid whole effluent biological toxicity testing to the department:~~

~~(i) all POTWs with design influent flows equal to or greater than one million gallons per day;~~

~~(ii) all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;~~

~~(j) In addition to the POTWs listed in (6)(i), the department may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:~~

~~(i) the variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and~~

~~types of industrial contributors);~~

~~(ii) the dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);~~

~~(iii) existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;~~

~~(iv) receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; and~~

~~(v) other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW) which the department determines could cause or contribute to adverse water quality impacts.~~

~~[p2924]~~

~~(k) for POTWs required under (6)(i) or (j) to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. This testing must have been conducted since the last MPDES permit reissuance or per modification under ARM 17.30.1361, whichever occurred later;~~

~~(l) all POTWs with approved pretreatment programs shall provide to the department a written technical evaluation of the need to revise local limits, as described in 40 CFR 403.5(c)(1)~~.

(7) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits, except for those facilities subject to the requirements of (8), shall provide the following information to the department, using application forms provided by the department:

(a) the latitude and longitude of the outfall to the nearest 15 seconds~~,~~ and the name of the receiving water;

(b) remains the same.

(c) a narrative identification of each type of process, operation, or production area ~~which~~ that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow ~~which~~ that each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, "dye-making reactor," "distillation tower"). For a privately owned treatment works, this information must include the identity of each user of the treatment works~~;~~. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated;

(d) through (f) remain the same.

(g) information on the ~~discharge~~ effluent characteristics of pollutants specified in this subsection, except information on storm water discharges that is specified in (11)(b), must be provided according to the following~~.~~:

(i) when "quantitative data" for a pollutant are required, the applicant ~~must~~ shall collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, unless use of another method is required for the pollutant under 40 CFR subchapter N. When no analytical

method is approved under Part 136 or required under subchapter N, the applicant may use any suitable method, but ~~must~~ shall provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in ~~(iii)(A), (B), and (iv)~~ (vi), (vii), and (viii), ~~below~~ that state that an applicant ~~must~~ shall provide quantitative data for certain pollutants known or believed to be present, do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant ~~must~~ shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, including Escherichia coli (E-coli). For all other pollutants, a 24-hour composite sample~~s~~, using a minimum of four grab samples, must be used, unless specified otherwise at 40 CFR Part 136. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours~~, and a minimum of one to four grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample must be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours~~. In addition, for discharges other than storm water discharges, the department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3(e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3 (e)) and that sample integrity is not compromised by compositing; ~~An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)~~

(ii) for storm water discharges, all samples must be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite must be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of

aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in (11)(e). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in (11)(e) except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility;

~~(i)(A)~~ (iii) ~~E~~every applicant ~~must~~ shall report quantitative data for every outfall for the following pollutants:

(A) biochemical oxygen demand ~~(BOD_5)~~;

(B) chemical oxygen demand;

(C) total organic carbon;

(D) total suspended solids;

(E) ammonia (as N);

(F) temperature (both winter and summer); and

(G) pH;

~~(B)~~ (iv) ~~T~~the department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in the above subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements~~.~~;

~~(ii)~~ (v) ~~E~~each applicant with processes in one or more primary industry category (see Appendix A of 40 CFR Part 122) contributing to a discharge ~~must~~ shall report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) remains the same.

(B) the pollutants listed in Table III of Appendix D of 40 CFR Part 122 (the toxic metals, cyanide, and total phenols)~~.~~;

~~(iii)(A)~~ (vi) ~~E~~each applicant ~~must~~ shall indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant ~~must~~ shall report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant ~~must~~ shall either report quantitative data or briefly describe the reasons the pollutant

is expected to be discharged.;

(B)(vii) Eeach applicant must shall indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D of 40 CFR Part 122 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under (7)(g)(ii)(v), is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ten ppb or greater, the applicant must shall report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must shall report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ten ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must shall either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under (7)(h) is not required to analyze for pollutants listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants).;

(iv) (viii) Eeach applicant must shall indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.;

(v) (ix) Eeach applicant must shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) remains the same.

(B) knows or has reason to believe that TCDD is or may be present in an effluent.;

(h) an applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in (7)(g)(ii)(v)(A) or (iii)(vi)(A) to submit quantitative data for the pollutants listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants):

(i) remains the same.

(ii) for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).;

(i) a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The department may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the department has adequate information to issue the permit.;

(j) an identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.;

(k) if a contract laboratory or consulting firm performed any of the analyses required by (7)(g), the identity of each laboratory or firm and the analyses performed.;

(l) remains the same.

(8) Except for storm water discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits ~~which~~ that discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department, using application forms provided by the department:

(a) through (c) remain the same.

(d)~~(i)~~ ~~Q~~quantitative data for the pollutants or parameters listed below, unless testing is waived by the department. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant ~~must~~ shall collect and analyze samples in accordance with 40 CFR Part 136. Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform, including E-coli. For all other pollutants, a 24-hour composite sample~~s~~, using a minimum of four grab samples, must be used, unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite aliquots is required. New dischargers ~~must~~ shall include estimates for the pollutants or parameters listed below, instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(i) The requirements of (d) apply to:

(A) through (I) remain the same.

(J) pH; ~~and~~

(K) temperature (winter and summer)~~.~~; and

(L) any pollutant not listed above, if the pollutant is present in the effluent and regulated by a state-adopted water quality standard;

(ii) The department may waive the testing and reporting requirements for any of the pollutants or flow listed in (i) if the applicant submits a request for such a waiver before or with ~~his~~ the application ~~which~~ that demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(iii) If the applicant is a new discharger, ~~he must~~ the applicant shall complete forms provided by the department by providing quantitative data in accordance with (d) no later than two years after commencement of discharge. However, the applicant need not complete those portions of the forms requiring tests ~~which he~~ that the applicant has already performed and reported under the discharge monitoring requirements of ~~his~~ the MPDES permit.

(iv) The requirements of ~~(i)~~ (d) and (d)(iii), that an applicant ~~must~~ shall provide quantitative data or estimates of certain pollutants, do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant ~~must~~ shall report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of ARM 17.30.1345(9) are met~~.~~;

(e) remains the same.

(f) a brief description of any treatment system used or to be used;

(g) and (h) remain the same.

(9) New and existing concentrated animal feeding operations (CAFOs), defined in ARM 17.30.~~1330~~ 1304, and concentrated aquatic animal production

facilities, defined in ARM 17.30.~~1304(6)~~ 1331(1), shall provide the following information to the department, using ~~the~~ application ~~f~~Form2B ~~provided by the department~~:

(a) for CAFOs:~~, the information specified in ARM 17.30.1322(6)(a) through (f) and 40 CFR 122.21(i)(1), including a topographic map; and~~

(i) the name of the owner or operator;

(ii) the facility location and mailing addresses;

(iii) latitude and longitude of the production area (entrance to production area);

(iv) a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of (6)(g);

(v) specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) the type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

(vii) the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and

(x) a nutrient management plan that at a minimum satisfies the requirements specified in ARM 17.30.1343(1)(c), including, for all CAFOs subject to 40 CFR part 412, subpart C or subpart D, the requirements of 40 CFR 412.4(c), as applicable; and

(b) through (b)(v) remain the same.

(10) New manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits (except for new discharges of facilities subject to the requirements of (8) or new discharges of storm water ~~runoff or facilities~~ associated with industrial activity that are subject to the requirements of ~~(10)~~ (11)) shall provide the following information to the department, using application forms provided by the department:

(a) and (b) remain the same.

(c)~~(i)~~ a description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

~~(ii)~~ (i) a line drawing of the water flow through the facility with a water balance as described in ~~ARM 17.30.1322(9)~~ (7)(b);

(iii) remains the same, but is renumbered (ii).

(d) remains the same.

(e) the requirements in (8)(d)~~(i), (ii), and (iii),~~ that an applicant ~~must~~ shall

provide estimates of certain pollutants expected to be present, do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant ~~must~~ shall report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of ARM 17.30.1345(9) are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass~~;~~.

(i) Each applicant ~~must~~ shall report estimated daily maximum, daily average, and source of information for each outfall for the ~~following~~ pollutants or parameters in (ii). The department may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application ~~which~~ that demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(ii) The requirements of (e)(i) apply to:

(A) through (F) remain the same.

(G) temperature (winter and summer); ~~and~~

(H) pH~~.~~; and

(I) any pollutant not listed above, if the pollutant is present in the effluent and regulated by a state-adopted water quality standard.

~~(ii)~~ (iii) Each applicant ~~must~~ shall report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants).

~~(iii)~~ (iv) Each applicant ~~must~~ shall report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(A) and (B) remain the same.

(iv) through (iv)(F) remain the same, but are renumbered (v) through (v)(F).

~~(v)~~ (vi) Each applicant ~~must~~ shall report any pollutants listed in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances) if ~~he~~ the applicant believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

~~(vi)~~ (vii) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit forms prescribed by the department. However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit~~.~~;

(f) each applicant ~~must~~ shall report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

(g) and (h) remain the same.

(11) Dischargers of storm water ~~from facilities or activities that are listed in ARM 17.30.1105(1)(a) through (f), must apply for an individual permit, or seek coverage under a storm water general permit as provided for in subchapter 11.~~

~~Individual permits for small municipal separate storm sewer systems are subject to the provisions stated in ARM 17.30.1111(1) through (18)~~ associated with industrial activity or with small construction activity that are required to obtain an individual permit or any other discharge of storm water that the department is evaluating for designation under ARM 17.30.1105(1)(f) and is not a municipal storm sewer, shall submit an MPDES permit application in accordance with the requirements of (6)(a) through (h), as modified and supplemented by the provisions of this section.

(a) Except as provided in (b) through (d), the operator of a storm water discharge associated with industrial activity that is required to obtain an individual permit shall provide:

(i) a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including:

(A) each of its drainage and discharge structures;

(B) the drainage area of each storm water outfall;

(C) paved areas and buildings within the drainage area of each storm water outfall;

(D) each past or present area used for outdoor storage or disposal of significant materials;

(E) each existing structural control measure to reduce pollutants in storm water runoff;

(F) materials loading and access areas;

(G) areas where pesticides, herbicides, soil conditioners, and fertilizers are applied;

(H) each of its hazardous waste treatment, storage, or disposal facilities (including each area not required to have a RCRA permit that is used for accumulating hazardous waste under 40 CFR 262.34);

(I) each well where fluids from the facility are injected underground; and

(J) springs and other surface water bodies that receive storm water discharges from the facility;

(ii) an estimate of the area of impervious surfaces (including paved areas and building roofs), the total area drained by each outfall (within a mile radius of the facility), and a narrative description of the following:

(A) significant materials that in the three years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water;

(B) method of treatment, storage, or disposal of such materials;

(C) materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff;

(D) materials loading and access areas;

(E) the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied;

(F) the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and

(G) a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(iii) a certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges that are not covered by an MPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification must include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(iv) existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(v) quantitative data based on samples collected during storm events and collected in accordance with (7)(g)(ii) from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(A) any pollutant limited in an effluent guideline to which the facility is subject;

(B) any pollutant listed in the facility's MPDES permit for its process wastewater, if the facility is operating under an existing MPDES permit;

(C) oil and grease, pH, biochemical oxygen demand, chemical oxygen demand, total suspended solids, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(D) any information on the discharge required under (7)(g)(vi) through (viii);

(E) flow measurements or estimates of the flow rate, the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(F) the date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) that generated the sampled runoff, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(vi) operators of a discharge that is composed entirely of storm water are exempt from the requirements of (7)(b), (c), (d), and (e), and (g)(iii), (iv), (v), and (ix);

(vii) operators of new sources or new discharges, as defined in ARM 17.30.1304, that are composed in part or entirely of storm water shall include estimates for the pollutants or parameters listed in (v) instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water shall provide quantitative data for the parameters listed in (v) within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the MPDES permit for the discharge. Operators of a new source or new discharge that is composed entirely of storm water are exempt from the requirements of (10)(c)(i) and (ii) and (e).

(b) An operator of an existing or new storm water discharge associated with industrial activity solely under the definition in 40 CFR 122.26(b)(14)(x) or associated with small construction activity solely under the definition in ARM 17.30.1304, is exempt from the requirements of (7) and (11)(a). Such operator shall provide a narrative description of:

(i) the location, including a map, and the nature of the construction activity;

(ii) the total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(iii) proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

(iv) proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

(v) an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(vi) the name of the receiving water.

(c) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with (a), unless the facility:

(i) has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987;

(ii) has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(iii) contributes to a violation of a water quality standard.

(d) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations.

(e) Applicants shall provide such other information the department may reasonably require under (7)(l) to determine whether to issue a permit and may require any facility subject to (11)(b) to comply with (11)(a).

(12) ~~Dischargers of storm water associated with industrial, mining, oil and gas, and construction activity, shall apply for an individual permit as stated in 40 CFR 122.26(c)(1) if their discharge is not covered under a general permit provided for in ARM 17.30.1110 or another MPDES permit. Dischargers of storm water associated with construction activity are exempt from the application requirements of (7) and 40 CFR 122.26(c)(1)(i).~~ Unless otherwise indicated, all new and existing publicly owned treatment works (POTWs) and other dischargers designated by the department, shall provide, at a minimum, the information in (a) through (h) to the department, using Form 2A. Permit applicants shall submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The department may waive any requirement of (a) through (h), if the department has access to substantially identical information. The department may also waive any requirement of (a) through (h) that is not of material concern for a specific permit, if approved by EPA. The waiver request to the EPA must include the department's justification for the waiver. The EPA's disapproval of the proposed waiver does not constitute final agency action, but does provide notice to the department and permit applicant that EPA may object

to any MPDES permit issued in the absence of the required information.

(a) All applicants shall provide the following basic information:

(i) name, mailing address, and location of the facility for which the application is submitted;

(ii) name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) identification of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs:

(A) hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(B) underground injection control program under the Safe Drinking Water Act (SDWA);

(C) MPDES program under the Clean Water Act (CWA);

(D) dredge or fill permits under section 404 of the CWA; and

(E) other relevant environmental permits, including state permits;

(iv) the name and population of each municipal entity served by the facility, including unincorporated connector districts. The applicant shall indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

(v) information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

(vi) the facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

(vii) identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises;

(viii) the following information for outfalls that discharge to state surface water and other discharge or disposal methods:

(A) for effluent discharges to state surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(B) for wastewater discharged to surface impoundments:

(I) the location of each surface impoundment;

(II) the average daily volume discharged to each surface impoundment; and

(III) whether the discharge is continuous or intermittent;

(C) for wastewater applied to the land:

(I) the location of each land application site;

(II) the size of each land application site, in acres;

(III) the average daily volume applied to each land application site, in gallons per day; and

(IV) whether land application is continuous or intermittent;

(D) for effluent sent to another facility for treatment prior to discharge:

(I) the means by which the effluent is transported;

(II) the name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other

than the applicant;

(III) the name, mailing address, contact person, phone number, and MPDES permit number (if any) of the receiving facility; and

(IV) the average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) for wastewater disposed of in a manner not included in (a)(viii)(A) through (D) (e.g., underground percolation, underground injection):

(I) a description of the disposal method, including the location and size of each disposal site, if applicable;

(II) the annual average daily volume disposed of by this method, in gallons per day; and

(III) whether disposal through this method is continuous or intermittent.

(b) All applicants with a design flow greater than or equal to 0.1 million gallons per day shall provide the following additional information:

(i) the current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

(ii) a topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) the treatment plant area and unit processes;

(B) the major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Outfalls from bypass piping must be included, if applicable;

(C) each well where fluids from the treatment plant are injected underground;

(D) wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(E) sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(F) the location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(iii) a process flow diagram or schematic, which includes:

(A) a diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) a narrative description of the diagram; and

(iv) information regarding scheduled improvements and the schedule of implementation, which includes the following:

(A) the outfall number of each outfall affected;

(B) a narrative description of each required improvement;

(C) scheduled or actual dates of completion for the following:

(I) commencement of construction;

(II) completion of construction;

(III) commencement of discharge; and

(IV) attainment of operational level; and

(D) a description of permits and clearances concerning other state or federal requirements.

(c) Each applicant shall provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) a description of each outfall that includes the following information:

(A) outfall number;

(B) county, city, or town in which outfall is located;

(C) latitude and longitude, to the nearest second;

(D) distance from shore and depth below surface;

(E) average daily flow rate, in million gallons per day;

(F) the following information for each outfall with a seasonal or periodic discharge:

(I) number of times per year the discharge occurs;

(II) duration of each discharge;

(III) flow of each discharge; and

(IV) months in which discharge occurs; and

(G) whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) a description of receiving waters that includes the following information, if known for each outfall through which effluent is discharged to state surface waters:

(A) name of receiving water;

(B) name of United States Geological Survey 8-digit hydrologic unit code and state water body identification code; and

(C) critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable); and

(iii) a description of treatment system, including the following information describing the treatment provided for discharges from each outfall to state water:

(A) the highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(I) design biochemical oxygen demand or carbonaceous oxygen demand removal (percent);

(II) design suspended solids removal (percent); and, where applicable,

(III) design phosphorus removal (percent);

(IV) design nitrogen removal (percent); and

(V) any other removals that an advanced treatment system is designed to achieve; and

(B) a description of the type of disinfection used and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

(d) As specified in (i) through (ix), all applicants shall submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to state surface waters. The department may allow applicants to submit sampling data for only one outfall, on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(i) All applicants shall sample and analyze for the following pollutants:

(A) biochemical oxygen demand or carbonaceous oxygen demand;
(B) fecal coliform;
(C) design flow rate;
(D) pH;
(E) temperature (winter and summer); and
(F) total suspended solids.

(ii) All applicants with a design flow greater than or equal to 0.1 million gallons per day shall sample and analyze for the pollutants listed below. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent are not required to analyze for chlorine:

(A) ammonia (as N);
(B) chlorine (total residual, TRC);
(C) nitrate/nitrite;
(D) Kjeldahl nitrogen;
(E) oil and grease;
(F) phosphorus; and
(G) total dissolved solids.

(iii) The following applicants shall sample and analyze for the pollutants listed in Appendix J, Table 2 of 40 CFR Part 122, and for any other pollutants for which the board has established water quality standards applicable to the receiving waters:

(A) all POTWs with a design flow rate equal to or greater than one million gallons per day;

(B) all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) other POTWs, as required by the department.

(iv) The department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

(v) Applicants shall provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The department may require additional samples, as appropriate, on a case-by-case basis.

(vi) All existing data for pollutants specified in (i) through (iv) that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

(vii) Applicants shall collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing MPDES permit. When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli), or volatile organics is required by (i) through (iii), grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

(viii) The effluent monitoring data provided must include at least the following information for each parameter:

(A) maximum daily discharge expressed as concentration or mass, based upon actual sample values;

(B) average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(C) the analytical method used; and

(D) the minimum detection limit (MDL) or minimum level (ML) for the analytical method used.

(ix) Unless otherwise required by the department, metals must be reported as total recoverable.

(e) All applicants shall provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(i) As specified in (ii) through (viii), the following applicants shall submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) all POTWs with design flow rates greater than or equal to one million gallons per day;

(B) all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) other POTWs, as required by the department, based on consideration of the following factors:

(I) the variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(II) the ratio of effluent flow to receiving stream flow;

(III) existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(IV) receiving stream characteristics, including possible or known water quality impairment, a water designated as an outstanding natural resource water; and

(V) other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the department determines could cause or contribute to adverse water quality impacts.

(ii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the department may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(iii) Each applicant required to perform whole effluent toxicity testing pursuant to (i) shall provide:

(A) results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(B) results from four tests performed at least annually in the 4 1/2-year period

prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the department.

(iv) Applicants shall conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. Applicants shall conduct acute or chronic testing based on the following dilutions:

(A) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone;

(B) acute or chronic toxicity testing if the dilution of the effluent is between 10:1 and 100:1 at the edge of the mixing zone; and

(C) chronic testing if the dilution of the effluent is less than 10:1 at the edge of the mixing zone.

(v) Each applicant required to perform whole effluent toxicity testing pursuant to (i) shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vi) Applicants shall provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to (i) for which such information has not been reported previously to the department.

(vii) Whole effluent toxicity testing conducted pursuant to (i) must be conducted using methods approved under 40 CFR Part 136.

(viii) For whole effluent toxicity data submitted to the department within four and one-half years prior to the date of the application, applicants shall provide the dates on which the data were submitted and a summary of the results.

(ix) Each POTW required to perform whole effluent toxicity testing pursuant to (i) shall provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

(f) Applicants shall submit the following information about industrial discharges to the POTW:

(i) number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

(ii) POTWs with one or more SIUs shall provide the following information for each SIU, as defined at ARM 17.30.1402, that discharges to the POTW:

(A) name and mailing address;

(B) description of all industrial processes that affect or contribute to the SIU's discharge;

(C) principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(D) average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) whether the SIU is subject to local limits;

(F) whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

(iii) The information required in (i) and (ii) may be waived by the department

for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in (i) and (ii):

(A) an annual report submitted within one year of the application; or

(B) a pretreatment program.

(g) POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA corrective action wastes or wastes generated at another type of cleanup or remediation site shall provide the following information:

(i) if the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant shall report the following:

(A) the method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(B) the hazardous waste number and amount received annually of each hazardous waste;

(ii) if the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant shall report the following:

(A) the identity and description of the site(s) or facility(ies) at which the wastewater originates;

(B) the identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(C) the extent of treatment, if any, the wastewater receives or will receive before entering the POTW; and

(iii) applicants are exempt from the requirements of (ii) if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

(h) Each applicant with combined sewer systems shall provide the following information:

(i) a map indicating the location of the following:

(A) all combined sewer overflow (CSO) discharge points;

(B) sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(C) waters supporting threatened and endangered species potentially affected by CSOs;

(ii) a diagram of the combined sewer collection system that includes the following information:

(A) the location of major sewer trunk lines, both combined and separate sanitary;

(B) the locations of points where separate sanitary sewers feed into the combined sewer system;

(C) in-line and off-line storage structures;

(D) the locations of flow-regulating devices; and

(E) the locations of pump stations;

(iii) the following information for each CSO discharge point (outfall) covered

by the permit application:

(A) outfall number;

(B) county, city, or town in which each outfall is located;

(C) latitude and longitude, to the nearest second;

(D) distance from shore and depth below surface;

(E) whether the applicant monitored any of the following in the past year for this CSO:

(I) rainfall;

(II) CSO flow volume;

(III) CSO pollutant concentrations;

(IV) receiving water quality; or

(V) CSO frequency; and

(F) the number of storm events monitored in the past year;

(iv) the following information about CSO overflows from each outfall:

(A) the number of events in the past year;

(B) the average duration per event, if available;

(C) the average volume per CSO event, if available; and

(D) the minimum rainfall that caused a CSO event, if available, in the last year;

(v) the following information about receiving waters:

(A) name of receiving water;

(B) name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(C) name of the United States Geological Survey hydrologic cataloging unit (8-digit) code and the state water body identification code, if known; and

(vi) a description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable water quality standard).

(i) All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

(j) All applications shall be signed by a certifying official in compliance with ARM 17.30.1323.

(13) A discharger that is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified below:

(a) through (a)(ii) remain the same.

(b) A request for a variance from the best available technology (BAT) requirements for federal Clean Water Act section 301(b)(2)(F) pollutants (commonly called "nonconventional" pollutants) pursuant to section 301(c) of the federal Clean Water Act because of the economic capability of the owner or operator, or pursuant to section 301(g) of the federal Clean Water Act because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) through (i)(B) remain the same.

(ii) submitting a completed request no later than the close of the public

comment period under ARM 17.30.1372 demonstrating that the requirements of ARM 17.30.1375 and the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under section 301(g) of the federal Clean Water Act ~~shall~~ must be filed before the department must make a decision;

(iii) remains the same.

~~(c) An extension under federal Clean Water Act section 301(i)(2) of the statutory deadlines in section 301(b)(1)(A) or (b)(1)(C) of the federal Clean Water Act based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under (14)(b), whichever is later, but in no event may this date have been later than January 30, 1988. The request must explain how the requirements of 40 CFR Part 125, subpart J, have been met.~~

~~(d) An extension under federal Clean Water Act section 301(k) from the statutory deadline of 301(b)(2)(A) for best available technology or 301(b)(2)(E) for best conventional pollutant control technology based on the use of innovative technology, may be requested no later than the close of the public comment period under ARM 17.30.1372 for the discharger's initial permit requiring compliance with section 301(b)(2)(A) or (b)(2)(E), as applicable. The request must demonstrate that the requirements of ARM 17.30.1375 and 40 CFR Part 125, subpart C, have been met.~~

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

(14) A discharger ~~which~~ that is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under ~~either of the following statutory provisions as specified below:~~

~~(a) an extension under federal Clean Water Act section 301(i)(1) of the statutory deadlines in federal Clean Water Act section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before August 3, 1987; or~~

~~(b) a modification under~~ federal Clean Water Act section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations ~~must be requested~~ no later than the close of the public comment period under ARM 17.30.1372 on the permit from which the modification is sought.

(15) Notwithstanding the time requirements in (13) and (14):

(a) the department may notify a permit applicant before a draft permit is issued under ARM 17.30.1370 that the draft permit will likely contain limitations eligibility for variances. In the notice the department may require that the applicant, as a condition of consideration of any variance request, submit an explanation of how the requirements of ~~40 CFR Part 125~~ ARM 17.30.1203(4) applicable to the variance have been met. The department may require submission of the explanation within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance; and specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance; and

(b) remains the same.

(16) remains the same.

(17) ~~The board hereby adopts and incorporates herein by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):~~

~~(a) 40 CFR 125.102, which is a federal agency rule setting forth requirements for best management practices for dischargers who use, manufacture, store, handle, or discharge any hazardous or toxic pollutant;~~

~~(b) 40 CFR Part 136, which is a series of federal agency rules setting forth guidelines establishing test procedures for the analysis of pollutants;~~

~~(c) Appendix A to 40 CFR Part 122, which is an appendix to a series of federal agency rules and sets forth a list of primary industrial categories;~~

~~(d) Tables I, II, and III of Appendix D to 40 CFR Part 122, which are part of appendices of federal agency rules and list, respectively, testing requirements for organic toxic pollutants by industry category for existing dischargers, organic toxic pollutants in each of four fractions in analysis by gas chromatography/mass spectroscopy (GC/MS), and other toxic pollutants (metals and cyanide) and total phenols;~~

~~(e) Tables IV and V of Appendix D to 40 CFR Part 122, which are lists appended to a federal agency rule setting forth, respectively, conventional and nonconventional pollutants, and toxic pollutants and hazardous substances required to be identified by existing dischargers if expected to be present;~~

~~(f) 40 CFR Part 125, which is a series of federal agency rules setting forth criteria and standards for the national pollutant discharge elimination system (NPDES), specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations;~~

~~(g) 40 CFR 403.5(c)(i) (July 1, 1991), which requires POTWs to develop and enforce specific limits to prevent certain discharges; and~~

~~(h) 40 CFR 122.26(c)(1), which states requirements for individual permit applications for storm water discharges.~~

~~(i) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~ New facilities with new or modified cooling water intake structures, as defined in ARM 17.30.1202, shall submit to the department for review the information required in this section as part of their application. Requests for alternative requirements under ARM 17.30.1213 must be submitted with the facility's permit application required by ARM 17.30.1322. All applicants shall provide the following information:

(a) source water physical data, which includes:

(i) a narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that supports a determination of the water body type where each cooling water intake structure is located;

(ii) identification and characterization of the source water body's hydrological and geomorphological features, as well as the methods used to conduct any

physical studies to determine the intake's area of influence within the water body and the results of such studies; and

(iii) locational maps;

(b) cooling water intake structure data, which includes:

(i) a narrative description of the configuration of each of the facility's cooling water intake structures and where they are located in the water body and in the water column;

(ii) latitude and longitude in degrees, minutes, and seconds for each of the cooling water intake structures;

(iii) a narrative description of the operation of each of the facility's cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

(iv) a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and

(v) engineering drawings of the cooling water intake structures; and

(c) a source water baseline biological characterization including information required to characterize the biological community in the vicinity of the cooling water intake structures and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the facility's design and construction technology plan, as required in ARM 17.30.1213, should be revised. This supporting information must include existing data (if they are available). However, supplemental data using newly conducted field studies may also be submitted at the discretion of the applicant. The following information must be submitted:

(i) a list of the data in (ii) through (vi) that are not available and efforts made to identify sources of the data;

(ii) a list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structures;

(iii) identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

(iv) identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

(v) data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structures;

(vi) identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

(vii) documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

(viii) if information is submitted to supplement the information requested in (i) with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area, taxonomic identification of sampled and evaluated

biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

(18) The board adopts and incorporates by reference the following federal regulations as part of the Montana pollutant discharge elimination system. Copies of these federal regulations may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(a) 40 CFR Part 136 (July 1, 2011), which sets forth guidelines establishing test procedures for the analysis of pollutants;

(b) Appendix A to 40 CFR Part 122 (July 1, 2011), which sets forth a list of primary industrial categories;

(c) Appendix D to 40 CFR Part 122 (July 1, 2011), which sets forth NPDES permit application testing requirements;

(d) Appendix J to 40 CFR Part 122 (July 1, 2011), which sets forth NPDES permit testing requirements for publicly owned treatment works;

(e) 40 CFR Part 125 (July 1, 2011), which sets forth criteria for extending compliance dates and for determining the availability of a variance;

(f) 40 CFR Part 412 (July 1, 2011), which sets forth effluent guidelines and standards for concentrated animal feeding operations.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The board is proposing to amend the application requirements in ARM 17.30.1322 in order to make them consistent with the equivalent federal requirements set forth in 40 CFR 122.21 and 122.26(c). In general, the proposed amendments add informational requirements for certain discharges, delete requirements that no longer apply, clarify which application forms and information must be submitted by various categories of discharges, add portions of the text of 40 CFR 122.21 and 122.26 into the existing text of ARM 17.30.1322, and update incorporations by reference of applicable federal rules. The board is proposing to adopt these federal application requirements because they are required elements of a delegated state's permit program. *See* 40 CFR 123.25. The board's specific reasons for adopting these federal requirements into various sections of ARM 17.30.1322 follow. The proposed amendments also make minor changes to wording and punctuation to conform to standard practices for rule formatting.

The board is proposing to amend (1) to clarify which application forms must be submitted for various categories of discharges that require an individual MPDES permit, as specified in 40 CFR 122.21(a). Given that the department currently provides these same federal application forms to MPDES applicants according to their type of discharge, no change or additional requirements are anticipated as a result of the proposed amendment. The board finds that adopting the proposed amendment is necessary to provide clear authority for the department to require the submission of information required by the various forms. In addition, the board is

proposing to delete language in (1) that requires the submittal of a best management program (BMP), because this language is no longer included in 40 CFR 122.21.

The board is proposing to amend (4) to eliminate the current language that establishes separate but identical application deadlines of 180-days that apply to publicly owned treatment works (POTWs) under (4)(a) and to "all other permittees" under (4)(b). Since 40 CFR 122.21(c) imposes on all permittees the obligation to submit an application 180 days prior to the expiration of an existing permit, the board is deleting language that provides separate application deadlines for POTWs and "all other permittees." To clarify that all permittees are subject to the same timeframe, the board is proposing to eliminate the deadline applicable to "all other permittees" in existing (4)(b) and amend (4)(a) to impose the 180-day time frame on "all permittees."

The board is proposing to amend (6) to clarify that POTWs, unlike all other permittees, do not have to submit Form 1 when applying for an individual MPDES permit. Since POTWs have different application requirements that must be submitted on a different form, the board is proposing to remove the existing application requirements for POTWs from (6) and combine those requirements with all of the other POTW application requirements being proposed for adoption in (12). This proposed amendment is necessary to provide clarity concerning the appropriate application forms and to consolidate all of the application requirements for POTWs under one section of the rule.

The board is proposing to amend (7), which sets forth the application requirements for existing manufacturing, commercial, mining, and silvicultural discharges in order to make Montana's requirements consistent with the federal requirements for these same facilities. In order to ensure consistency with the federal rule, the board is proposing to adopt all portions of the text from 40 CFR 122.21(g) that apply to delegated-states' permit programs, but are absent from the existing text of subsection (7). The portions of 40 CFR 122.21(g) being proposed for adoption under (7) consist of the following: (1) language clarifying that the application requirements do not apply to facilities that discharge only non-process wastewater; (2) sampling and analytical requirements for storm water discharges from these facilities; and (3) sampling requirements that are necessary to characterize the effluent discharged by these facilities. These amendments are necessary to maintain consistency with federal application requirements.

The board is proposing to amend (8), which sets forth the application requirements for all manufacturing, commercial, mining, and silvicultural discharges applying for MPDES permits that discharge only non-process wastewater. The proposed amendments to (8)(d) reformats the structure of the subsection by removing the list of pollutants currently in (8)(d)(i)(A) through (K) and including that list into the last sentence of (8)(d). Other amendments to (8)(d)(i) through (iii) are to proposed make the language gender neutral. The board is also proposing to add language clarifying the number of samples that must be used for a 24-hour composite sample. Finally, the board is proposing to add a new requirement for the submission of data relating to pollutants that are present in the discharge, if those pollutants are regulated by water quality standards. This new language is necessary to ensure that water quality standards are adequately considered and addressed during the application process.

The board is proposing to amend (9), which currently incorporates by reference the application requirements for concentrated animal feeding operations (CAFO) that apply for an individual permit. The proposed amendment will accomplish two objectives. First, it will correct citations to definitions that are incorrectly cited in the current text of (9). Second, it will eliminate the incorporation by reference of 40 CFR 122.21(i)(1) and replace that reference with the actual text of the federal rule. These proposed amendments are necessary to correct errors in internal citations and make more readily available to the public the specific application requirements that apply to CAFOs that are required to apply for an individual permit.

The board is proposing to amend (10), which specifies application requirements for new sources and new discharges, to make the language describing exceptions to those requirements consistent with the federal requirements in 40 CFR 122.21(k). The board is also proposing an amendment that will reformat (10)(e)(i). This amendment will not impose any new requirements, but will remove the list of pollutants in (10)(e)(i)(A) through (H) and move that list into the last sentence of (10)(e)(i). Finally, the board is proposing to add a new requirement for the submission of data relating to pollutants that are present in the discharge, if those pollutants are regulated by water quality standards. This new language is necessary to ensure that water quality standards are adequately considered and addressed during the application process.

The board is proposing to amend (11), which currently requires dischargers of storm water from certain facilities to apply for an individual permit or a general permit under subchapter 11. The current text also explains that individual permits for small municipal separate storm sewer systems (MS4s) are subject to the permit requirements in ARM 17.30.1111(1) through (18). Since general permit requirements for storm water and MS4s are addressed separately in subchapter 11, the reference to those requirements in ARM 17.30.1322, which is solely concerned with individual permit applications, is not necessary. Consequently, the board is proposing to delete the existing language in (11) and replace it with individual permit application requirements for storm water discharges, as required in 40 CFR 122.26(c). The proposed amendment to (11)(a) applies to dischargers of storm water associated with industrial activity that are required to obtain an individual permit and any other discharge that the department is evaluating for designation under subchapter 11, unless otherwise exempt under the proposed language in (11)(b), (c) or (d). The individual application requirements for storm water dischargers, provided in 40 CFR 122.26(c), including the exceptions to those requirements, are a required element of a delegated state's permit program, as specified in 40 CFR 123.25(a)(9).

The board is proposing to delete the current language in (12), which requires dischargers of storm water from certain industrial facilities to obtain coverage under a general permit or apply for an individual permit, pursuant to 40 CFR 122.26(c). Since general permit requirements for storm water dischargers are addressed separately in subchapter 11, and since the board is proposing to adopt the individual permit requirements required by 40 CFR 122.26(c) into (11), there is no need to retain these requirements in (12). Instead, the board is proposing to replace the current text of (12) with the application requirements for POTWs. Specifically, the

board is proposing to remove the application requirements for POTWs currently included under (6) and consolidate those requirements with all of the application requirements for POTWs that are required by 40 CFR 122.21(j), but currently absent from ARM 17.30.1322. This amendment is necessary to make more readily available to the public the entire list of specific application requirements that apply to POTWs.

The board is proposing to delete the current text in (13)(c) and (d) and (14)(a), which require dischargers intending to request a variance from certain effluent limitations do so by a certain date. The time periods for submitting a request under subsections (13)(c) and (d) and (14)(a) are taken from the federal Clean Water Act, which required such requests be submitted by, for (13)(c), January 30, 1988; for (13)(d), March 31, 1991; and for (14)(a), August 7, 1987. Since the timelines imposed by the federal Clean Water Act expired decades ago, the requirement to meet these deadlines serves no purpose. Given that EPA removed these particular timeframes from federal rules on June 29, 1995 (60 FR 33926), the board is proposing to remove them from Montana's rules as well.

The board is proposing to move the incorporations by reference of federal rules currently in (17) and place them in new (18). The board is then proposing to adopt the text of 40 CFR 122.21(r) into (17). The text of the federal rule being proposed for adoption in (17) applies to new cooling water intake structures and includes all of the information and application requirements that apply to these facilities. This amendment is necessary in order to be consistent with EPA's requirements for delegated states' permit programs, pursuant to 40 CFR 123.25(a)(4).

The board is proposing to incorporate and update all applicable federal rules necessary to support the provisions of ARM 17.30.1322 that were formerly in (17) and are now proposed for adoption in new (18). Some of the federal rules that are currently incorporated by reference are being eliminated, because they are no longer necessary to support the provisions of ARM 17.30.1322. The federal rules that are being omitted are the following: (1) 40 CFR 125.102, which sets forth requirements for BMP programs, is no longer necessary due to the proposed elimination of references to BMP programs from (1); (2) 40 CFR 403.5(c)(i), which establishes requirements for pretreatment programs, is not necessary because the department does not administer the federal pretreatment program; and (3) 40 CFR 122.26(c)(1), which sets forth individual permit application requirements for storm water dischargers, is no longer necessary due to the proposed adoption of those requirements into (11). The board is further proposing to add 40 CFR 412.4(c) to the list of federal rules proposed for incorporation by reference in (18), because that rule is necessary to support the CAFO application requirements in (9).

4. The rule proposed for repeal is as follows:

17.30.1303 INCORPORATIONS BY REFERENCE (75-5-304, MCA; IMP, 75-5-304, 75-5-401, MCA), located at page 17-2895, Administrative Rules of Montana. The board is proposing to repeal ARM 17.30.1303, which incorporates by reference 46 different federal rules or statutes that are included in the MPDES rules. Many of these rules and statutes are not implemented by the department under the MPDES

program because they are not a required element of a delegated state's permit program. The incorporations by reference in ARM 17.30.1303 that are a necessary component of a delegated state's permit program are already incorporated by reference into the specific MPDES rule that relies upon the federal rule. Repeal of ARM 17.30.1303 will eliminate duplication between this rule and the other MPDES rules in Title 17, chapter 30, subchapters 11 through 13.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 12, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden BY: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, July 30, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 20.9.103, 20.9.106, 20.9.110, 20.9.113, 20.9.115, 20.9.116, 20.9.117, 20.9.120, 20.9.123, 20.9.124, 20.9.128, 20.9.134, 20.9.140 and 20.9.141 pertaining to youth placement committees	))))))))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 8, 2012, the Department of Corrections proposes to repeal the above-stated rules.

2. The Department of Corrections 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 Department of Corrections no later than 5:00 p.m. on August 24, 2012, to advise us of the nature of the accommodation that you need. Please contact Linda Zander, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-3930; fax (406) 444-4920; or e-mail Lzander2@mt.gov.

3. The department proposes to repeal the following rules:

20.9.103 DUTIES OF THE YOUTH PLACEMENT COMMITTEE CHAIR

AUTH: 41-5-2006, 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, MCA

20.9.106 REFERRALS TO THE COMMITTEE

AUTH: 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, MCA

20.9.110 PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS

AUTH: 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124, 41-5-125, MCA

20.9.113 PLACEMENT RECOMMENDATION PROCEDURES

AUTH: 53-1-203, MCA
IMP: 41-5-123, 41-5-124, 41-5-125, MCA

20.9.115 CRITERIA FOR APPROVING RECOMMENDATIONS

AUTH: 53-1-203, MCA
IMP: 41-5-123, 41-5-124, 41-5-125, MCA

20.9.116 SIX-MONTH REVIEWS OF YOUTH CONTINUING IN PLACEMENT

AUTH: 53-1-203, MCA
IMP: 41-5-122, MCA

20.9.117 TEMPORARY AND EMERGENCY PLACEMENTS

AUTH: 52-1-103(17), 53-1-203, MCA
IMP: 41-5-124, 41-5-527, 41-5-528, 41-5-529, MCA

20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT OR PLACEMENT

AUTH: 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124, 41-5-125, MCA

20.9.123 EVALUATION OF JUDICIAL DISTRICTS

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2001, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, MCA

20.9.124 ACCESS TO DISTRICT RECORDS

AUTH: 41-5-2006, MCA
IMP: 41-5-215, 41-5-216, 41-5-2003, MCA

20.9.128 REPORT TO THE LEGISLATURE

AUTH: 41-5-2006, MCA
IMP: 41-5-2006, MCA

20.9.134 DISTRIBUTION OF FUNDS TO PARTICIPATING DISTRICT AT THE END OF A FISCAL YEAR

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2003, MCA

20.9.140 DISTRIBUTION OF COST CONTAINMENT FUNDS

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2006, MCA

20.9.141 COST CONTAINMENT REVIEW PANEL

AUTH: 41-5-2006, MCA
IMP: 41-5-132, MCA

STATEMENT OF REASONABLE NECESSITY: When the Montana Legislature enacted Senate Bill 46 in the 2007 session, it changed the statutory scheme for the Juvenile Delinquency Intervention Project, commonly known as JDIP. Most of the duties for which the Department of Corrections was previously responsible, were assumed by the Judicial Branch. Consequently, the administrative rules that governed the department's responsibilities were not necessary. The department proposes to repeal those rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Diana Koch, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9539; fax (406) 444-4920; or e-mail dkoch@mt.gov, and must be received no later than 5:00 p.m., September 6, 2012.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Diana Koch at the above address no later than 5:00 p.m., September 6, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 50 persons based on the number of judicial districts, the Montana judicial branch's court administration office, and the Department of Corrections.

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 Myrna Omholt-Mason, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-3911, fax (406) 444-4920, or

e-mail momholt-mason@mt.gov or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been satisfied by contacting Senator Jim Shockley by telephone and e-mail on July 24, 2012.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 30, 2012.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.207.501 examination, 24.207.504 qualifying education requirements, 24.207.517 trainee requirements, 24.207.518 mentor requirements, 24.207.2102 continuing education noncompliance and the adoption of NEW RULE I complaints involving appraisal management companies	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 31, 2012, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on August 24, 2012, to advise us of the nature of the accommodation that you need. Please contact Becky Zaharko, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2354; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdrea@mt.gov.

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

24.207.501 EXAMINATION (1) remains the same.

(2) Effective January 1, 2013, an applicant must complete all qualifying education and experience prior to taking the examination.

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

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule now to ensure compliance with new regulations promulgated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation that will become effective January 1, 2015. The board is amending this rule to implement the AQB's finding

that examination takers are better prepared to succeed on the examination when they have completed their experience prior to sitting for the test.

24.207.504 QUALIFYING AND CONTINUING EDUCATION REQUIREMENTS (1) through (2)(d) remain the same.

(e) the qualifying education course includes an examination for measuring the information learned.

(3) through (3)(b) remain the same.

(c) proprietary schools holding valid certificates of approval from ~~the state of~~ Montana; or

(d) remains the same.

(4) To apply for approval, a course provider must make application in the manner prescribed by the board and pay the proper fee 30 days prior to offering the course. The application shall include, but not be limited to:

(a) through (9) remain the same.

(10) Credit toward the classroom hour requirement may only be granted for qualifying education if the length of the educational offering is at least 15 hours and the individual successfully completes an examination pertinent to that educational offering.

(11) through (13) remain the same.

(14) A webinar is not acceptable for continuing education credit, whether or not the webinar is approved by the Appraiser Qualifications Board (AQB).

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-202, MCA

REASON: The board determined it is reasonably necessary to amend the title and text of this rule to clarify the requirements for both qualifying and continuing education courses. The board has standards and requirements for continuing education in place currently, but had not before stated them in rule. The amendments will set forth these requirements in a single location for simplicity, and will clearly differentiate between qualifying and continuing education when necessary, such as the examination required at the end of qualifying education courses, but not for continuing education courses.

The board is adding (14) to specify that the board will not allow continuing education credit for webinars. The board concluded that webinars do not ensure that licensees are paying attention to the material presented, and believes this change will help ensure that licensees are receiving the ongoing education necessary to maintain licensure. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.207.517 TRAINEE REQUIREMENTS (1) and (1)(a) remain the same.

(b) make application to the board on forms approved by the board; and

(c) have completed ~~a minimum of 50~~ 100 percent of approved qualifying education ~~including 15 hours of Uniform Standards of Professional Appraisal~~

~~Practice (USPAP) in the principles of real estate appraisal~~ prior to making application~~; and~~.

~~(d) complete the remainder of approved qualifying education hours within the next 12 months or the next renewal, whichever is greater.~~

(2) through (6) remain the same.

~~(7) A trainee shall submit two copies of two different appraisal reports the trainee completed in accordance with USPAP with the trainee's annual renewal.~~

(8) through (11) remain the same, but are renumbered (7) through (10).

(11) A trainee shall notify the board within ten days of the occurrence of any change that affects the status of the trainee-mentor relationship.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: The board is amending (1) to comply with new regulations promulgated by the AQB of the Appraisal Foundation that will become effective January 1, 2015.

The board is deleting (7) to no longer require trainees to submit two appraisal reports at renewal. Because trainees must submit appraisal reports when they apply for appraiser licensure, the board determined that requiring reports at a trainee level adds nothing to the process and does not further protect the public.

The board is adding (11) to require that trainees notify the board when a change in the mentor's status affects the trainee's supervision and ability to gain experience for licensure. The board determined this change is reasonably necessary to help ensure that trainees are supervised at all times. This amendment will also require a trainee to notify the board when the mentor is unable to supervise due to a change in the trainee-mentor relationship, such as a change in the trainee-mentor contractual or employment relationship or the incapacitation of a mentor.

24.207.518 MENTOR REQUIREMENTS (1) through (3) remain the same.

(4) The board may, in its discretion, allow a mentor to provide limited supervision to a trainee with whom the mentor has not inspected a minimum of 50 properties when:

(a) the mentor making this evaluation has personally inspected a minimum of ten properties with the trainee and supervised the trainee, with respect to all corresponding assignments;

(b) the trainee has completed a minimum of 50 assignments related to properties that were personally inspected by a licensee who was approved to be a mentor for the trainee at the time of the assignment and inspection;

(c) the mentor has evaluated all appraisal activity the trainee completed under the mentor's supervision, including the assignments involving properties which the mentor inspected with the trainee;

(d) on the basis of the mentor's evaluation of the assignments completed, while the trainee was under the mentor's supervision, the mentor has determined that the trainee is competent to perform assignments within the minimum criteria of USPAP, with limited supervision by the mentor; and

(e) the mentor and trainee request and receive approval from the board to allow the trainee to complete assignments with limited supervision.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, MCA

REASON: The board is amending this rule to allow a new mentor to take over the supervision and training of a trainee in the event that a prior mentor is unable to continue these duties. This proposal is intended to provide guidance for trainees and mentors who are involved in such transitions.

This amendment will also ensure that a trainee who has already completed 50 assignments, in conjunction with an inspection by the trainee's mentor, does not have to repeat another 50 assignments with inspections when the trainee's mentor changes. Instead, the trainee can receive limited supervision by the new mentor if the new mentor and trainee comply with these requirements and the limited supervision is approved by the board.

24.207.2102 CONTINUING EDUCATION NONCOMPLIANCE (1) remains the same.

(2) ~~Noncompliance of CE~~ Failure to comply with continuing education requirements mandated by the ~~ABQ~~ Appraiser Qualifications Board (AQB) will be reported to the ~~ASC~~ Appraisal Subcommittee (ASC) National Registry Compliance Database.

AUTH: 37-1-136, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-136, MCA

REASON: The board is amending this rule to align with the AQB requirement that any failure to comply with mandatory continuing education be reported to the national registry. This change was prompted by an AQB audit that suggested the board's previous practice of reporting continuing education issues only when complaints against licensees had been fully adjudicated, was not compliant with AQB guidelines. The amended language will clarify to licensees that the board will report to the national registry database any failure to comply with continuing education requirements.

4. The proposed new rule provides as follows:

NEW RULE I COMPLAINTS INVOLVING APPRAISAL MANAGEMENT COMPANIES (1) The board may share complaints and other information about an appraisal management company with other regulators of the appraisal management company.

(2) An appraisal management company shall report a potential Uniform Standards of Professional Appraisal Practice (USPAP) violation to the board within 30 days of discovering the potential violation.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-1-136, 37-54-507, MCA

REASON: The 2011 Montana Legislature enacted Chapter 270, Laws of 2011 (HB 188), which provided for regulation of appraisal management companies and the relationships between appraisal management companies and appraisers. The bill was signed by the Governor on April 22, 2011, and became effective October 1, 2011. The board is proposing New Rule I to address reporting of complaints involving appraisal management companies and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdrea@mt.gov, and must be received no later than 5:00 p.m., September 10, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.realestateappraiser.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdrea@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
JENNIFER MCGINNIS, CERTIFIED GENERAL, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2012

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII pertaining to state-owned navigable waterways	)))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION

To: All Concerned Persons

1. On June 21, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-144 regarding the notice of public hearing on the proposed adoption of the above-stated rules at page 1225 of the 2012 Montana Administrative Register, Issue Number 12.

2. A public hearing was held on July 11, 2012, in the Director's Conference Room at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules. The department is extending the comment period to allow the public more time to comment on the proposed rulemaking. The extended comment period will run concurrently with the public scoping being conducted for the rulemaking and will run through 5:00 p.m. on August 31, 2012.

3. The Department of Natural Resources and Conservation 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 Department of Natural Resources and Conservation no later than 5:00 p.m. on August 23, 2012, to advise us of the nature of the accommodation that you need. Please contact Jessica Jenewein, Department of Natural Resources and Conservation, PO Box 201601, Helena, Montana, 59620; telephone (406) 444-3544; fax (406) 444-2684; or e-mail jjenewein@mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Jessica Jenewein, Department of Natural Resources and Conservation, PO Box 201601, Helena, Montana, 59620; telephone (406) 444-3544; fax (406) 444-2684; or e-mail jjenewein@mt.gov, and must be received no later than 5:00 p.m. on August 31, 2012.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on July 30, 2012.

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

In the matter of the adoption of New Rules I through XI pertaining to licensing of specialty hospitals	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 29, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 22, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to establish the general requirements for the licensure of specialty hospitals. These rules outline the process for application, including the submission of results of an impact study; and the development and implementation of charity care policies for the nondiscrimination of persons who are unable to pay for health care services provided in specialty hospitals.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-121, 50-5-245, 50-5-246, MCA

NEW RULE II SCOPE (1) A specialty hospital is a subclass of a hospital that is intended to diagnose, care, or treat patients with:

(a) cardiac conditions;

(b) orthopedic conditions;

(c) patients undergoing surgery; or

(d) patients being treated for cancer-related diseases and receiving oncology services.

(2) A specialty hospital is subject to the general requirements applicable to all hospitals and must be licensed according to the rules as outlined in this subchapter.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-101, 50-5-245, MCA

NEW RULE III DEFINITIONS (1) "Administrator" means the individual responsible for the day-to-day operations of a specialty hospital. This individual may also be known as, but not limited to, "chief executive officer," "executive director," or "president."

(2) "Charity care" means provision of services to those who are unable to pay. This includes all of the under reimbursed costs of caring for low income patients who either are enrolled in a government program, such as Medicaid, or those who are uninsured, or underinsured.

(3) "Emergency care services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(4) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the person's health would be in serious jeopardy;

(b) the person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(5) "Impact study" means the examination and analysis of the financial and operational effects of a proposed specialty hospital on existing health care facilities in the service area.

(6) "Independent consultant" means an individual or group of individuals who for a fee examine and analyze the financial and operational impacts of a proposed specialty hospital on existing health care facilities in the service area. In order to be deemed an independent consultant, the individual or group of individuals must not be an employee of, not otherwise related to, or affiliated with the owners or operators of a proposed specialty hospital or an existing health care facility in the service area.

(7) "Joint venture relationship" means an express or implied agreement or contract between two or more parties to create the joint venture.

(8) "Service area" means that geographic location in which local residents are the primary recipients of provided specialty hospital services. A nonresident is not prohibited from receiving services from the specialty hospital.

(9) "Transfer of care" means relocating an individual to the care of another health care facility or health care provider when an adequate continuum of care is not possible.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-101, 50-5-121, 50-5-245, 50-5-246, MCA

NEW RULE IV GENERAL REQUIREMENTS (1) A specialty hospital must comply with the requirements under 42 CFR 482.2 through 482.62. The department adopts and incorporates by reference 42 CFR 482.2 through 482.62 as revised on May 16, 2012, which set forth the Centers for Medicare and Medicaid Services Conditions of Participation for Hospitals as the standard for the operation of specialty

hospitals in Montana. A copy of 42 CFR 482.2 through 482.62 may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-103, 50-5-245, MCA

NEW RULE V IMPACT STUDY (1) As indicated in [NEW RULE VI] a condition of application for a proposed specialty hospital is that it must conduct an impact study that analyzes the financial and operational impacts of the proposed specialty hospital on existing health care facilities in the service area. The impact study must be completed prior to submitting the application for licensure.

(2) The applicant for a proposed specialty hospital:

(a) must provide the department with an overview of the proposed specialty hospital including, but not limited to:

(i) type of services to be provided in the proposed specialty hospital;

(ii) the number and type of patients or residents for which care is to be provided; and

(iii) the number of employees in all job classifications.

(b) must provide to the department a list of independent consultants who could conduct the impact study; and

(c) pay the costs of that study.

(3) The department must provide for an opportunity for public comment and participation, including opportunity to comment on the list of consultants, into the study process. Prior to designating an independent consultant to conduct the impact study, the department will afford the public an opportunity to provide comment on the independent consultants and scope of the impact study. At the discretion of the department, a public meeting may be held in lieu of a formal hearing as an additional means of soliciting public comment.

(4) The department will determine the scope of the impact study. After the department approves the consultant, the scope of the study will be finalized. The study will assess the potential positive and adverse impacts on access to the health care system in the applicant's service area. The scope of the study may include, but is not limited to:

(a) the impact on health care costs in the service area;

(b) the impacts on access to emergency care, mental health care, and other subsidized services provided in the proposed service area;

(c) the operational impacts upon existing health care facilities; and

(d) the need for the services proposed in the health service area.

(5) The independent consultants utilized in these studies must:

(a) have the necessary resources to conduct and complete the impact study within the required timeframes;

(b) not allow the results of the study or the manner in which the study is conducted to be controlled by the proposed specialty hospital applicant or members of the joint venture;

(c) address all areas designated within the scope of the study; and

(d) prepare a written report documenting the findings of the impact study which the applicant will submit to the department with the license application.

(6) The impact study must be completed within 180 days of the date the department finalizes the scope.

(7) If as a result of the impact study, the department finds that a proposed specialty hospital will have an adverse influence on an existing hospital or to the community's health care delivery system, the department will:

(a) impose conditions to mitigate the adverse effect; or

(b) deny the request for license.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-245, 50-5-246, MCA

NEW RULE VI LICENSE APPLICATION PROCESS (1) Application for a specialty hospital must be made on an application form provided by the department. At least 30 days prior to the opening of a facility, an applicant must submit to the department:

(a) a completed license application form which must contain the following information:

(i) the name and address of the applicant if an individual; the name and address of each member of a firm, partnership, or association; or the name and address of each officer if a corporation;

(ii) the location of the proposed specialty hospital facility;

(iii) the name of the person or persons who will administer, manage, or supervise the specialty hospital facility;

(iv) the number and type of patients or residents for which care is to be provided;

(v) the number of employees in all job classifications;

(vi) a copy of the contract, lease agreement, or other document indicating the person legally responsible for the operation of the specialty hospital facility if the specialty hospital is operated by a person other than the owner;

(vii) the designated name of the specialty hospital to be licensed; and

(viii) the owner or operator of a health care facility must sign the completed license application form.

(b) the results of an impact study showing the analysis of the financial and operational impacts of the proposed specialty hospital on existing health care facilities in the area;

(c) each application form must be accompanied by the applicable license fee:

(i) $20.00 license fee for a specialty hospital with 20 beds or less;

(ii) $1.00 per bed license fee for a specialty hospital with 21 beds or more.

(2) The department will renew the license for a period of one to three years if the specialty hospital:

(a) makes written application for renewal on an application form provided by the department at least 30 days prior to the expiration date of its current license;

(b) meets the minimum licensure standards; and

(c) employs or contracts with existing or proposed qualified staff adequate to operate the facility.

(3) On receipt of a new or renewal license application, the department or its authorized agent will inspect the specialty hospital to determine if the proposed staff is qualified and the facility meets the minimum standards set forth in this subchapter. If minimum standards are met and the proposed staff is qualified, the department will issue a license for a period of one to three years.

(a) The department may issue a provisional license for a period of less than one year if continued operation of the specialty hospital will not result in undue hazard to patients or if demand for the accommodations offered is not met in the community.

(4) A patient may not be admitted or cared for in a specialty hospital unless the facility is licensed.

(5) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.

(6) The designated name of the specialty hospital may not be changed without first notifying the department in writing.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-111, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-245, 50-5-246, MCA

NEW RULE VII FACILITY TRANSFER OF CARE AGREEMENT (1) Prior to accepting patients, a specialty hospital must have in place a signed transfer care agreement with a hospital capable of providing emergency care services. A specialty hospital must also have written policies that result in medically appropriate transfers.

(2) Prior to transferring a patient from a specialty hospital, the specialty hospital must:

(a) notify the receiving hospital before the patient is transferred and receive confirmation from the receiving hospital that services necessary to treat the patient are available;

(b) use medically appropriate life support measures to stabilize the patient before the transfer and to sustain the patient during the transfer;

(c) transfer all necessary records for continuing the care for the patient; and

(d) in cases of nonemergent care services ensure that the patient or legally responsible person acting on the patient's behalf are informed of the risk and benefit of transfer.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-122, 50-5-245, MCA

NEW RULE VIII ADMINISTRATOR (1) Each specialty hospital must have an administrator who:

(a) maintains daily overall responsibility for the facility operations;

(b) develops and oversees the implementation of all policies and procedures pertaining to the operation of the specialty hospital;

(c) establishes written policies and procedures for all facility human resource services;

(d) establishes a process for patient complaints and grievances;

(e) establishes a patient incident report file on all patient incidents or allegation of abuse;

(f) develops and maintains an organizational chart that delineates the current lines of authority, responsibility, and accountability for the administration and provision of all facility patient treatment programs and services; and

(g) develops and implements written orientation and training procedures on all facility policies and procedures for all employees or contractors, relief workers, temporary employees, students, interns, volunteers, and trainees to include, but not limited to:

(i) defining responsibilities, limitations, and supervision of students, interns, and volunteers working for the specialty hospital; and

(ii) verifying each professional staff member's credentials, when hired, and annually thereafter, to ensure the continued credentialing of required licenses.

(2) The administrator must develop policies and procedures for screening, hiring, and assessing staff which include practices that assist the employer in identifying employees that may pose a risk or threat to the health, safety, or welfare of any resident and provide written documentation of findings and the outcome in the employees file.

(3) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility during the administrator's absence. The administrator or designee must be in charge, on call, and physically available on a daily basis as needed, and must ensure there are sufficient, qualified staff so that the care, health, safety, and welfare needs of the patient are met at all times.

(4) If the administrator is absent for more than 30 calendar days, the department must be given written notice of the individual who has been appointed as the designee.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-103, MCA

NEW RULE IX CHARITY CARE POLICY (1) Every specialty hospital must have a charity care policy that is actively implemented. The charity care policy should reflect the organization's mission statement, organizational goals and objectives, and legal and resource constraints.

(2) A specialty hospital devising a charity care policy should clearly identify the difference between charity care and bad debt.

(3) For any specialty hospital that has a For Profit tax status, the facility's charity care policy must be commensurate to the policies which exist for any nonprofit hospital in the community.

(4) In addition to (1), the charity care policy criteria should include a mixture of the following factors:

(a) individual or family income or net worth;

(b) employment status and earning capacity;

(c) family size;

(d) other financial obligations;
(e) other sources of payment for the services rendered;
(f) type of services provided, whether elective or emergency;
(g) costs to provide services exceeds third-party payments for services; and
(h) in the case of emergency department visits only, failure of the patient to cooperate with billing inquiries when the patient lives in a zip code known to have a per capita income below the federal poverty level.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-121, 50-5-245, MCA

NEW RULE X JOINT VENTURE RELATIONSHIP REQUIREMENTS
(1) Each specialty hospital must have a joint venture relationship with a hospital or a signed statement from a nonprofit hospital in the community acknowledging that the hospital declined a bona fide, good faith opportunity to participate in a joint venture with the specialty hospital applicant.
(2) To qualify as a joint venture, the agreements must contain the following four elements:
(a) an express or implied agreement or contract creating and defining the joint venture;
(b) a common purpose among the parties;
(c) community of interest; and
(d) equal right to control of the venture.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-245, MCA

NEW RULE XI LICENSE DENIAL (1) The department may deny an application for a specialty hospital as a result of an adverse impact study or for any reason as outlined in 50-5-207, MCA.
(2) If an application for a specialty hospital is denied for any reason, the department will issue a written denial of the license, the grounds for denial, and the right to an appeal pursuant to 50-5-208, MCA.
(3) A decision to deny an application or to impose conditions upon an applicant or licensee may be appealed by filing a request for a hearing, in writing, to the department's Office of Fair Hearings.
(4) Hearing requests must be received by the Office of Fair Hearings at P.O. Box 202953, 2401 Colonial Drive, Third Floor, Helena, MT 59620-2953, within 30 days after the date of mailing of notice of the department's decision.

AUTH: 50-5-103, 50-5-245, MCA
IMP: 50-5-207, 50-5-208, 50-5-245, 50-5-246, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing the adoption New Rules I through XI pertaining to minimum licensing standards for specialty hospitals. Senate Bill 446 passed by the

2009 Legislature, (Ch. 456, L. 2009) revised hospital laws to provide licensing requirements for specialty hospitals. The proposed rules address the provisions of the legislation by addressing the scope and purpose of the rules, the general requirements for a specialty hospital, the required impact study requirements, license application and denial requirements, transfer of care agreements, charity care policy, and joint venture requirements.

Section 50-5-245, MCA, requires the department to adopt rules governing the qualifications for licensure of specialty hospitals. These proposed licensure rules provide the minimum licensing standards for specialty hospitals specifically while coordinating with the provisions of Title 50, chapter 5, parts 1 and 2, MCA. In addition to being required by statute, the rules are necessary to inform potential specialty hospital applicants of the expectations necessary in order to be licensed.

The department considered several approaches to licensing specialty hospitals including modifying existing minimum standards for hospital rules. This option was rejected because of the statutory requirements specific to specialty hospitals are not applicable to other hospitals. The department determined that combining the requirements would cause confusion between hospital types and therefore is proposing new rules specific to specialty hospitals.

New Rule I

This rule is necessary to provide an overview of the requirements for licensure of specialty hospitals.

New Rule II

This rule is necessary to identify the scope of specialty hospitals and to indicate that specialty hospitals need to comply with the general licensing requirements in addition to those licensing requirements specific to specialty hospitals. Requiring specialty hospitals to comply with these licensing requirements ensures the hospital meets the minimum standards in providing care and a safe environment for the hospital's patients, staff, and visitors.

New Rule III

This rule is necessary to define the terms used in the rules that are not defined in statute. This ensures that all involved are exposed to the meaning of the terms used thereby creating a clearer understanding of the intent of the rules.

New Rule IV

This rule is necessary to indicate that specialty hospitals comply with the Centers for Medicare and Medicaid Services Conditions of Participation for Hospitals as the standard for the operation of specialty hospitals. These conditions are necessary in the interest of the health and safety of the individuals who are furnished services in

hospitals. By requiring compliance with these conditions, there is no variation between the general requirements of hospitals and specialty hospitals.

New Rule V

This rule is necessary to identify the process and information that is required for the department to make an informed decision regarding the impact a specialty hospital will have on an existing hospital or the community's health care delivery system. Without the impact study, the department has no knowledge of the feasibility of an area supporting multiple facilities and what multiple facilities will do to the provision of services in an area.

New Rule VI

This rule is necessary to identify the process for licensing a specialty hospital. An entity seeking licensure must know the expectations required in order to apply for and maintain a specialty hospital license.

New Rule VII

This rule is necessary to indicate that the specialty hospital has made arrangements to provide emergency care services in the event that the patient is not able to receive the necessary care at the specialty hospital. Without the transfer of care agreement in place, the patient's level of care may be negatively impacted.

New Rule VIII

This rule is necessary to ensure that there is a clear designation of authority regarding the administration of the specialty hospital. By providing this designation, the operation of the specialty hospital is overseen by an individual who is responsible for ensuring that the requirements necessary to ensure the safe operation of the facility are met and maintained.

New Rule IX

This rule is necessary to ensure that specialty hospitals actively implement a charity care policy comparable to other nonprofit hospitals in the area. If the specialty hospital is not required to operate using the same level of charity care, the existing facilities in the area may be at an economic disadvantage and the facilities may not be able to provide similar levels of care to their patients.

New Rule X

This rule is necessary to indicate that the existing hospital in the community was afforded the opportunity to participate in the establishment of the specialty hospital. By providing the joint venture relationship requirement, the existing facility may opt in or out of being involved in the operation of another facility that may be providing

similar services, thereby providing the potential for financial and operational competition.

New Rule XI

This rule is necessary to indicate that not all specialty hospital applicants will be eligible for licensure by the department. This rule identifies for the applicant the possible reasons for licensure denial and the appeal process. The possible reasons for denying licensure must be identified so applicants are made aware that a license is not guaranteed. If an applicant is not licensed, the department must provide the opportunity to appeal the decision in order to not violate the applicant's rights.

Fiscal Impact

There is no fiscal impact due to 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 6, 2012.

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 must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 20, 2012.

/s/ Kurt R. Moser
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 30, 2012.

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

In the matter of the amendment of ARM 37.87.903 pertaining to changing prior authorization requirements and adopting a new utilization review manual	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 29, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building,111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 22, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

(2) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (Service Matrix) effective August 1, 2011. A copy of the service matrix may be obtained from the department ~~or at www.mt.medicaid.org~~.

(3) Prior authorization and continued authorization by the department or its designee is required for the following services:

(a) ~~individual or family~~ outpatient therapy services ~~in excess of 24 sessions per state fiscal year, subject to such additional limitations for outpatient therapy services as may be set forth in the Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted at ARM 37.87.901. This rule does not apply to a session with a physician or midlevel practitioner for the purpose of medication management~~ concurrent with therapeutic youth group services;

(b) remains the same.

(c) ~~therapeutic family care (TFC) and~~ therapeutic foster care (TFOC) services in accordance with ~~ARM 37.87.1021, 37.87.1023, and 37.87.1025 and~~ ARM Title 37, chapter 51;

(d) remains the same.

(e) ~~psychiatric~~ hospital for psychiatric treatment and partial psychiatric hospital services defined in ARM 37.86.2901 and 37.86.3001; and

(f) and (4) remain the same.

~~(5) Prior authorization and continued authorization by the department or its designee is not required for targeted case management.~~

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

~~(7)~~(6) The department may waive a requirement for prior authorization or continued authorization when ~~the provider submits documentation that~~:

(a) the provider submits documentation that:

~~(a)~~(i) there was a clinical reason why the request for prior authorization or continued authorization could not be made at the required time, and the provider submitted a subsequent authorization request within ten business days; or

~~(b)~~(ii) a timely request for prior authorization or continued authorization was not possible because of a failure or malfunction of the department's or its designee's equipment that prevented the transmittal of the request at the required time and the provider submitted a subsequent authorization request within ten business days.

(b) computing the time for any request provided for in this subchapter includes weekends and holidays. If a deadline falls on a weekend or holiday, the deadline is the next business day.

(c) the department finds exceptional circumstances that reasonably justify a provider's failure to timely request prior authorization or continued authorization, it may extend the deadline for meeting the requirement.

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

~~(9)~~(8) Review of authorization requests and retrospective reviews by the department or its designee will be made with consideration of the department's clinical management guidelines. The department adopts and incorporates by reference the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management dated ~~August 1, 2011~~ October 1, 2012. A copy of the manual ~~can~~ may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at www.dphhs.mt.gov/mentalhealth/children/index.shtml.

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

~~(11)~~(10) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and ~~consumers~~ interested persons.

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

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.87.903 pertaining to Medicaid authorization for mental health services for youths. The Children's Mental Health Bureau (CMHB) recently completed the procurement of a new Medicaid utilization review (UR) contract. These proposed amendments are necessary to align the rule with the new utilization review contract, which becomes effective October 1, 2012, CMHB is proposing to update the current provider manual, "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" dated August 1, 2011 and the administrative rule language. The proposed changes to ARM 37.87.903 are described below.

Effective October 1, 2012, the CMHB will no longer require prior authorization for some of the children's mental health services provided through Medicaid funding. In order to give providers clear guidance in documenting medical necessity in the record, which is subject to retrospective reviews, the CMHB has worked with the UR contractor and providers to review and update the medical necessity criteria. The updated medical necessity criteria and prior authorization requirements will be adopted and incorporated by reference, in the proposed provider manual, "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" dated October 1, 2012. This manual may be found at the following web site: www.dphhs.mt.gov/mentalhealth/children/index.shtml.

The department is proposing to add language in the rule defining deadlines for submission of authorizations and continued authorizations that fall on weekends or holidays. The new language will also allow the department more discernment when determining the deadline for submission of requests for authorizations and continued authorizations for which extenuating circumstances exist.

The CMHB has also rewritten the appeal process in the proposed provider manual in order to be in compliance with administrative rule. The proposed language aligns the department's current appeal process with administrative rule.

Fiscal Impact

There is no fiscal impact due to this proposed rulemaking.

5. The department intends the proposed rule changes to be applied effective October 1, 2012. There will be no detrimental effects if the amendments are applied retroactively.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 6, 2012.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 30, 2012.

BEFORE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3727 pertaining to the administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 21, 2012, the Department of Commerce published MAR Notice No. 8-94-104 pertaining to the proposed amendment of the above-stated rule at page 1166 of the 2012 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A comment was received – in the form of a question to staff – that it was unclear what had been changed in the guidelines, and therefore it was difficult to provide comment.

RESPONSE #1: There were three major changes made to the Community Development Block Grant (CDBG) guidelines for the 2012 fiscal year. One change was to increase the maximum amount of grant funds that could be requested, from $20,000 to $30,000 per applicant; the second change was to reduce the amount of local match required to receive grant funds, from a 1:1 matching requirement to a 1:3 matching requirement; and the third change was to clarify, under eligible activities, that historic preservation studies could include a downtown revitalization plan. Beyond these three changes, minor grammatical changes were made throughout the document, and contact information was updated.

COMMENT #2: A comment was received from the City of Helena that they (the city) were in support of the proposed increase in grant funding, as well as the reduction in the match requirement. However, there was concern that by reducing the match amount, the grant funding would not go as far because there would be less of a financial commitment expected for a larger amount of money. This change was still viewed as positive in that it would provide jurisdictions with less cash on hand the opportunity to complete projects they would have otherwise been unable to fund.

RESPONSE #2: Previous CDBG guidelines allowed for up to $20,000 in grant funding with a minimum of $20,000 in local match; this would typically result in a total of $40,000 available for a planning project, between grant award and match. With the changes to the new guidelines, the increase in possible grant funding and

the decrease in local match required still come to $40,000, if the applicant were to request the maximum amount of funding available. The change enables grantees to access more money and continue to pay for larger planning projects, even if limited matching funds are available.

COMMENT #3: A subsequent comment was received from the City of Helena expressing concern that in-kind match is no longer eligible; they (the city) feels this may overburden smaller communities who do not have cash on hand to serve as match for grant funding.

RESPONSE #3: The decision to eliminate in-kind as an acceptable form of match was, in part, the result of communities having difficulties tracking and verifying their in-kind hours for match; this is reflected in the State of Montana 2012 Annual Action Plan. In addition to cash match, grant recipients have the option to match funds through loan programs and, in some cases, may utilize other grant funding as viable match. Grant recipients having difficulty with the match requirements may request a waiver to reduce or waive the match requirement entirely, due to extreme financial hardship.

COMMENT #4: Two similar comments were received from Rocky Mountain Development Council (RMDC) staff echoing the comments submitted by the City of Helena supporting the increase in the amount of funding available, especially with the rising cost of architectural and engineering studies. RMDC staff were also in support of the reduction in required local match, but suggested match be reduced even further – possibly down to 1:4 – due to uncertainty of funding options for local government entities.

RESPONSE #4: The decision to reduce the amount of match required from 1:1 down to 1:3 was a reflection of the guidance provided in the State of Montana 2012 Annual Action Plan.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State July 30, 2012.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a temporary emergency rule closing Cooney Reservoir in Carbon County	)))	NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) The Skibstad wildfire is burning near Columbus, Montana.

(b) Fire suppression efforts include several helicopters bucketing water from Cooney Reservoir.

(c) The closure is necessary so helicopter crews can safely operate and maneuver without potential collisions with recreationists on the river. The closure is also necessary so recreationists, including those with limited maneuverability, are not subject to potential collision with large, heavy water buckets suspended from helicopters.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 15 of the 2012 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 31, 2012, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective July 26, 2012, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

<u>RULE I COONEY RESERVOIR TEMPORARY EMERGENCY CLOSURE</u>

(1) Cooney Reservoir is located in Carbon County.

(2) Cooney Reservoir is closed to all public occupation and recreation including, but not limited to, floating, swimming, wading, and boating.

(3) This rule is effective as long as the reservoir is needed as a source of water for fire suppression efforts.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule is in effect as long as the reservoir is needed as a source of water for fire suppression and the department determines Cooney Reservoir is again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Posted signs regarding the emergency closure will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Roger Semler, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, MT 59620-0701; fax (406) 444-4952; or e-mail rsemler@mt.gov. Any comments must be received no later than September 14, 2012.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Acting Director
Department of Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State July 26, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.902 and 17.24.903 pertaining to general performance standards and adoption of New Rule I pertaining to rules not applicable to in situ coal operations	))))))	NOTICE OF AMENDMENT AND ADOPTION (RECLAMATION)

TO: All Concerned Persons

1. On May 24, 2012, the Board of Environmental Review published MAR Notice No. 17-333 regarding a notice of proposed amendment and adoption of the above-stated rules (no public hearing contemplated) at page 1027, 2012 Montana Administrative Register, issue number 10.

2. The board has amended ARM 17.24.902 and 17.24.903 and adopted New Rule I (17.24.905) exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, July 30, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 20.7,110, 20.7.111, 20.7.112, and 20.7.113 pertaining to the boot camp incarceration program	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Corrections transfers the above-stated rules to the Department of Corrections, Title 20, chapter 7, subchapter 12.

2. This transfer is required because the prior assignment of the boot camp incarceration program rules in subchapter 1 did not accurately reflect the correct subchapter placement.

3. The transferred rules are assigned the following numbers under the Department of Corrections:

OLD	NEW	
20.7.110	20.7.1201	SCREENING COMMITTEE
20.7.111	20.7.1202	PROGRAM REQUIREMENTS AND REVIEW
20.7.112	20.7.1203	TERMINATION FROM THE PROGRAM
20.7.113	20.7.1204	CERTIFICATION BY THE DEPARTMENT THAT THE OFFENDER HAS SUCCESSFULLY COMPLETED THE PROGRAM

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 30, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
AND THE BOARD OF PARDONS AND PAROLE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 20.2.208, 20.2.209, 20.2.210, 20.2.211, 20.2.212, and the amendment of ARM 20.25.101, 20.25.103, 20.25.201, 20.25.202, 20.25.305, 20.25.306, 20.25.307, 20.25.401, 20.25.402, 20.25.501, 20.25.505, 20.25.506, 20.25.601, 20.25.701, 20.25.702, 20.25.704, 20.25.801, 20.25.901. 20.25.901A, 20.25.902, and 20.25.904 pertaining to the Department of Corrections and the Board of Pardons and Parole	)	NOTICE OF REPEAL AND AMENDMENT

TO: All Concerned Persons

1. The Department of Corrections and the Board of Pardons and Parole has repealed and amended the above-stated rules.

2. The Department of Corrections has repealed the following rules:

20.2.208 ON-SITE HEARING FOR PAROLE VIOLATION - NOTICE

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.209 ON-SITE HEARING FOR PAROLE VIOLATION - NOTICE AND WITNESSES

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.210 ON-SITE HEARING FOR PAROLE VIOLATION - HEARING

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.211 ON-SITE HEARING FOR PAROLE VIOLATION – FINDING

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.212 ON-SITE HEARING FOR FURLOUGH VIOLATION

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

3. The amended rules pertaining to the Board of Pardons and Parole provide as follows:

20.25.101 ORGANIZATION OF THE BOARD (1) The board is a quasi-judicial body and is administratively attached to the Department of Corrections. The board consists of seven members who are appointed by the governor. The board shall administer executive clemency and parole processes and procedures, and ensure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based.

(2) through (9) remain the same.

AUTH: 46-23-218, MCA
IMP: 2-15-121, 2-15-124, 2-15-2302, 46-23-104, MCA

20.25.103 DISSEMINATION OF INFORMATION (1) through (10) remain the same.

(11) An offender may request to view his/her individual parole file by making a request in writing. Board staff will provide the offender an opportunity to inspect the file except for information deemed confidential. An offender may not request to view his/her file any more frequently than annually unless extenuating circumstances exist. If the offender making the request has previously reviewed his/her file, only the information added to the file since the previous review will be provided unless the offender presents circumstances that justify a complete review.

(12) The board may charge 10 cents per page for each page the board produces.

AUTH: 46-23-218, MCA
IMP: 2-6-102, 44-5-311, 46-18-243, 46-23-110, 46-23-202, MCA

20.25.201 OBJECTIVES (1) The principal objective of the board is to affect the release from confinement of appropriate eligible offenders before the completion of the full term of commitment while still fully protecting society. A hearing panel may only grant a release when, in the panel's opinion, there is a reasonable probability it can release the offender without detriment to the offender or the community. When a hearing panel grants a release the offender is subject to the conditions imposed by the panel and the supervision authorized by governing statutes, rules, and policies of the department. The board will conduct business fairly and consistently and the board's hearing panels will base decisions on public safety concerns, successful offender reentry, and sensible use of state resources.

(2) An offender must serve the statutorily or court-imposed amount of time before the board may consider the offender for release. Release before the offender serves the entire sentence is a privilege, not a right. A hearing panel may only grant

a release for the best interest of society and when the panel believes the offender is able and willing to fulfill the obligations of a law-abiding citizen and not as an award of clemency or a reduction of sentence or pardon.

(3) If the department, after it utilizes its screening process, transfers an offender from prison to prerelease or a community-based treatment program before the offender is eligible for parole, when the offender becomes eligible for parole, a hearing panel, after review of the entire offender file or summary, will conduct an impartial hearing.

(4) remains the same.

AUTH: 46-23-218, MCA
IMP: 46-23-201, MCA

20.25.202 DEFINITIONS For the purposes of this chapter, these definitions apply:

(1) through (3) remain the same.

(4) "Dead time" means the time an offender is not serving his/her sentence of incarceration because a hearing panel has determined the offender was in violation of the provisions of release.

(5) "Department" means the Department of Corrections as authorized in 2-15-2301, MCA.

(6) remains the same.

(7) "Hearing" means the personal appearance of an offender before a hearing panel for release consideration, executive clemency, or revocation.

(8) "Hearing panel" means two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, administrative parole reviews, and to make final decisions and recommendations in matters of executive clemency.

(9) "Offender" means any person sentenced by a state district court to a term of confinement in a state correctional institution, committed to the director of the Department of Public Health and Human Services, or committed to the department.

(10) "Parole" means the release to the community by a decision of a hearing panel prior to the expiration of the offender's sentence, subject to conditions imposed by the hearing panel and subject to the supervision of the department.

(11) "Parolee" means a person whom a hearing panel has granted parole, who has signed the rules of parole and been given a parole certificate, and whose parole has not been revoked.

(12) "Parole certificate" means the document signed by the board chair and executive director authorizing the release from confinement to parole.

(13) and (14) remain the same.

(15) "Rescission" means an action of a hearing panel that annuls or voids a prior release decision.

(16) through (20) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-103, 46-23-104, 46-23-218, MCA

20.25.305 ELIGIBILITY (1) An offender in a state prison, the state hospital, the Montana Developmental Center, or the Montana Mental Health Nursing Care Center, or an offender who is sentenced to the state prison or committed to the department and who has been transferred from the prison to a prerelease center, or a youth who was sentenced to prison pursuant to 41-5-206, MCA, and is confined in a youth correctional facility is eligible for parole unless the offender is under a sentence of death, the sentencing court has made the offender ineligible for parole, or the offender is ineligible for parole by operation of statute. The department shall receive parole eligibility dates for eligible offenders as calculated by the department pursuant to statutory and court-imposed criteria.

(a) through (c) remain the same.

(2) If the offender receives a consecutive sentence after reception at prison, but before a hearing panel makes an initial ruling on the offender's parole on the original sentence, parole eligibility is determined on the statutory or court-imposed criteria based on the aggregate sum of the original sentence and the consecutive sentence.

(3) If the offender receives a consecutive sentence after reception at prison and after a hearing panel makes an initial ruling on the offender's parole on the original sentence, the offender will not be eligible for parole on the consecutive sentence until the offender discharges the original sentence, unless a hearing panel orders otherwise. However, the offender remains eligible for parole consideration in regard to the original sentence. A hearing panel may allow commencement of the consecutive term for purposes of calculating parole eligibility. If a hearing panel allows commencement of the consecutive term, it only changes the parole eligibility calculation, but does not shorten the consecutive term.

(4) An offender who waives his/her parole hearing will have a mandatory parole hearing within six months unless an extended period is necessary as determined by facility staff and approved by board staff, for a period not to exceed one year. The hearing month will be automatically set and the offender will come before a regularly scheduled hearing panel, unless the offender requests a hearing prior to this date and provides at least 30 days written notice to the board. The board, through its staff, will review all waivers for legitimacy and may accept or reject any waiver. An offender may voluntarily waive two consecutive parole hearings for up to 12 months each time.

(5) Unless a hearing panel otherwise orders, before an offender in a community-based program appears before the board, the offender must have at least 90 days free of severe (Class 100) or major (Class 200) disciplinary violations. An offender in a secure facility must have 120 days free of major disciplinary violations.

(6) Unless a hearing panel otherwise orders, an offender incarcerated at a prison must be classified and have been living in an assigned housing unit for a minimum of 60 days before the offender may appear for parole consideration.

AUTH: 46-23-218, MCA
IMP: 46-23-201, 46-23-218, MCA

20.25.306 PAROLE PLAN (1) remains the same.

(2) Each offender who applies for a grant of parole should prepare a comprehensive release plan for the panel's consideration. The parole plan should include the following:

(a) through (d) remain the same.

(3) Substantial changes in the parole plan that is submitted at the time of the parole hearing must be reviewed and approved by the hearing panel.

AUTH: 46-23-218, MCA
IMP: 46-23-215, 46-23-216, MCA

20.25.307 MEDICAL PAROLE (1) Except for an offender under sentence of death or of life imprisonment without the possibility of parole, a hearing panel may release on medical parole:

(a) remains the same.

(b) a Montana offender confined in prerelease or other community corrections program; or

(c) an offender for whom the court has restricted parole for a number of years under 46-18-202(2), MCA, but who has obtained the approval of the sentencing court. If the sentencing court does not respond within 30 days to a written request for medical parole consideration from the department, the offender is considered to be approved by the court for medical parole.

(2) remains the same.

(3) The diagnosis must be reviewed and accepted by the department's medical director or designee before a hearing panel may hear the case for medical parole.

(4) In order to grant a medical parole a hearing panel must find:

(a) and (b) remain the same.

(5) In considering whether an offender is likely to pose a detriment to the victim or community, a hearing panel may consider:

(a) through (g) remain the same.

(6) In determining whether to grant or deny an application for medical parole, a hearing panel may consider whether:

(a) through (f) remain the same.

(7) The hearing panel shall require as a condition of medical parole that the offender agree to placement in a setting chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The hearing panel may require as a condition of parole that the offender agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the offender's physical capacity has improved to the extent that the offender is likely to pose a possible detriment to society, a hearing panel may revoke the medical parole and return the offender to the custody of the department.

(8) Prior to the medical parole hearing, the board, through its staff, shall gather for a hearing panel's deliberations, all pertinent information on the offender, including but not limited to the nature of the offense, social history, criminal history,

institutional performance, and any medical and mental examinations which may have been made while in custody.

(9) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, a hearing panel may consider the offender for nonmedical parole according to the rules established for nonmedical parole consideration.

(10) remains the same.

(11) If a hearing panel denies the application, the department may not accept another application regarding the same offender, unless the offender's medical condition has deteriorated to such a degree that the factors previously considered by the hearing panel are affected.

(12) and (13) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-210, MCA

20.25.401 HEARING PROCEDURE (1) An eligible offender may apply and come before a hearing panel or an out of state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender including:

(a) through (c) remain the same.

(d) reports of any physical, psychological, and mental health evaluations done on the offender.

(2) The presiding hearing panel member shall conduct hearings informally and shall have discretion to allow or not allow any proposed testimony. Board staff shall make a record of all hearings.

(3) Interested persons who wish to appear before the hearing panel must:

(a) remains the same.

(b) inform the board staff of the reason they wish to appear before the hearing panel and the relationship of the person to the offender at whose hearing the person intends to appear.

(4) through (5)(b) remain the same.

(c) the victim's opinion regarding whether the hearing panel should grant the offender parole.

(6) remains the same.

(7) The hearing panel shall consider the victim's statement along with the other information presented in determining whether to grant parole.

(8) remains the same.

(9) When the hearing panel denies an offender parole, it must give the offender written notification of the decision and include reason(s) for the decision and when the offender may reapply for parole consideration.

(10) A hearing panel will consider an eligible offender for parole release even if the offender does not submit an application for parole. A hearing panel will render a decision based on the written record and on the fact the offender did not apply for parole.

(11) A hearing panel may conduct hearings via two-way interactive video

teleconferencing and may conduct administrative reviews by means of telephone conference.

(12) and (13) remain the same.

(14) At the conclusion of the hearing, the hearing panel will either notify the offender of the panel's decision and the reasons for the decision or the hearing panel may take the decision under advisement.

AUTH: 46-23-218, MCA
IMP: 46-23-202, 46-23-203, 46-23-204, MCA

20.25.402 ADMINISTRATIVE REVIEW, REAPPEARANCE, AND EARLY REVIEW (1) After the initial parole hearing, if the hearing panel does not grant a parole it may set a date on which the offender may reappear for a subsequent parole hearing. If the hearing panel does not set a reappearance date, an administrative review of the offender's case will be conducted at intervals as outlined below:

(a) and (b) remain the same.

(2) Unless the offender presents good cause for earlier administrative review pursuant to (6), the reviews will be conducted according to the following schedule or as otherwise ordered by the hearing panel, but in any case, not to exceed six years.

(a) and (b) remain the same.

(3) If the offender's prison discharge date is ten or more years away, the offender will be scheduled for a hearing before the board no less than every six years.

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

(5) through (5)(c)(iii) remain the same but are renumbered (6) through (6)(c)(iii).

(iv) the offender has fulfilled other conditions ordered by the hearing panel or has been unable to fulfill them due to factors outside the offender's control;

(v) the hearing panel's previous disposition was based on erroneous information or misinformation;

(vi) through (viii) remain the same.

(d) If board staff determines the offender meets one of the above-listed criteria, it will refer the request for early review to the board chair or designee to determine whether to schedule an early review. Board staff may not refer an offender for early administrative review if the offender has been involved in multiple or major misconduct since a hearing panel's last hearing or administrative review or a hearing panel has specifically prohibited early administrative review.

(e) remains the same.

AUTH: 46-23-201, 46-23-218, MCA
IMP: 46-23-201, 46-23-218, 46-24-212, MCA

20.25.501 DECISION AND RECONSIDERATION (1) through (2)(c) remain the same.

(d) continue the offender to a subsequent reconsideration hearing at an interval consistent with ARM 20.25.402(2) and (3), but in any case not to exceed six

years. The hearing panel may order that the offender is not subject to administrative review except as provided in ARM 20.25.402(6).

(e) remains the same.

(f) pass the offender to discharge if the date of discharge is less than six years away or if the offender has requested to serve to discharge.

(3) through (5) remain the same.

(6) If a two-member hearing panel is unable to reach a unanimous decision, the board chair shall appoint a third member to consider all pertinent information and render a final decision.

(7) and (8) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-104, 46-23-201, 46-24-212, MCA

20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE (1) A hearing panel may release an eligible offender on nonmedical parole only when, in its opinion:

(a) through (d) remain the same.

(2) In making its determination regarding release, the hearing panel may consider each of the following factors:

(a) through (o) remain the same.

(p) any and all other factors which the hearing panel determines to be relevant.

AUTH: 46-23-218, MCA
IMP: 46-23-201, 46-23-202, MCA

20.25.506 FURLOUGH (1) When a hearing panel has granted an offender a parole, the panel or the board chair or designee may grant the offender a furlough for the sole purpose of finding employment, making suitable living arrangements, or fulfilling any other hearing panel condition that is difficult to fulfill while incarcerated.

(2) remains the same.

(3) While on furlough the offender remains in the legal custody of the department and is subject to the department's furlough program rules, standard parole conditions, and any other special conditions recited by the hearing panel. If the offender fails to report as directed or fails to return to custody, the offender may be charged with a violation of 45-7-306, MCA.

(4) The offender may be immediately returned to the institution from which the furlough was granted if the offender violates the furlough program rules, any of the standard parole rules, any of the panel's special conditions, or if the offender is unable to fulfill the employment, housing, or other furlough conditions.

(5) and (6) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-215, MCA

20.25.601 RESCISSION HEARING (1) A hearing panel may conduct a hearing and rescind a previously granted parole if the offender has not left confinement or is on furlough status and the panel finds one of the following has occurred:

(a) through (4) remain the same.

(5) Unless a hearing panel otherwise orders, before an offender leaves prison confinement on parole, the offender must be clear of major disciplinary misconduct for a minimum of 120 days. If the offender is a resident of a community-based program, the offender must be clear of Class 100 and 200 disciplinary violations for at least 90 days.

AUTH: 46-23-218, MCA
IMP: 46-23-218, MCA

20.25.701 RELEASE (1) The board, through its staff, may delay a release that has been granted and not scheduled for rescission, up to 120 days as a result of improper conduct or new evidence or information. The staff shall notify the board of any delay and reason for it.

(2) Parole is not effective until the conditions are signed by the offender and the board issues the parole certificate. If a violation is established, a hearing panel may continue or rescind the parole, or enter such other order as it may see fit. The determination of further release shall be consistent with the rules adopted for release hearings.

(3) While on parole release an offender on nonmedical or medical parole is serving the sentence of imprisonment or commitment imposed by the court until the sentence is discharged. The offender must remain under supervision or in custody until the sentence is discharged unless the offender is granted a conditional discharge from supervision pursuant to ARM 20.25.704.

(4) An offender granted a parole is subject to revocation of the release for violation of the law or of any of the conditions of the supervision agreement including conditions imposed by the hearing panel.

AUTH: 46-23-218, MCA
IMP: 46-23-215, 46-23-216, MCA

20.25.702 CONDITIONS OF SUPERVISION (1) When a hearing panel orders an offender paroled, the offender is subject to the following standard rules unless otherwise ordered by the panel:

(a) through (h) remain the same.

(i) The offender is prohibited from using or possessing alcoholic beverages and all intoxicants or mind altering chemicals. The offender is required to submit to bodily fluid testing for intoxicants or mind altering chemicals on a random or routine basis and without reasonable suspicion.

(j) and (k) remain the same.

(2) A parolee shall pay a supervisory fee of at least $10 a month for each month under supervision. A hearing panel may reduce or waive the fee or suspend

the monthly payment if payment would cause the parolee significant financial hardship.

(3) A hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special conditions imposed by the department must be approved by a hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender.

(4) and (5) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-215, MCA

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1) Upon recommendation of the supervising parole officer, a hearing panel may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the panel determines that such conditional discharge is in the best interests of the parolee and society, and will not present an unreasonable risk of danger to society or the victim of the offense.

(2) During a conditional discharge the following apply:

(a) the parolee is not supervised by the department;

(b) the parolee will not pay supervision fees; and

(c) if the parolee becomes a resident of another state, the parolee's sentence is discharged, but the parolee can be revoked as in (7).

(3) After the parolee has served one year of active supervision, the parole officer will review the parolee's file and may recommend a parolee for conditional discharge.

(3) remains the same but renumbered (4).

(5) If a hearing panel grants a conditional discharge from supervision it may order the parolee to submit written reports to the board once a year, reporting the parolee's address, and any contacts the parolee has had with law enforcement.

(6) A hearing panel may return a parolee to active supervision or amend the conditions of the conditional discharge if, in the opinion of a hearing panel, this action is in the best interest of society and the parolee has committed any of the violations listed in (7).

(7) The board may revoke a parole, even when the parolee is conditionally discharged from supervision, if the parolee:

(a) is charged with a felony offense;

(b) is charged with a misdemeanor offense for which the parolee could be sentenced to incarceration for a period of more than six months; or

(c) the parolee fails to report his/her address and law enforcement contacts.

AUTH: 46-23-218, MCA
IMP: 46-23-215, 46-23-1020, 46-23-1021, 46-23-1027, MCA

20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE (1) and (2) remain the same.

(3) No on-site hearing is necessary if the parolee is convicted of a felony offense during the period of supervision, or if the parolee is arrested in a state in which the parolee had no permission to travel or reside. If no on-site hearing is necessary the hearing panel may utilize the court judgment and conviction or out-of-state arrest documents in lieu of the on-site hearing summary.

(4) For an on-site hearing the parole officer shall serve the parolee with a report of violation and notice of on-site hearing.

(5) The on-site hearing must be held at or reasonably near the site of the alleged violation within a reasonable time after the service of the report of violation to the parolee. If the parolee is arrested out-of-state, the hearing will be conducted by the state tasked with supervision of the parolee or upon return to Montana custody.

(6) The parolee may have witnesses attend the on-site hearing, but only if the witnesses have relevant testimony to present concerning whether the parolee did or did not violate the conditions of release on parole, and only if the witnesses can qualify to enter the correctional facility if the hearing is held in a secure facility.

(7) A hearing officer of the department will preside over the on-site hearing. If the hearing officer finds there is probable cause to hold the parolee for the final decision of the board, the parole officer will notify the board and submit a summary of the hearing to the board.

(8) The parolee may be held in a state prison pending an on-site hearing or after a hearing officer has determined there is probable cause to hold the parolee for a final decision of the board.

(9) remains the same.

(10) If a hearing panel determines that the offender has violated the provisions of release, the hearing panel, at its sole discretion, will determine the amount of time, if any, that will be counted as time served while the parolee was in violation of the provisions of release.

(11) remains the same.

(4) through (8) remain the same but renumbered (12) through (16).

AUTH: 46-23-218, MCA
IMP: 46-23-215, 46-23-1024, 46-23-1025, MCA

20.25.901 APPLICATIONS FOR CLEMENCY (1) through (2)(b)(iii) remain the same.

(iv) psychological reports that are available at the time of application;

(v) and (vi) remain the same.

(3) An offender whose application has been denied may not reapply for executive clemency unless the offender submits evidence of substantial change in circumstances since the last application. A hearing panel will screen reapplications for clemency and if the offender has submitted evidence of substantial change of circumstances, it will determine if it will order an investigation and hearing as indicated in ARM 20.25.902.

(4) and (5) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-301, MCA

20.25.901A EXECUTIVE CLEMENCY CRITERIA (1) Pardon is a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction. An individual may not apply for a pardon unless the offense for which he/she seeks a pardon has been commuted or discharged. A hearing panel may recommend a pardon for an individual who:

(a) through (2) remain the same.

(3) A hearing panel may also recommend to the governor that a respite or a remission of fines or forfeitures be granted.

(4) When considering an application for executive clemency the hearing panel shall consider the nature of the crime, the comments of the sentencing judge, the prosecuting attorney, the community, and the victims and victims' family regarding clemency for the applicant, and whether release would pose a threat to the public safety.

AUTH: 46-23-218, MCA
IMP: 46-23-301, MCA

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING (1) In cases in which the death penalty has not been imposed, the board staff will conduct a preliminary review of the application for clemency and submit a report to a hearing panel for its consideration.

(a) The hearing panel, based on the staff's preliminary review, may accept or reject the application. The panel will base its decision to accept or reject an application on:

(i) all the circumstances surrounding the crime for which the applicant was convicted; and

(ii) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(b) If a hearing panel decides to accept the application, it will request the department to conduct an investigation within 90 days of its request. The hearing panel may request a psychological evaluation of the applicant as part of the investigation.

(i) Within 90 days of receiving the investigation report, board staff will compile all the information for a hearing panel's consideration and make a recommendation to the panel that the panel either reject the application or order a hearing on the application.

(ii) The panel may require other reports that, in the panel's opinion, are necessary.

(c) After receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, a hearing panel will consider the application and decide whether to deny the application or hold a hearing concerning the application.

(d) If in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, the panel will sign an order indicating the following:

(i) the date on which the hearing will be held;

(ii) that all persons having an interest in the matter who desire to be heard should be present on the date set for the hearing;

(iii) that the order must be printed and published in a newspaper of general circulation in the county where the crime was committed once each week for two weeks; and,

(iv) that a copy of the order must be sent to the district judge, the county attorney, the sheriff of the county where the crime was committed, and to the applicant.

(e) If the panel denies the application without a hearing, it will give notice to the applicant and will post the denial on the board's web site within 21 calendar days of the board's decision.

(2) If the board receives an application for clemency for an inmate for whom the death penalty has been imposed, the board will set a date for a hearing on the application. Board staff will give notice of the hearing date, as prescribed by law, and as described in (1)(d).

AUTH: 46-23-218, MCA
IMP: 46-23-301, 46-23-302, MCA

20.25.904 DECISION CONCERNING CLEMENCY (1) Upon conclusion of the hearing the hearing panel will take the entire case under advisement or may issue an immediate decision. If the panel takes the case under advisement, it must make a decision in writing within 30 days.

(a) In cases in which the death penalty has not been imposed, if the hearing panel makes a recommendation that the governor grant clemency, it will immediately forward all relevant documents and a proposed executive order to the governor for the governor's final determination. If the panel does not recommend a grant of clemency, it will not forward the application to the governor.

(b) In cases in which the death penalty has been imposed, the hearing panel will, immediately after making its decision, forward all relevant documents and a recommendation to grant or deny clemency to the governor for the governor's final determination.

(2) and (3) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-301, 46-23-307, MCA

/s/ Diana L. Koch	/s/ Mike Ferriter
Diana L. Koch	Mike Ferriter
Rule Reviewer	Director
	Department of Corrections

Certified to the Secretary of State July 30, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V pertaining to the education of exonerated persons	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 23, 2012, the Department of Corrections published MAR Notice No. 20-26-51 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 334 of the 2012 Montana Administrative Register, Issue Number 4.

2. On March 16, 2012, a public hearing was held on the proposed adoption of the above-state rules. Several comments were received by the March 22, 2012, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments and testimony received and the department's responses are as follows:

COMMENT #1: Ms. Jessie McQuillan, Executive Director of the Montana Innocence Project, commented that New Rules III and V are based on a reimbursement system, whereas a reimbursement system is not feasible for an exonerated person who is just leaving prison.

RESPONSE #1: The comment is well taken and the department has amended New Rules III and V to reflect a system of payments to the exonerated person, not reimbursements.

COMMENT #2: Ms. McQuillan commented that New Rule II limiting the educational benefits to ten years creates an injustice to Mr. Bromgard who was exonerated in 2002.

RESPONSE #2: The department regrets that Mr. Bromgard's opportunity to receive benefits under this program terminates in 2012. The department, however, is bound by 53-1-214, MCA, that specifies the privilege of receiving educational aid "remains active for 10 years after the release of a person" who is exonerated. The department will not amend the rule.

COMMENT #3: Ms. McQuillan commented that New Rule III does not allow a person exonerated, by means other than DNA testing, to receive educational aid, whereas persons are sometimes exonerated for other reasons.

RESPONSE #3: 53-1-214, MCA, does not allow the department to grant educational aid to any other offenders besides ones exonerated by DNA testing. The persons

entitled to aid are ones "whose judgment of conviction was overturned by a court based on the results of postconviction forensic DNA testing…." The department will not amend the rule.

COMMENT #4: David Niss, legislative staff attorney for the Law and Justice Interim Committee, commented that New Rule III(5) does not conform to 53-1-214, MCA. The statute does not limit the degrees the exonerated person can attain, whereas the proposed rule limits the degree to a bachelor's or master's degree.

RESPONSE #4: The comment is well taken and the department will amend the rule to reflect that the exonerated person may attain any degree.

4. The department has adopted NEW RULE I (20.26.101), II (20.26.102), and IV (20.26.104) exactly as proposed.

5. The department adopts NEW RULE III (20.26.103) and NEW RULE V (20.26.105) with the following changes from the original proposal, new matter underlined, deleted matter interlined.

NEW RULE III APPLICATION AND DESIGNATION (1) remains as proposed.

(2) the application must be received by the department 30 days before the person incurs the expense for which the person request ~~reimbursement~~ payment.

(3) through (4) remain as proposed.

(5) The designation of exonerated person entitles the exonerated person to receive benefits for up to five years from the time the exonerated person begins an educational program that is reimbursed under these rules, but in no instance will the department reimburse the exonerated person beyond the time the exonerated person attains a ~~bachelor's or master's~~ degree or ten years after the exonerated person was released from incarceration.

NEW RULE V PROCEDURE TO RECEIVE BENEFITS (1) remains as proposed.

(2) Upon establishment of admission or enrollment, the department will establish a ~~reimbursement~~ payment plan with the exonerated person.

(a) remains as proposed.

(b) The department will maintain a form for the exonerated person to estimate expenses for books. Expenses for books will be ~~reimbursed~~ paid to the exonerated person with presentation of ~~a proper receipt~~ the appropriately executed form that outlines the necessary books and their cost.

(c) and (3) remain as proposed.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter, Director
Department of Corrections

Certified to the Secretary of State July 30, 2012

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.602 direct-entry midwife apprenticeship requirements	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 23, 2012, the Alternative Health Care Board (board) published MAR notice no. 24-111-24 regarding the proposed amendment of the above-stated rule at page 345 of the 2012 Montana Administrative Register, issue no. 4.

2. On July 12, 2012, the board published the notice of amendment of MAR notice no. 24-111-24 at page 1360 of the 2012 Montana Administrative Register, issue no. 13.

3. In preparing replacement pages for the third quarter of 2012, it was discovered that an error occurred in the number sequence of (8) through (11), specifically (9), of ARM 24.111.602. There should have been no amendment to the numbering in that section. Section (9) will be numbered as follows:

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (9) remain as adopted.

(a) through (e) remain as adopted, but are not renumbered (b) through (f).

(10) and (11) remain as adopted.

4. The corrected replacement page will be submitted to the Secretary of State's office on September 30, 2012.

ALTERNATIVE HEALTH CARE BOARD
MAGGI BEESON, ND, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2012

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

In the matter of the amendment of ARM 24.180.301 definitions, 24.180.505 journeyman must work in the employ of master, 24.180.507 master plumbers registration of business name, and the adoption of NEW RULE I nonroutine applications and NEW RULE II unprofessional conduct	))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 8, 2012, the Board of Plumbers (board) published MAR notice no. 24-180-47 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 476 of the 2012 Montana Administrative Register, issue no. 5.

2. On April 2, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the April 10, 2012, deadline.

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

COMMENT 1: One commenter was concerned about using misdemeanor crimes and prior professional misconduct to define nonroutine license applications, and asserted that New Rule I would affect current licensees with past instances of misdemeanors or misconduct. The commenter suggested that conviction of a crime under New Rule II (unprofessional conduct) should be consistent with nonroutine application criteria (New Rule I), so that it would take at least two misdemeanors (like skateboarding on the sidewalk) to amount to professional misconduct.

RESPONSE 1: Because the nonroutine applications rule will only affect future license applications, and because the types of misdemeanors the commenter referenced would not amount to unprofessional conduct under the proposed rules, the board concluded that this comment does not address the proposed rule changes. The board is adopting the new rules exactly as proposed.

COMMENT 2: A commenter asserted that if someone could lose a license for failing to respond to a board inquiry, then all inquiries should be sent via certified or registered mail. Noting that there could be many reasons why a licensee may not receive a mailed board inquiry, the commenter was concerned that the board could sanction a licensee solely due to a failure to respond.

RESPONSE 2: Because no discipline can be imposed on a licensee for failing to respond to a board inquiry until after a hearing, the board points out that any and all reasons why a response was not forthcoming would be known and considered before a finding of unprofessional conduct could be made or any sanction could be imposed.

4. The board has amended ARM 24.180.301, 24.180.505, and 24.180.507 exactly as proposed.

5. The board has adopted NEW RULES I (24.180.405) and II (24.180.2301) exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2012

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32.3.1205, 32.3.2001 pertaining to animal contacts, and brands and earmarks	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 21, 2012, the Department of Livestock published MAR Notice No. 32-12-225 regarding the proposed amendment of the above-stated rules at page 1222 of the 2012 Montana Administrative Register, issue number 12.

2. The department has amended 32.3.1205 exactly as proposed and 32.3.2001 as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

32.3.2001 BRANDS AND EARMARKS (1) and (1)(a) remain as proposed.

(b) cattle originating from Canada must have a ~~CAN~~ C□N hot iron brand as permanent origin identification. The brand must be 2-3 inches tall applied high on the right hip, consistent with VS memo 591.64.

(2) remains as proposed.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State July 30, 2012.

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

In the matter of the amendment of ARM 37.86.3607 pertaining to case management services for persons with developmental disabilities reimbursement	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 21, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-589 pertaining to the public hearing on the above-stated rule at page 1245 of the 2012 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends to apply this rule retroactively to August 1, 2012, as the department is aware of a current need of a provider to increase their FTE in order to manage their caseload. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ Michelle Maltese
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 30, 2012.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

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 a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2012. This table includes those rules adopted during the period April 1, 2012, through June 30, 2012, 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 March 31, 2012, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2012 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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