ISSUE NO. 21

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after 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 DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.206, 4.5.207, 4.5.208, and 4.5.209 pertaining to modification of the Noxious Weed Priority 1A category statement and changing the priority category of dyer's woad, flowering rush, Eurasian watermilfoil, and curlyleaf pondweed	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 9, 2013, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on November 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov.

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

4.5.206 PRIORITY 1A (1) These weeds are not present or have a very limited presence in Montana. Management criteria will require eradication if detected, education, and prevention:

(a) Yellow starthistle (*Centaurea solstitialis*)~~.~~, and

(b) Dyer's woad *(Isatis tinctoria*).

AUTH: 7-22-2101, 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The previous Priority 1A statement was determined to be inadequate to address invasive plants in Montana. Dyer's woad category is changed from Priority 1B to Priority 1A because there are fewer than 1000 identified plants in Montana.

Economic Impact: There is no economic impact associated with modifying the description of priority 1A weeds. The economic impact of dyer's woad being listed as a Priority 1A noxious weed will be county-specific and will depend on whether the weed is present in a county and the extent of infestation.

4.5.207 PRIORITY 1B (1) These weeds have limited presence in Montana. Management criteria will require eradication or containment and education:

~~(a) Dyer's woad (Isatis tinctoria);~~

~~(b) Flowering rush (*Butomus umbellatus*);~~

~~(c)~~ (a) ~~Japanese knotweed~~ Knotweed complex (*Polygonum cuspidatum, P. sachalinense, P. × bohemicum, Fallopia japonica, F. sachalinensis, F. × bohemica, Reynoutria japonica, R. sachalinensis, and R.× bohemica ~~spp.~~*);

~~(d)~~ (b) Purple loosestrife (*Lythrum salicaria ~~spp.~~*);

~~(e)~~ (c) Rush skeletonweed (*Chondrilla juncea*); and

~~(f) Eurasian watermilfoil (*Myriophyllum spicatum*);~~

~~(g)~~ (d) Scotch broom (*Cytisus scoparius*)~~;~~.

~~(h) Curlyleaf pondweed (*Potamageton crispus*).~~

AUTH: 7-22-2101, 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: There are fewer than 1000 dyer's woad plants in Montana and should be listed as a Priority 1A noxious weed. The department has received requests to change the listing of aquatic noxious weeds from a Priority 1B to Priority 2B. In addition, there have been several scientific name changes that needed to be updated.

Economic Impact: Changing the priority category for aquatic weeds and changing or adding scientific names does not have an economic impact. The change will allow local weed districts to prioritize aquatic weeds based on aquatic weed presence, county noxious weed priorities, and on funding and resource availability.

4.5.208 PRIORITY 2A (1) These weeds are common in isolated areas of Montana. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

(a) Tansy ragwort (*Senecio jacobaea, Jacobaea vulgaris*);

(b) Meadow hawkweed complex (*Hieracium caespitosum, H. praealtum, H. floridundum, and Pilosella caespitosa ~~spp.~~*);

(c) Orange hawkweed (*Hieracium aurantiacum, Pilosella aurantiaca*);

(d) Tall buttercup (*Ranunculus acris*);

(e) Perennial pepperweed (*Lepidium latifolium*);

(f) Yellowflag iris (*Iris pseudacorus*);

(g) Blueweed (*Echium vulgare*); and

(h) Hoary alyssum (*Berteroa incana*).

AUTH: 7-22-2101, 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: There have been several scientific name changes that needed to be updated. There is no economic impact associated with the proposed change.

4.5.209 PRIORITY 2B (1) These weeds are abundant in Montana and widespread in many counties. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

(a) Canada thistle (*Cirsium arvense*);
(b) Field bindweed (*Convolvulus arvensis*);
(c) Leafy spurge (*Euphorbia esula*);
(d) Whitetop (*Cardaria draba*, *Lepidium draba*);
(e) Russian knapweed (~~*Centaurea*~~ *Acroptilon repens*, *Rhaponticum repens*);
(f) Spotted knapweed (~~*Centauria*~~ *Centaurea stoebe*, ~~or~~ *C. maculosa*);
(g) Diffuse knapweed (*Centaurea diffusa*);
(h) Dalmatian toadflax (*Linaria dalmatica*);
(i) St. Johnswort (*Hypericum perforatum*);
(j) Sulfur cinquefoil (*Potentilla recta*);
(k) Common tansy (*Tanacetum vulgare*);
(l) Oxeye daisy (*Leucanthemum vulgare*);
(m) Houndstongue (*Cynoglossum officinale*);
(n) Yellow toadflax (*Linaria vulgaris*);
(o) Saltcedar (*Tamarix spp*.)~~.~~;
(p) Flowering rush (*Butomus umbellatus*);
(q) Eurasian watermilfoil (*Myriophyllum spicatum)*; and
(r) Curlyleaf pondweed (*Potamogeton crispus*).

AUTH: 7-22-2101, 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The department has had discussions with county weed districts, who have indicated a preference to change the listing of aquatic noxious weeds from a 1B to a 2B Priority during the transition of aquatic invasive plants from the Department of Agriculture to Fish, Wildlife and Parks. The rule also updates the scientific name for Russian knapweed and whitetop and the spelling of the scientific name for spotted knapweed.

Economic Impact: Changing the priority category for aquatic weeds does not have an economic impact. The change will allow local weed districts to prioritize aquatic weeds based on aquatic weed presence, county noxious weed priorities, and on funding and resource availability.

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: Cort Jensen, Department of Agriculture, 302 N Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

7. 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.

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

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

/s/ *Cort Jensen*
Cort Jensen
Rule Reviewer

/s/ *Ron de Yong*
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State November 4, 2013.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 18.6.202 and 18.6.247 pertaining to community welcome to signs	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 13, 2013, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on December 5, 2013 to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail phurley@mt.gov.

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

NEW RULE I COMMUNITY WELCOME TO SIGNS (1) A community, county, or sovereign nation may erect welcome to signs within its territorial jurisdiction or zoning jurisdiction, as long as the community, county, or sovereign nation exercises some form of governmental authority over the area upon which the sign is located (e.g., city limits). Welcome to signs must not be erected by other types of governmental entities including states or tourist area regions.

(2) Qualifying communities, counties, or sovereign nations may develop their own welcome to sign designs, and may also use their own pictographs and a brief jurisdiction-wide program slogan, providing the sign design complies with all provisions of this rule, and has been approved by the department before the sign is granted a permit or erected.

(3) Welcome to signs must not contain any form of commercial advertising, including any promotion of commercial products or services through slogans and information on where to obtain the products and services. Welcome to signs must not identify any private or public organizations or affiliations.

(4) Qualifying welcome to sign applicants must first thoroughly explore all options to erect the sign off public right-of-way, and may request placement within the right-of-way only as the option of last resort.

(5) Welcome to signs must not be placed along interstate routes.

(6) Welcome to signs may only be placed in qualifying locations which meet all the following requirements:

(a) within state-controlled right-of-way limits along controlled routes, except for interstate routes, upon verification by the sign owner that specific locations outside the right-of-way have been considered, but were unavailable;

(b) on private or other government-owned property adjacent to controlled routes, with permission of the landowner;

(c) outside of key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions;

(d) within five miles of a community for community signs, or within five miles of a county line for county signs, with no more than one welcome to sign in each direction;

(e) more than 500 feet from an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in rural areas, and more than140 feet from an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in cities or towns;

(f) outside an intersection sight triangle;

(g) more than 500 feet from public parks, public forests, public playgrounds, or designated scenic areas which are adjacent to the controlled route, unless the sign is in an incorporated area;

(h) within an area where adequate spacing is available between the welcome to sign and other higher priority signs including all traffic control devices, where adequate space is defined as:

(i) 150 feet on roadways with speed limits of less than 30 mph;

(ii) 200 feet on roadways with speed limits of 30 to 45 mph; and

(iii) 500 feet on roadways with speed limits greater than 45 mph;

(i) in a position where they would not obscure the road users' view of other traffic control devices; and

(j) ten feet or more outside the highway clear zone, unless prior department approval for an exemption is given.

(7) Welcome to signs must meet all of the following design standards:

(a) the maximum area of the welcome to sign shall not exceed 150 square feet;

(b) the height above ground level shall not exceed 30 feet in height;

(c) lettering height must be at least four inches in height;

(d) the sign must not be attached to any other sign, sign assembly, or other traffic control device, including supports or any sign structures;

(e) the sign must not be affixed to fences, power poles, traffic signal poles or boxes, street lights, trees, or painted, or drawn upon rocks, or other natural features;

(f) the sign must not contain any messages, lights, symbols, or trademarks that resemble any official traffic control devices;

(g) the sign must not contain any internal illumination, light-emitted diodes (LED), luminous tubing, fiber optics, luminescent panels, or other flashing, moving, or animated features;

(h) the sign may be lighted by external spot lights if the lights are effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled way of the highway, or are of such low intensity as to not cause glare, or to

impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle; and

(i) the sign must not distract from official traffic control messages such as regulatory, warning, or guidance messages.

(8) An outdoor advertising permit must be obtained for each welcome to sign, accompanied by a nonrefundable inspection fee. There is no initial permit fee or renewal fee for welcome to signs.

(9) An encroachment permit must be obtained from the department for each welcome to sign which will be located within the right-of-way limits of any controlled route. An encroachment permit is not required for welcome to signs which will be located on private or government-owned properties adjacent to the controlled route, which location is outside the state-controlled right-of-way limits.

(10) Welcome to signs must be initially installed and later maintained by the sign owner, at the sign owner's sole expense, by meeting all department rules for sign repair and maintenance.

(11) Sign owners who are granted an encroachment permit for a welcome to sign to be erected in state-controlled right-of-way must meet all department procedures for work within the right-of-way, including traffic control plans, if required by the department, and any other safety procedures required by the department. Welcome to sign owners must contact the department and receive department approval before conducting any work within state-controlled right-of-way limits.

(12) This rule applies to new and modified welcome to sign installations, and does not apply to welcome to signs which were erected by any community, county, or sovereign nation before the effective date of this rule, except previously erected welcome to signs must meet all maintenance requirements and procedures for work within the right-of-way under this rule.

(13) Any welcome to sign which is proposed for upgrade or structural modification beyond routine maintenance must obtain permits and meet all requirements of this rule.

(14) If a highway construction or reconstruction project, or placement of a newly installed higher-priority traffic control device, such as a higher-priority sign, a highway traffic signal, or a temporary traffic control device, as solely determined by the department, conflicts with an existing welcome to sign, the welcome to sign must be relocated, covered, or removed by the sign owner, at the department's directive.

AUTH: 61-8-203, 75-15-121, MCA
IMP: 61-8-203, 75-15-111, 75-15-113, MCA

REASON: The proposed new rule is necessary to set standards which may allow "welcome to" signs to be placed along stated-controlled routes, including within right-of-way limits, under strict location, and design standards, to promote community recognition in the state. FHWA has previously recognized a distinction between signing intended as advertising, which is not allowed in the right-of-way, and signing intended as acknowledgement, which may be allowed in the right-of-way under intended purposes of community recognition. The proposed new rule will impose requirements of obtaining both outdoor advertising and encroachment permits from the department, and other restrictions to allow safe and orderly movement of traffic,

which must not be compromised, with the use of community or county recognition welcome to signs. The proposed new rule will require good, basic engineering practices to be followed, such as simplifying sign message content, using reasonable sign sizes, and minimizing driver distraction.

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

18.6.202 DEFINITIONS (1) through (6) remain the same.

(7) "Clear zone" means the total roadside border area, starting at the edge of the traveled way, that is available for an errant driver to stop or regain control of a vehicle. The area might consist of a shoulder, a recoverable slope, or a nonrecoverable, traversable slope with a clear run-out area at its toe.

(7) through (32) remain the same but are renumbered (8) through (33).

~~(33)~~ (34) "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law, for the purposes of carrying out an official duty or responsibility. Historical markers~~, welcome to,~~ and public utility signs authorized by state law and erected by state or local government agencies may be considered official signs.

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

(39) "Pictograph" means a pictorial representation used to identify a governmental jurisdiction or an area of jurisdiction.

(38) through (47) remain the same but are renumbered (40) through (49).

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to add definitions of words or phrases used in proposed New Rule I. The proposed amendment to (34) will delete a reference to welcome to signs in the "official signs" definition, as welcome to signs will now be in a separate category of signs, and no longer be a part of the official signs definition.

18.6.247 OFFICIAL SIGNS (1) through (3) remain the same.

~~(4) Local governments may erect, within the limits of their jurisdiction, official signs welcoming travelers and describing the services and attractions available, but official signs shall not contain any commercial advertising, nor advertise private business or brand names.~~

~~(5) Not more than one official sign welcoming visitors or providing information about a community is allowed on each highway entering the community, from each direction of travel, subject to federal and state outdoor advertising control rules.~~

~~(6) On interstate highways, official "welcome to" signs may be erected within five miles of a community. Not more than one "welcome to" sign in each direction is allowed.~~

(7) through (14) remain the same but are renumbered (4) through (11).

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to delete the subsections which formerly addressed welcome to signs as part of the official signs category. Under New Rule I, welcome to signs will be a separate category of signs, with separate requirements imposed, thus any reference to welcome to signs must be removed from ARM 18.6.247 on official signs.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick J. Hurley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Patrick J. Hurley at the above address no later than 5:00 p.m., December 12, 2013.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 persons based on 129 incorporated cities and 56 counties within the state.

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

9. 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.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses because welcome to sign requirements only apply to communities or sovereign nations.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State November 4, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.3.505 and 23.3.506 pertaining to type 2 endorsements for commercial motor vehicle operators	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 10, 2013, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

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

23.3.505 ELIGIBILITY FOR TYPE 2 ENDORSEMENT (1) A person is eligible to receive a type 2 endorsement if the person:

(a) is at least 18 years of age~~,~~;

~~(i) however, a person who is at least 16 years of age and has a minimum of 12 months driving experience may be issued a type 2 endorsement with a "B" classification, restricted to hauling goods and property only within a 150 mile radius of his/her home or place of employment;~~

~~(ii) A person who possesses the above "underage" endorsement may have the restrictions imposed due to age removed on or after his/her 18th birthday by completing a driving examination for the type and class of endorsement desired.~~

(b) through (3) remain the same.

AUTH: 61-5-112, ~~61-5-117~~, 61-5-125, MCA
IMP: 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-112, 61-5-201, MCA

23.3.506 PHYSICAL QUALIFICATIONS FOR TYPE 2 ENDORSEMENT

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

(j) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than ~~50~~ 40

decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951;

(k) does not use:

(i) any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, narcotic, or any habit-forming drug; ~~and~~ or

(ii) any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in 49 CFR 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(l) remains the same.

AUTH: 61-5-112, ~~61-5-117~~, 61-5-125, MCA
IMP: 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-112, MCA

REASON: The Federal Motor Carrier Safety Regulations (at 49 CFR 355.25) require that state laws and regulations pertaining to commercial motor vehicle safety in interstate commerce must be compatible with federal standards. In addition, 61-5-112, MCA, requires state rules adopted under its authority to be specifically consistent with the federal requirements found in 49 CFR part 391. Each of the rules proposed to be amended was adopted under the authority of that statute. The amendments proposed are being made to ensure that Montana's rules relating to the age of a commercial driver and the physical qualifications of a commercial driver are consistent with the federal regulations found in 49 CFR 391.11(b)(1) and 49 CFR 391.11(b)(4).

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 Funk, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail pfunk@mt.gov, and must be received no later than 5:00 p.m., on December 12, 2013.

5. Peter Funk, Department of Justice, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the department's web site at https://doj.mt.gov/agooffice/administrative-rules. The

department 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 department 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.

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

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

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State November 4, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.12.601 concerning fire safety, fireworks, and Uniform Fire Code	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 27, 2013, the Department of Justice proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

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

23.12.601 ADOPTION OF THE INTERNATIONAL FIRE CODE (2012 EDITION) (1) through (5)(z) remain the same.

~~(aa) Appendix D - Access Roads: Sections D101-D105.3 - are adopted.~~

(ab) remains the same but is renumbered (aa).

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

RATIONALE AND JUSTIFICATION: The department has learned that provisions of Appendix D conflict with rules and regulations that have been enacted by local governments. This amendment is reasonably necessary to avoid creating conflicts with local rules and regulations that have been enacted by municipalities, counties, or other entities that have authority over roads.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Matt Cochenour, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail mcochenour2@mt.gov, and must be received no later than 5:00 p.m. on December 12, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Matt Cochenour at the above address no later than December 12, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 25.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at http://doj.mt.gov/agooffice/administrative-rules, and mailed to the rule reviewer.

8. An electronic copy of this notice is available through the Department of Justice web site at http://doj.mt.gov/agooffice/administrative-rules. 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State November 4, 2013.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.26.697 and the adoption of New Rule I pertaining to the stay of an informal investigation	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On December 6, 2013, at 1:00 p.m., the Board of Personnel Appeals (board) will hold a public hearing in the auditorium of the DPHHS Building, 111 North Sanders, 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 rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Labor and Industry no later than 5:00 p.m. on December 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Jordon Dyrdahl-Roberts, Department of Labor and Industry, PO Box 1728, Helena, Montana, 59624; telephone (406) 444-4493; fax (406) 444-1394; TDD/Montana Relay Service (406) 444-5549; or e-mail jordonroberts@mt.gov.

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

24.26.697 FACT FINDER (1) Either party to a dispute may petition the board to initiate ~~fact finding~~ factfinding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the board may initiate ~~fact finding~~ factfinding in accordance with ~~section~~ 39-31-308, MCA.

(2) Within three days of receipt of a petition for ~~fact finding~~ factfinding, the board shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(3) through (7) remain the same.

(8) ~~The cost of fact finding proceedings must be equally borne by the board and the parties concerned.~~ When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties concerned. The fact finder shall, within ten working days of the written findings, submit an invoice of the costs and fees to the board which shall send copies of the invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the board within five days and the board shall forward the total amount to the fact finder.

AUTH: 39-31-104, MCA

IMP: 39-31-309, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to correct substantive and spelling discrepancies between 39-31-309, MCA, and ARM 24.26.697. The board recently became aware that ARM 24.26.697 misstates the cost-sharing burden set forth in 39-31-309, MCA, and determined that an amendment is necessary to rectify the discrepancy.

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

NEW RULE I STAY OF INFORMAL INVESTIGATION (1) If during the course of the informal investigation of the unfair labor practice charge, the board's agent determines that the charge is one that may be resolved through deferral to the final and binding arbitration provisions contained in the collective bargaining agreement between the parties, the board's agent may issue a recommended order staying the board's proceedings.

(2) A party may appeal the recommended order to stay proceedings by filing an appeal with the board within 14 days after service of the recommended order.

(3) An appeal of the recommended order to stay proceedings must clearly set forth the specific factual or legal reasons indicating error. At the discretion of the board, interested parties will be afforded an opportunity to respond to an appeal of the recommended order.

(4) The board or the board's agent has the discretion to dissolve the stay and continue with its investigation into the unfair labor practice if a party makes a proper showing that:

(a) the unfair labor practice charge has not been resolved in a reasonable amount of time;

(b) the arbitration decision has not resolved the unfair labor practice; or

(c) the decision to stay the proceedings was inconsistent with the laws that govern collective bargaining in Montana.

(5) A decision by the board or the board's agent to dissolve a stay is not appealable.

(6) If the board affirms and adopts the recommended order to stay proceedings, the stay remains in place until there is a subsequent request to review the stay or the board's order affirming and adopting the recommended order is removed by operation of court order.

AUTH: 39-31-104, MCA
IMP: 39-31-405, MCA

REASON: The board believes there is reasonable necessity to adopt this rule in order to reduce the administrative burden on the agency and further the goal of collective bargaining, as intended by Title 39, Chapter 31, MCA. Parties before the board have recently encouraged the adoption of a rule similar to the federal rule allowing the stay of an investigation when an unfair labor practice charge may be resolved through arbitration. Allowing for the stay of an investigation will provide

disputing parties additional time to resolve the issue raised in the complaint without being constrained by the proceedings of an administrative investigation.

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: Pam McDaniel, Department of Labor of Industry, PO Box 201503, Helena, Montana, 59620; telephone (406) 444-1376; fax (406) 444-7071; or e-mail pmcdaniel@mt.gov, and must be received no later than 5:00 p.m., December 13, 2013.

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

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

10. With regard to the requirements of 2-4-111, MCA, the department, on behalf of the board, has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses as the rules relate only to public sector employees.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE, CHAIRPERSON

/s/ Mark Cadwallader
Mark Cadwallader
Rule Reviewer

/s/ Pam Bucy
Pam Bucy
Commissioner
Department of Labor and Industry

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.34.201 and the repeal of ARM 37.34.202, 37.34.207, 37.34.208, 37.34.211, 37.34.212, 37.34.217, 37.34.222, 37.34.225, and 37.34.226, pertaining to eligibility	)))))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 5, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-645 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1574 of the 2013 Montana Administrative Register, Issue Number 17.

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 November 18, 2013, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. Due to the publication of an updated version of the Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, the department is proposing additional amendments.

4. The rules as proposed are being amended as follows, new matter underlined, deleted matter interlined:

37.34.201 ELIGIBILITY: GENERAL ELIGIBILITY REQUIREMENTS

(1) remains as proposed.

(2) The Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, ~~5th~~ 6th Edition, ~~2011~~ 2013, sets forth the requirements for eligibility of the DDP's service programs.

(3) Eligibility for the DDP service programs, with the exception of federally funded Part C services, must be determined in accordance with the requirements of the Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, ~~5th~~ 6th Edition, ~~2011~~ 2013. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program,

111 N. Sanders, P.O. Box 4210, Helena, MT 59604 or at http://www.dphhs.mt.gov/dsd/ddp/ddeligmanual.pdf.

AUTH: 53-20-204, 53-6-402, MCA
IMP: 53-20-203, 53-20-209, 53-6-402, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 25, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.81.304 and 37.81.342 pertaining to maximum Big Sky Rx premium change	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 4, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment 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 November 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~$34.61~~ $32.20 per month. The benefit amount will not exceed ~~$34.61~~ $32.20 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~$34.61~~ $32.20 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~$34.61~~ $32.20, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

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

37.81.342 BIG SKY RX PREMIUM PAYMENTS (1) Monthly premium payments will be made to:

(a) and (b) remain the same.

(c) direct payments to enrollees ~~can~~ will be made:

~~(i) by check mailed to the enrollee; or~~

~~(ii)~~ (i) through direct deposit~~.~~; or

(ii) by check only in the following circumstances:

(A) if there is no bank account; or

(B) the enrollee has a permanent exemption with Social Security and still receiving Social Security benefits by check or by Direct Express debit card.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.81.304 and 37.81.342 pertaining to the Big Sky Rx monthly benefit payments and premium payments. These proposed amendments are necessary to ensure safety and convenience to the clients who now receive their monthly benefit by warrant. The proposed amendments are summarized below.

ARM 37.81.304

The proposed amendment to ARM 37.81.304 will ensure that the monthly benefit does not exceed the Low Income Subsidy (LIS) set for this region.

ARM 37.81.342

The department is proposing amendments to ARM 37.81.342 in order to update the required premium benefits to be paid electronically unless the enrollee has qualified for an exemption.

5. The department intends to adopt these rule amendments effective January 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

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.

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

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.104.101, 37.104.102, 37.104.105, 37.104.109, 37.104.316, 37.104.319, 37.104.321, 37.104.329, 37.104.330, 37.104.401, 37.104.404, and 37.104.405 pertaining to emergency medical services (EMS)	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 4, 2013, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment 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 November 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4:

(1) "Advanced emergency medical technician (ECP-AEMT)" means an individual who is licensed by the board as an advanced emergency medical technician as defined in ARM 24.156.2701.

(2) "Advanced emergency medical technician (ECP-AEMT) equivalent" means one of the following:

(a) an ECP-AEMT;

(b) any licensed ECP provider above ECP-AEMT, including endorsements; or

(c) a registered nurse with supplemental training.

~~(1)~~ (3) "Advanced life support (ALS)" means ~~an advanced life support provider as defined in ARM 24.156.2701~~ a level of care provided by any licensed ECP provider above ECP-EMT, including endorsements.

~~(2)~~ (5) "Advanced life support EMS service" means an ambulance service or nontransporting medical unit that has the capacity and is licensed by the department to provide care at the ~~EMT-Paramedic~~ ECP-paramedic equivalent level 24 hours a day, seven days a week~~:~~.

(3) remains the same, but is renumbered (4).

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

(7) "AEMT life support EMS service" means an ambulance service or nontransporting medical unit that has the capacity and is licensed by the department to provide care at the ECP-AEMT equivalent level 24 hours a day, seven days a week.

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

~~(9)~~ (12) "Basic life support (BLS)" means a basic life support level of care ~~as defined in ARM 24.156.2701~~ provided by an ECP-EMR including endorsements or an ECP-EMT without endorsements.

~~(10)~~ (13) "Basic life support EMS service" means an ambulance service or nontransporting medical unit capable of providing care at the basic life support level and licensed as a provider under ARM 37.104.109.

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

(15) "Emergency care provider (ECP)" means any out-of-hospital provider licensed by the board.

(16) "Emergency medical responder (ECP-EMR)" means an individual who is licensed by the board as an emergency medical responder as defined in ARM 24.156.2701.

(17) "Emergency medical responder (ECP-EMR) equivalent" means one of the following:

(a) an ECP-EMR;

(b) any licensed ECP above ECP-EMR; or

(c) a registered nurse with supplemental training.

~~(12)~~ (18) "Emergency medical technician~~-basic (EMT-B)~~ (ECP-EMT)" means an individual who is licensed by the board as an ~~EMT-B~~ emergency medical technician as defined in ARM 24.156.2701.

(a) An ECP-EMT is equivalent to the emergency medical technician-basic as required in 50-6-322, MCA.

~~(13)~~ (19) "Emergency medical technician~~-basic (EMT-basic)~~ (ECP-EMT) equivalent" means one of the following:

(a) an ~~EMT-basic~~ ECP-EMT;

(b) any licensed ~~EMT~~ ECP provider above ~~EMT-B~~ ECP-EMT, including endorsements; or

(c) remains the same.

~~(14) "Emergency medical technician-first responder (EMT-F)" means an individual who is licensed by the board as an EMT-F.~~

~~(15) "Emergency medical technician-first responder equivalent" means one of the following:~~

~~(a) an EMT-F;~~

~~(b) any licensed EMT provider above EMT-F, including endorsements; or~~

~~(c) a registered nurse with supplemental training.~~

~~(16) "Emergency medical technician-intermediate (EMT-I)" means an individual who is licensed by the board as an EMT-I.~~

~~(17) "Emergency medical technician-intermediate (EMT-I) equivalent" means one of the following:~~

~~(a) an EMT-intermediate;~~

~~(b) any licensed EMT provider above EMT-I, including endorsements; or~~

~~(c) a registered nurse with supplemental training.~~

~~(18) "Emergency medical technician-paramedic (EMT-P)" means an individual who is licensed by the board as an EMT-P.~~

~~(19) "Emergency medical technician-paramedic (EMT-P) equivalent" means one of the following:~~

~~(a) an EMT-paramedic;~~

~~(b) an EMT provider with an endorsement above EMT-P; or~~

~~(c) a registered nurse with supplemental training.~~

(20) and (21) remain the same.

~~(22) "First responder ambulance" means an individual licensed by the board as an EMT-F with ambulance endorsement as listed in ARM 24.156.2751.~~

~~(23) "Intermediate life support service" means an ambulance service or nontransporting medical unit that has the capacity and is licensed by the department to provide care at the EMT-intermediate equivalent level 24 hours a day, seven days a week.~~

~~(24)~~ (22) "Level of EMS service" means basic life support, ~~intermediate~~ AEMT life support, or advanced life support ~~services~~ levels of licensed EMS services.

(25) remains the same, but is renumbered (23).

(24) "Paramedic (ECP-paramedic)" means an individual who is licensed by the board as a paramedic as defined in ARM 24.156.2701.

(25) "Paramedic equivalent" means one of the following:

(a) a paramedic (ECP-paramedic);

(b) an ECP provider with an endorsement above paramedic; or

(c) a registered nurse with supplemental training.

(26) through (32) remain the same.

(33) "Supplemental training" means a training program for registered nurses utilized by an emergency medical service that complements their existing education and experience and results in knowledge and skill objectives comparable to the level of ~~EMT~~ ECP training corresponding to the license level at which the service is licensed or authorized.

(34) and (35) remain the same.

(36) "Type of EMS service" means either an air ambulance fixed wing, air ambulance rotor wing, ground ambulance, or nontransporting medical unit.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.102 PERSONNEL: ~~, EMT-INTERMEDIATE~~ AEMT GROUND AMBULANCE SERVICE (1) An ~~intermediate life support~~ AEMT ground ambulance service must:

(a) remains the same.

(b) when transporting a patient at the ~~intermediate~~ AEMT life support level, ensure that one of the required personnel is an ~~intermediate life support EMT~~ ECP-AEMT equivalent provider.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.105 LICENSE TYPES AND LEVELS (1) A license will be issued for, and authorize performance of, emergency medical services of a specific type and at a basic, ~~intermediate~~ AEMT, or advanced life support level.

(2) Except as specifically provided in this chapter, an emergency medical service may be licensed at an ~~intermediate~~ AEMT or advanced life support level only if they can reasonably provide such service 24 hours a day, seven days a week.

AUTH: 50-6-323, MCA
IMP: 50-6-306, 50-6-323, MCA

37.104.109 BASIC LIFE SUPPORT SERVICE LICENSING (1) An ambulance service or nontransporting medical unit (NTU) capable of providing service only at the basic life support level will be licensed at the basic life support level.

(a) An ambulance service or NTU that provides advanced life support with ~~EMT-intermediates~~ ECP-AEMT equivalent or ~~EMT-paramedics~~ ECP paramedic equivalent providers, but cannot reasonably provide it 24 hours per day, seven days per week due to limited personnel, will receive a basic life support license with authorization for limited ALS.

(b) An ambulance service or NTU that provides advanced life support with ~~EMT-basics~~ ECP-EMT with endorsements will receive a basic life support license with authorization for limited ALS.

(2) Ambulance services or NTUs requesting authorization for (1)(a) or (b) ~~shall~~ must:

(a) remains the same.

(b) submit documentation of the level and endorsement(s) each ~~emergency medical technician~~ ECP is authorized by the service medical director to provide.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.316 PERSONNEL REQUIREMENTS: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE (1) Except as provided for in 50-6-322, MCA, a basic life support ground ambulance service must ensure that at least two of the following individuals are on board the ambulance when a patient is loaded or transported, with the proviso that having only two ~~first responder ambulance~~ ECP-EMR personnel on a call is not allowed:

(a) ~~a first responder ambulance EMT,~~ an ECP-EMR equivalent; or

~~(b) an EMT-basic equivalent; or~~

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

(2) remains the same.

(3) Persons utilized as drivers of ambulances ~~shall~~ must complete training equivalent to the emergency vehicle operation objectives in a board-approved ~~EMT-basic~~ ECP-EMT course.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.319 PERSONNEL: ADVANCED LIFE SUPPORT GROUND AMBULANCE SERVICE (1) An advanced life support ground ambulance service must:

(a) remains the same.

(b) when transporting a patient at the advanced life support level, ensure that one of the required personnel is an ~~advanced life support EMT~~ ECP-paramedic equivalent.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.321 PERSONNEL: ~~, EMT-INTERMEDIATE~~ AEMT LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one ~~immediate life support EMT~~ ECP-AEMT equivalent is required.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.329 PERSONNEL: ADVANCED LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one ~~advanced life support EMT~~ ECP-paramedic equivalent is required.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.330 ~~EMT~~ ECP LEVEL OF CARE LIMITATIONS (1) With the exception of a physician or the circumstances described in ARM 37.104.335(3), individual personnel ~~shall~~ must not provide a level of care higher than the level and type for which the emergency medical service is licensed. The service must be licensed or authorized to operate at the highest level it plans to allow individuals to provide care.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.401 PERSONNEL: BASIC LIFE SUPPORT NONTRANSPORTING UNIT (1) At least one of the following individuals must be on each call:

~~(a) a person with a grandfathered advanced first aid training;~~

~~(b) an EMT-first responder (EMT-F);~~
~~(c)~~ (a) an ~~EMT-first responder~~ ECP-EMR equivalent; or
(d) remains the same, but is renumbered (b).

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.404 PERSONNEL: ADVANCED LIFE SUPPORT NONTRANSPORTING UNIT (1) An advanced life support nontransporting unit must:
(a) remains the same.
(b) when responding at the advanced life support level, ensure that at least one ~~advanced level EMT~~ ECP-paramedic equivalent is on the call.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.405 PERSONNEL: ~~, EMT-INTERMEDIATE~~ AEMT LIFE SUPPORT NONTRANSPORTING UNIT (1) An ~~intermediate~~ AEMT life support nontransporting unit must:
(a) remains the same.
(b) when responding at the ~~intermediate~~ AEMT life support level, ensure that at least one ~~advanced level EMT~~ ECP-AEMT equivalent is on the call.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.104.101, 37.104.102, 37.104.105, 37.104.109, 37.104.316, 37.104.319, 37.104.321, 37.104.329, 37.104.330, 37.104.401, 37.104.404, and 37.104.405 pertaining to emergency medical services (EMS).

Nationally, states and territory EMS offices have been adopting concepts of an EMS Education Agenda which describes a job-analysis process for EMT providers, new scopes of practice, and new names for various levels of EMT providers. Last year, the Montana Board of Medical Examiners (BOME) and the Montana Department of Labor and Industry (DLI) began a rule process to adopt these new levels of EMS providers and the new terms. Those rules were adopted this last summer, and the BOME adopted protocols defining their scope of practice in their September meeting. As of January 1, 2014, the old licensing levels of First Responder, EMT-Basic, Intermediate, and Paramedic will no longer exist. Several sections of the department's EMS service licensing rule reference these old terms for EMT providers. These rules must be changed to reflect the new terms of Emergency Medical Responder, Emergency Medical Technician, Advanced Emergency Medical

Technician, and Paramedic. Also, amendments to terminology for levels of licensed EMS and level of care are being proposed in order to reduce confusion.

ARM 37.104.101

The proposed amendments to these rule definitions reflect changes to BOME rules regulating EMTs that will go into effect in January of 2014. This provides consistency in terms between EMS and EMT rules.

ARM 37.104.102 and 37.104.105

The department is proposing amendments to these rules to change terminology related to EMT intermediate to the newer term "advanced emergency medical technician or AEMT" to reflect industry usage.

ARM 37.104.109

The department is proposing amendments to this rule to change terminology related to EMT intermediate and EMT paramedic to the newer terms of "advanced emergency medical technician or AEMT" and "paramedic." An amendment to (2) is also proposed to clarify that each case in (1) requires approval and documentation about the ECPs and the levels of care that will be provided by the EMS.

ARM 37.104.316, 37.104.319, 37.104.321, 37.104.329, 37.104.330, 37.104.404, and 37.104.405

The department is proposing amendments to these sections to change names of EMT providers to the newer ECP names.

ARM 37.104.401

The department is proposing amendments to this section to change names of EMT providers to the newer ECP names. The department is also proposing deletion of the "grandfathered advanced first aid training" level as it refers to a provider that likely no longer exists on any licensed EMS.

5. The department intends to apply these rules retroactively to January 1, 2014. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

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.

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

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.86.5111 pertaining to passport to health program	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 4, 2013, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 27, 2013, 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:

<u>37.86.5111 PASSPORT TO HEALTH PROGRAM: PRIMARY CARE PROVIDERS REQUIREMENTS</u> (1) and (2) remain the same.

(3) Passport providers who reach their specified caseloads of Passport patients, per their provider agreements with the department, will not be assigned additional members. Providers who have reached their capacity will be provided the opportunity to increase their caseloads. <u>Providers that are not provider-based as described at ARM 37.86.3031 may request an exemption from this rule.</u>

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-116, MCA

4. <u>STATEMENT OF REASONABLE NECESSITY</u>

The Department of Public Health and Human Services (the department) is proposing an amendment to a rule governing the Medicaid Passport to Health Program. The proposed rule change is needed to meet the care management needs of nonprovider-based providers.

ARM 37.86.5111

The department is proposing a change to add the opportunity for nonprovider-based providers to request an exemption from the caseload capacity requirement.

5. The department intends to adopt this rule amendment effective December 31, 2013.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

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.

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

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.70.107, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, and 37.70.901 pertaining to the Low Income Energy Assistance Program (LIEAP) for the 2013-2014 heating season	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 4, 2013, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment 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 November 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.107 REFERRALS TO THE ~~DEPARTMENT OF JUSTICE~~ AUDIT AND COMPLIANCE BUREAU (1) ~~When requested by the department, the Department of Justice shall~~ The Department of Public Health and Human Services (DPHHS), Audit and Compliance Bureau ~~have~~ has the power and duty to:

(a) investigate matters relating to low income energy assistance including, but not limited to, ~~the claim for an acceptance of benefits by recipients and the receipt and disbursal of funds by the department or the local contractor; and~~ applications, awards of benefits, and information received relating to an application;

(b) ~~institute civil and criminal actions in the appropriate courts to enforce the welfare laws with respect to low income energy assistance and violations thereof.~~ determine, based on the evidence gathered, whether an overpayment of benefits has occurred; and

(c) whether the overpayment was due to:

(i) a false or misleading statement or a misrepresentation, concealment, or withholding of facts; or

(ii) any other action intended to mislead, misrepresent, conceal, or withhold facts.

(2) ~~The Audit and Compliance Bureau is the liaison between the department and the Department of Justice. Referrals of~~ Contractors may make reports of possible overpayments or fraud ~~and requests for investigation must be sent~~ to the Department of Public Health and Human Services (DPHHS), Intergovernmental Human Services Bureau (IHSB), P.O. Box 202956, Helena, MT 59620-2953. IHSB will review cases referred prior to referral to the DPHHS Audit and Compliance Bureau. ~~, Quality Assurance Division, Audit and Compliance Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953, before they are referred to the Department of Justice. When the department of justice makes a direct request to the local contractor for case information, the information may be sent directly to the department of justice.~~

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

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) The procedure for determining eligibility for low income energy assistance is:

(a) An application is filed by the applicant together with verification for determining financial eligibility and benefit award. After an application is filed, the local contractor may request any additional information or documentation needed to determine the eligibility ~~and/~~or benefit amount, or both. If an applicant fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of ~~initial application~~ the most recent request for additional information, the application ~~shall~~ will be denied, but the household may reapply for assistance.

(i) through (3) remain the same.

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

37.70.401 DEFINITIONS (1) through (8) remain the same.

(9) "Incurment" means that portion of a medically needy recipient's income that exceeds the department's medically needy income level for the size of the filing unit.

(9) through (12) remain the same, but are renumbered (10) through (13).

(14) "Medically needy" means an individual or family otherwise eligible for Montana Medicaid but whose income exceeds medically needy income levels.

(13) through (28) remain the same, but are renumbered (15) through (30).

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

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) remains the same.

(2) Except as provided elsewhere in this rule, households which consist solely of members who are eligible for and receiving supplemental nutritional assistance payments (SNAP), supplemental security income (SSI), TANF-funded cash assistance, or county or tribal general assistance are automatically financially eligible for low income energy assistance benefit awards.

(3) Households which consist of members receiving SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance, and other individuals whose income and resources were not considered in determining eligibility for SNAP, SSI, TANF-funded cash assistance, or general assistance are not automatically eligible for low income energy assistance but must meet the financial requirements set forth in this rule.

(4) Individuals living in shelters, including but not limited to, recipients of SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance, are not eligible for low income energy assistance. Individuals living in licensed group-living situations as defined in ARM 37.70.401 may be eligible if they meet all other requirements for eligibility. Individuals living in licensed group-living situations which are not group-living situations as defined in ARM 37.70.401 are not eligible for low income energy assistance.

(5) through (9) remain the same.

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

37.70.406 INCOME STANDARDS (1) Households with one through seven members with annual gross income at or below 60% of the estimated state median income for federal fiscal year (FFY) ~~2013~~ 2014 are eligible for low income energy assistance on the basis of income. Households with eight or more members are eligible for low income energy assistance on the basis of income only if the household's annual gross income is at or below 150% of the ~~2012~~ 2013 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) remains the same.

(3) The table of income standards for households of various sizes for the ~~2013~~ 2014 heating season may be accessed at the department's web site at www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(4) Households at or below 60% of the estimated state median income amount for FFY ~~2013~~ 2014 for the household's size are eligible for LIEAP client education and outreach activities.

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

37.70.407 EXCLUDED INCOME (1) ~~Excluded from income are t~~The following types of unearned income ~~and deductions~~ are excluded or deducted:

(a) through (z) remain the same.

(aa) amounts paid to satisfy an incurment for the medically needy programs.

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

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year ~~2013~~ 2014, a household will be eligible if its total countable nonbusiness resources do not exceed ~~$10,392~~ $10,610 for a single person, ~~$15,591~~ $15,918 for two persons, and an amount equal to ~~$15,591~~ $15,918 plus ~~$1,039~~ $1,061 for each additional household member, up to a maximum of ~~$20,786~~ $21,223 per household. In addition, the household may have business assets whose equity value does not exceed $25,000.

(5) remains the same.

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

37.70.601 BENEFIT AWARD (1) Except as provided in (2), the benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	~~NATURAL~~ GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
~~ONE~~	~~$ 473~~	~~$ 896~~	~~$ 1,165~~	~~$1,804~~	~~$ 678~~	~~$ 674~~
~~TWO~~	~~688~~	~~1,302~~	~~1,694~~	~~2,623~~	~~986~~	~~980~~
~~THREE~~	~~937~~	~~1,775~~	~~2,308~~	~~3,574~~	~~1,343~~	~~1,335~~
~~FOUR~~	~~1,289~~	~~2,441~~	~~3,176~~	~~4,917~~	~~1,848~~	~~1,836~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ 482	$ 870	$ 1,030	$1,645	$ 707	$ 646
TWO	701	1,265	1,497	2,391	1,029	939
THREE	954	1,724	2,040	3,258	1,401	1,280
FOUR	1,313	2,371	2,806	4,482	1,928	1,761

(ii) MULTI-FAMILY

# BEDROOMS	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$ 400~~	~~$ 758~~	~~$ 985~~	~~$1,918~~	~~$ 573~~	~~$ 569~~
~~TWO~~	~~602~~	~~1,141~~	~~1,484~~	~~2,888~~	~~862~~	~~857~~
~~THREE~~	~~884~~	~~1,674~~	~~2,178~~	~~4,238~~	~~1,265~~	~~1,258~~
~~FOUR~~	~~1,033~~	~~1,956~~	~~2,544~~	~~4,951~~	~~1,478~~	~~1,469~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ 407	$ 736	$ 871	$1,748	$ 597	$ 546
TWO	614	1,108	1,312	2,633	900	822
THREE	900	1,626	1,925	3,863	1,320	1,206
FOUR	1,052	1,900	2,249	4,513	1,543	1,409

(iii) MOBILE HOME

# BEDROOMS	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$ 399~~	~~$ 755~~	~~$ 982~~	~~$1,594~~	~~$ 571~~	~~$ 568~~
~~TWO~~	~~583~~	~~1,104~~	~~1,436~~	~~2,330~~	~~835~~	~~830~~
~~THREE~~	~~772~~	~~1,463~~	~~1,903~~	~~3,089~~	~~1,107~~	~~1,101~~
~~FOUR~~	~~862~~	~~1,633~~	~~2,124~~	~~3,448~~	~~1,236~~	~~1,228~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ 406	$ 733	$ 868	$1,453	$ 596	$ 544
TWO	594	1,072	1,269	2,124	872	796
THREE	787	1,421	1,682	2,816	1,155	1,055
FOUR	878	1,586	1,877	3,143	1,289	1,178

(d) through (2) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) through (4) remain the same.

(5) Subject to the provisions of (6), after a household has requested emergency assistance and provided proof that it is financially and otherwise eligible for such assistance, the contractor shall provide some form of assistance to resolve the emergency:

(a) remains the same.

(b) within 18 hours after the request is made, if the emergency is ~~a~~ life-threatening ~~situation~~. Life threatening is defined as any of the conditions of emergency specified in (1) that may cause death or severe permanent damage to the health of one or more household members.

(6) through (8) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of 37.70.107, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, and 37.70.901 pertaining to Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low-income households pay their home heating costs.

ARM 37.70.107

The department is proposing amendments to this rule to specify its designation of the department's Audit and Compliance Bureau, rather than the Department of Justice (DOJ), as the unit authorized to investigate matters relating to low income energy assistance including the claim for an acceptance of benefits by recipients and the receipt and disbursal of funds by the department or the local contractor. As a means of preventing fraud, waste, and abuse, this designation will allow the Audit and Compliance Bureau to accept fraud referrals and requests for investigation from the LIEAP Program. It is more appropriate for the Audit and Compliance Bureau to investigate possible fraud because they are more knowledgeable about the department's programs and may already be investigating a related incidence of fraud in other programs.

ARM 37.70.311

The proposed amendments to this rule specify the timeline, for applicants to provide additional information or documentation needed to make an eligibility determination, as 45 days from the most recent request for the client to provide the additional information, as opposed to 45 days from the initial application date. This proposed amendment will allow clients additional time to get necessary eligibility information and documentation to the LIEAP agency.

ARM 37.70.401

The department is proposing to add new terms to ARM 37.70.407; therefore, it is necessary to define these terms in this rule.

ARM 37.70.402

This rule is being amended to include eligibility information related to households where all members are receiving supplemental nutritional assistance payments (SNAP). Although the federal regulation allows the LIEAP Program to make energy-assistance payments to households in which one or more individuals are receiving SNAP, this proposed amendment takes a more restrictive approach. The proposed amendments allow LIEAP households, in which all members are currently receiving SNAP benefits, to be determined categorically eligible for LIEAP.

ARM 37.70.406

Because LIEAP is a needs-based assistance program, only households with income and assets below specified limits are eligible to receive LIEAP benefits. This rule contains the maximum income standards used to determine eligibility for LIEAP. These income standards are computed as a specified percentage of the federal poverty guidelines (FPG) issued annually by U.S. Department of Health and Human Services (HHS). The standards currently in this rule are based on the HHS poverty guidelines for 2012.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long-standing practice of the department to amend this rule annually to provide that the updated version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. Thus, this rule is now being amended to provide that the 2013, rather than the 2012, poverty guidelines will be used for the 2013-2014 heating season.

ARM 37.70.407

The proposed amendments to this rule describe unearned income and other deductions which are not included as income for the LIEAP eligibility determination. This rule has been expanded to include amounts paid as incurments for the medically needy program. In medically needy cases, individuals who would not be income-eligible for Medicaid benefits are required to "pay down" their income to the medically needy income level in order for Medicaid to begin paying the medical expenses. Often times, after meeting the incurment the individual is left with a very small amount of income for living expenses, less than would be received by a supplemental security income (SSI) recipient. In most circumstances, the SSI

recipient would be categorically eligible to receive LIEAP, but without this rule amendment the medically needy individual may not qualify for fuel assistance, yet is left to live on an amount less than the SSI individual.

ARM 37.70.408

In determining eligibility for LIEAP, the department considers not only income but also assets (known as "resources") the household has that can be used to pay heating costs. This rule specifies the rules relating to resources. Section (4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year (SFY) 2014. Section (5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation, so it is necessary to amend (4) to increase the dollar amounts for SFY 2014. Section (5) specifies that the revised nonbusiness resource limits will be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The increase in the CPI for calendar year 2012 was 2.1%, so the dollar amounts in (4) would increase by 2.1% from SFY 2013 to 2014. Therefore, in accordance with the formula provided in (5), (4) must be amended to increase the maximum amounts of nonbusiness resources 2.1% from SFY 2013 to 2014.

ARM 37.70.601

This rule governs the computation of benefits for eligible households. Subsection (1)(a) provides that an eligible household's benefit is computed by multiplying the applicable amount in the table of benefits in (1)(c) by the applicable multiplier from the table of income/climatic adjustment multipliers in (1)(d). The benefit amounts in (1)(c) vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding and the number of households expected to receive benefits in a given heating season. The department is proposing to amend the benefit amounts in (c). They are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2013-2014 heating season as well as fuel-cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the 2013-2014 heating season. The revised benefit amounts in (1)(c) for 2013-2014 are based on the department's estimate that 24,000 households will qualify for LIEAP benefits for the current heating season and based on the department's estimates of the federal LIEAP funds it will receive.

ARM 37.70.901

The department is proposing to modify this rule to specify the definition of a "life-threatening" emergency. Federal Low Income Home Energy Assistance Program (LIHEAP) regulations provide timelines in which assistance must be provided to the household who applies for energy crisis benefits, depending whether the crisis is determined to be a life-threatening emergency. A recent review of the LIHEAP

program by the federal Department of Health and Human Services (HHS) indicated that the Administrative Rules of Montana (ARM), and the LIEAP policy manual should be clarified to define what constitutes a life-threatening emergency. This clarification will allow workers to more accurately determine the required response time for resolution of the emergency situation.

Fiscal Impact

LIEAP is 100% federally funded. Congress has not yet appropriated funds for LIEAP for the 2013-2014 heating season, but based on the information available at this time the department estimates that Montana will receive LIEAP funds of approximately $18 million for the current heating season. This compares to LIEAP funding of $18 million for the 2012-2013 heating season. Benefit levels for households using all types of heating fuel and for all dwelling types will not change significantly from the 2012-2013 heating season. It is estimated that 21,500 households will qualify for LIEAP benefits this year, which is comparable to last year.

5. The department intends to apply these rules retroactively to October 1, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 12, 2013.

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.

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

/s/ Barbara B. Hoffmann	/s/ Richard H. Opper
Barbara B. Hoffmann	Richard H. Opper, Director
Rule Reviewer	Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.245 relating to liquor advertising	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 27, 2013, the department proposes to amend the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 2, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

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

42.11.245 ADVERTISING SPECIALTIES (1) Registered representatives are allowed to distribute point of sale advertising materials and consumer advertising specialties to a retailer as set forth in Title 27 of the Code of Federal Regulations, regulation number 6.84, in effect on April 1, 2012. Copies may be obtained at the United States Treasury web site located at www.ttb.gov.

(2) remains the same.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 2-4-307, 16-3-103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.11.245 to add in the effective date of the Code of Federal Regulations adopted by reference in the rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; or e-mail lalogan@mt.gov, not later than December 12, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Laurie Logan at the above address no later than 5:00 p.m., December 12, 2013.

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 who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no 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 persons directly affected has been determined to be 4 based on approximately 40 representatives who are registered as of July 1, 2013.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment to the rule contained in this notice will not significantly or directly impact small businesses.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State November 4, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.124 pertaining to clarification of valuation periods	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 5, 2013, at 3:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 22, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

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

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) remains the same.

(b) For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of ~~January 1, 2014~~ July 1, 2008.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.18.124(1)(b) to correct an error that was created with an inadvertent amendment to the rule in 2012. The date of July 1, 2008, was accurate and should not have been changed.

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: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov and must be received no later than December 12, 2013.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment to the rule contained in this notice will not significantly or directly impact small businesses.

/s/ Laurie Logan	/s/ Mike Kadas
LAURIE LOGAN	MIKE KADAS
Rule Reviewer	Director of Revenue

Certified to Secretary of State November 4, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.102 pertaining to applications for property tax exemptions	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 5, 2013, at 2 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 22, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record, the property owner's agent, or a federally recognized tribe, must file an application for a property tax exemption on a form available from the local department office before March 1, except as provided in ARM 42.20.118 ~~for 2012~~, of the year for which the exemption is sought ~~or within 30 days after receiving an assessment notice, whichever is later~~. Applications postmarked after March 1 ~~or more than 30 days of receiving the assessment notice, whichever is later,~~ will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer receives notice by way of an AB-34 (Removal of Property Tax Exemption) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption; or

(b) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness~~.~~; and

(c) the applicant can demonstrate, while not necessarily continuous, the impediment(s) existed at sufficient levels in the period of January 1 to March 1, of the tax year in which the applicant is applying, to prevent timely filing of the application.

(2) The following documents must accompany all applications, unless the applicant is a federally recognized tribe:

(a) and (b) remain the same.

(c) if the applicant has been granted tax-exempt status by the Internal Revenue Service (IRS), a copy of the applicant's tax-exempt status letter (501 determination)~~;~~

~~(d) a letter~~:

(i) identifying the parcel by geocode, assessor code, legal description, or physical address; ~~and~~

(ii) explaining how the organization, or society, ~~believes it~~ qualifies for the property tax exemption; and

(iii) stating the specific use of the real or personal property.

(3) ~~For an exemption application of a federally recognized tribe, the following documents~~ A tribal resolution must accompany all applications submitted by a federally recognized tribe that:

(a) ~~a tribal resolution identifying~~ identifies the fee land, by legal description;

(b) ~~language stating~~ states the type of exemption the tribe is requesting;

(c) ~~language stating~~ states how the property qualifies for ~~that type of~~ the exemption; and

(d) ~~a statement regarding~~ states the specific and exclusive use of the real or personal property.

(4) For personal property exemption applications, the following documents must accompany all applications:

(a) a copy of the title of motor vehicle or mobile home; or a letter ~~of explanation~~ identifying ownership, if title is not applicable~~, a letter identifying ownership~~; and

(b) a photograph of the property.

(5) For real property exemption applications, the following documents must accompany the applications:

(a) a copy of a fully executed deed, or a contract for deed, or a notice of purchaser's interest, or a security agreement identifying ownership.

(6) For real property exemption applications where the applicant is requesting exemption of property used for religious purposes, the following documents must accompany the application:

(a) remains the same.

(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:

(i) identifying the fee land by legal description, not to exceed 15 acres, as sacred land to be used exclusively for religious purposes~~, by legal description, language~~;

(ii) stating the type of exemption the tribe is requesting~~,~~; and

(iii) ~~language~~ stating how the property qualifies for this type of exemption~~, not to exceed 15 acres~~.

(7) For real property exemption applications where the applicant is requesting exemption of property used for educational purposes, the following documents must accompany the application:

(a) through (d) remain the same.

(e) if the applicant is a federally recognized tribe, a copy of the tribal resolution:

(i) identifying the fee land, by legal description, to be used exclusively for educational purposes~~, by legal description, language~~;

(ii) stating the type of exemption the tribe is requesting~~,~~; and

(iii) ~~language~~ stating how the property qualifies for this type of exemption.

(8) For real property exemption applications where the applicant is requesting exemption of property used for nonprofit healthcare facilities, the following documents must accompany the application:

(a) remains the same.

(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:

(i) identifying the fee land, by legal description, to be used exclusively for health care services~~, by legal description, language~~;

(ii) stating the type of exemption the tribe is requesting~~,~~; and

(iii) ~~language~~ stating how the property qualifies for this type of exemption.

(9) For real property exemption applications where the applicant is requesting exemption of property used solely in connection with a cemetery or cemeteries, the following documents must accompany the application:

(a) and (b) remain the same.

(c) if the applicant is a federally recognized tribe, a copy of the tribal resolution:

(i) identifying the fee land, by legal description, to be used exclusively as a cemetery or cemeteries~~, by legal description, language~~;

(ii) stating the type of exemption the tribe is requesting~~,~~; and

(iii) ~~language~~ stating how the property qualifies for this type of exemption.

(10) through (12) remain the same.

~~(13) The department will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201, 15-6-203, 15-6-209, 15-6-211, 15-6-216, 15-6-221, and 15-6-230, MCA.~~

~~(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on the date of acquisition as evidenced by the deed and realty transfer certificate, if an application (if one is required for the exemption) is filed by the application deadline for that tax year and the property meets statutory requirements.~~

AUTH: 15-1-201, 15-6-230, MCA

IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-6-211, 15-6-216, 15-6-221, 15-6-230, 15-7-102, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.102 to correct an inequitable situation that exists in the current language in the rule relative to applying for property tax exemptions in general. Section 15-8-201, MCA, requires the department to assess all property to the person by whom it was owned, claimed, or in possession of on January 1. Taxpayers may file for an exemption of their property taxes within 30 days after receiving their assessment notices.

When a property transfer occurs very early in the calendar year, the department typically has time to record the ownership transfer prior to processing

that year's property assessment notices. For acquisitions occurring closer to the department's assessment notice processing time, the opportunity to update the record of transfer ahead of the assessment notice mailing does not exist.

In those instances, the owners of the property acquired later do not have the same opportunity to file for an exemption that the owners of property acquired earlier in the year do, and must wait to file for an exemption in the following tax year instead. This creates a situation where not all property owners who acquire property after January 1 in a given year are being treated the same. Therefore, the department proposes to remove the 30-day language in (1) and to strike (13) altogether to remove the language that has previously allowed for this inequity to occur.

The department further proposes to restructure the language in (1) through (9) to improve the readability of the rule.

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: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov and must be received no later than December 12, 2013.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. With regard to the requirements of 2-4-111, MCA, the department has

determined that the proposed amendments to the rule contained in this notice will not significantly or directly impact small businesses.

/s/ Laurie Logan	/s/ Mike Kadas
LAURIE LOGAN	MIKE KADAS
Rule Reviewer	Director of Revenue

Certified to Secretary of State November 4, 2013

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III that establish criteria to be used by the board's actuary to obtain information related to PERS, its amortization period, its funding status, its future GABA rates, and its actuarial equivalent factors	)))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 22, 2013, the Public Employees' Retirement Board published MAR Notice No. 2-43-490 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1466 of the 2013 Montana Administrative Register, Issue Number 16.

2. The Public Employees' Retirement Board has adopted the above-stated rules as proposed: New Rule I (2.43.1310), II (2.43.1311), New Rule III (2.43.1312).

3. No comments or testimony were received.

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

/s/ Scott E. Moore
Scott E. Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State October 22, 2013.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 2.43.2114 pertaining to required employer reports regarding employer contributions paid on behalf of university employees who elect to participate in the Optional Retirement Program rather than in the Public Employees' Retirement System	))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 22, 2013, the Public Employees' Retirement Board published MAR Notice No. 2-43-491 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1470 of the 2013 Montana Administrative Register, Issue Number 16.

2. The Public Employees' Retirement Board has amended the above-stated rule as proposed.

3. The Public Employees' Retirement Board has adopted the above-stated rule as proposed: New Rule I (2.43.3601).

4. The Public Employees' Retirement Board has thoroughly considered the comment received. A summary of the comment received and the Public Employees' Retirement Board's response are as follows:

COMMENT 1: A commenter requested additional explanation in regards to MAR Notice No. 2-43-491. She also requested to have "Optional Retirement Plan" changed to the "Montana University System-Retirement Plan."

RESPONSE 1: It was explained that the changes to the name of the Optional Retirement Plan would be changed in a rule notice that will be filed October 7, 2013. HB 320 requires the name change but is not effective until October 1, 2013.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ Scott E. Moore
Scott E. Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State October 22, 2013

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.313 pertaining to Noxious Weed Seed Free Forage Fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 8, 2013, the Department of Agriculture published MAR Notice No. 4-14-213 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1395 of the 2013 Montana Administrative Register, Issue Number 15.

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: The Noxious Weed Seed Free Forage program is important and a vital part of the battle against weeds.

RESPONSE #1: The department agrees.

COMMENT #2: The increase is too much and it will discourage people from growing the products.

RESPONSE #2: We agree that increases in fees are discouraging and may impact participation in the program. It is unfortunate that two funding resources that have in the past supported the program are no longer available, necessitating a fee increase or changes that would likely diminish the program in ways that no one wants to occur (i.e., not available in some counties, not acceptable to our federal partners, not allowed out of state).

COMMENT #3: The increase is too much and it will discourage people from selling the products.

RESPONSE #3: Increased fees do contribute to overall production cost and impact product pricing but should not create a significant selling barrier. The increase in fees is not meant to discourage people from selling products but is necessary to operate the program.

COMMENT #4: The increase is too much and it will discourage people from buying the products.

RESPONSE #4: Use of NWSFF is still required on public lands because of the valuable protection it provides to our environment. People will still need a source of product. Buyer decisions are based on a multitude of factors, including value and price. NWSFF still represents a value even at what could be higher prices.

COMMENT #5: The increase is too much and it will price out Montana-grown straw in road construction projects.

RESPONSE #5: NWSFF is required on all road construction and land restoration projects, so straw demand should remain steady or increase. Buying locally reduces transportation costs, making local product purchases cost effective and a value for the price.

COMMENT #6: The increase is not needed to support the program.

RESPONSE #6: The current fees support only a small portion of the program funding needed to operate an effective and efficient program. The loss of two sources of funding for this program means the program must be supported solely through fees at this time.

COMMENT #7: Are there other places or things that could be cut such as overhead?

RESPONSE #7: We agree with the commenter and have already reduced office space and operational costs. Operational reductions, however, are not enough to address the large gap in funding created by the loss of other resources. The fee increase will allow the program to become self-funded.

COMMENT #8: If the program is not fully funded, it will cease to be used, promoted, and functional.

RESPONSE #8: The department agrees.

COMMENT #9: The program doesn't matter as there are still weeds in neighboring properties.

RESPONSE #9: We believe that NWSFF does matter and the required use of NWSFF products protects pristine weed-free backcountry areas. The department understands the frustration that comes with controlling weeds in one area only to have the neighboring property be weedy and serve as a continual source of weeds. We recommend that these concerns be brought to the attention of the County Weed District Coordinators.

COMMENT #10: Shouldn't the federal government pay for the program?

RESPONSE #10: The department agrees and would like to see federal partners financially help support this program but it is also a state program. All partners should contribute and help fund this program.

COMMENT #11: While it would be ideal if this program were self-sustaining, wouldn't general fund money be a better route to stabilizing this important program?

RESPONSE #11: The department agrees.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State November 4, 2013.

BEFORE THE 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 2013-2014 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 19, 2013, the Department of Commerce published MAR Notice No. 8-94-117 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1646 of the 2013 Montana Administrative Register, Issue Number 18.

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 follow:

COMMENT #1: A comment was received – in the form of a question to staff – since CRDCs receive funding from the U.S. EDA for the preparation of comprehensive economic development strategies and other planning activities, can EDA funds be used as match for CDBG planning grant activities?

RESPONSE #1: Guidance in Section IV found on page 7 of the *Draft FFY 2013-2014 CDBG Application Guidelines for Housing & Public Facilities Planning Grants* identifies that "grants or other cash contributions from other local, state and federal agencies and programs or private organizations are also acceptable forms of match for CDBG planning grant awards." Therefore, funds received from the U.S. EDA for the completion of planning activities for which a local government is also applying for CDBG planning grant funding would be an eligible source of match. The local government would be required to clearly document the source of matching funds in their grant application, as well as provide detailed documentation of what planning activities and products the matching funds paid for, in relation to the overall planning activity funded.

COMMENT #2: A comment was received – in the form of a question to staff – that many CRDCs do planning in rural communities. Since most counties don't have designated planning staff, who takes the lead in planning at the local level? And if CRDCs are doing planning work for a rural community or county, does there have to be a separate RFP process, as normally required for CDBG?

RESPONSE #2: CDBG planning grants are awarded to eligible counties, cities or towns; these eligible entities may apply on behalf of a nonprofit organization, but are

required to be the applicant with regard to planning activities utilizing planning grant funds. If a county, city, or town is interested in using a CRDC to complete planning projects, they would be able to do so as long as the local government follows the procurement procedures outlined in Section VIII of the *Draft FFY 2013-2014 CDBG Application Guidelines for Housing & Public Facilities Planning Grants.*

COMMENT #3: A comment was received urging staff to reconsider allowing CDBG planning grant funds to pay for the preparation of grant applications for funding from other agencies and programs, not just CDBG. Page 5 of the current CDBG planning grant guidelines lists the preparation of grant applications for CDBG housing or public facilities projects, in conjunction with a planning project listed above (under eligible activities within the guidelines).

RESPONSE #3: Application guidelines for CDBG planning grants dating back to 2006 have recognized the preparation of a grant application for a CDBG housing or public facilities project as an eligible expense; the current guidelines are consistent with what has been in place for the last seven years. Other planning grant programs allow for the preparation of project grant applications to benefit communities; the 2015 Biennium Quality Schools planning grant guidelines allow for the preparation of an application for a Quality Schools facility infrastructure grant as an eligible expense, and the Treasure State Endowment Program Infrastructure Planning Grant Administration Guidelines allow for the preparation of a TSEP grant application to count as match toward an infrastructure planning grant.

COMMENT #4: A comment was received – in the form of a series of questions to staff – regarding specific administrative and review processes in the application. These questions included clarification under Section VIII as to what the 500-word limit applies to; clarification of what 'activities' refers to in Exhibit 2 – Proposed Budget & Justification Narrative; clarification of postmark date; and when the final version of the application guidelines will be posted.

RESPONSE #4: Under Section VIII of the application – *Detailed Project Proposal* – the '500 words or less' requirement applies to all subsections under A, B, and C. The term 'activities' in the table in Exhibit 2 – *Proposed Budget & Justification Narrative* – encompasses the general project and does not need to include the entire statement/breakdown of work. Any applications sent via standard mail must be postmarked November 1, 2013 – staff recommends the applicant e-mail application materials, if possible, on November 1 to ensure the application is received as soon after the cycle opens as possible; the original signature page and documents can be mailed to Commerce following submittal via e-mail. At minimum, the month and year of the activity to be completed should be included in the implementation schedule attached to the application (Exhibit 1). It is anticipated the finalized guidelines and application will be posted on the Department of Commerce's web site no later than October 25, 2013.

COMMENT #5: A comment was received voicing concern that there is not sufficient turnaround time between the end of the comment period and the beginning of the application cycle on November 1, 2013.

RESPONSE #5: Due to the use of electronic media and the amount of interest surrounding the CDBG planning grant cycle opening this fall, the Department of Commerce felt confident that one week was a sufficient amount of time. Comments received to date did not result in significant alterations to the draft guidelines that were posted on September 19, 2013 and made available to potential applicants. Had there been significant changes to the application and/or guidelines as a result of the public process, the department would have considered postponing the opening of the application cycle. Furthermore, if applications are received that are incomplete as a result of any changes made during this process, Commerce staff is committed to assisting applicants in working through these deficiencies to produce a complete application that can be considered for funding.

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Meg O'Leary
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State November 4, 2013.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to salvage permits) NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 15, 2013, the Fish and Wildlife Commission published MAR Notice No. 12-392 pertaining to the proposed adoption of the above-stated rule at page 1300 of the 2013 Montana Administrative Register, Issue Number 14.

2. The commission has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I [12.3.186] SALVAGE PERMITS (1) A deer, elk, moose, or antelope accidentally killed as a result of a vehicle collision may be salvaged and possessed if a permit is obtained from a peace officer, a department regional office during regular business hours, or by the department through an electronic application and issuing process within 24 hours of taking possession of the animal.

(2) Any animal ~~carcass~~ taken for salvage must:

(a) be taken in its entirety; and

~~(a) be presented to a peace officer or department regional office during regular business hours within 24 hours of taking possession of the animal; and~~

(b) be disposed of in accordance with 75-10-213, MCA, and any meat rendered must be utilized for human consumption and may not be used for bait or any other purpose.

(3) The salvage permit will be issued on a form provided by the department.

(4) Big game licenses and tags issued for the purpose of hunting shall not be used for purposes of salvaging animals.

(5) All parts of animals salvaged shall be made available for inspection by a peace officer upon request.

AUTH: 87-3-145, MCA
IMP: 87-1-301, 87-3-145, MCA

3. The commission received a total of 86 comments, 55 supporting adopting the rule and 31 comments that offered comments that were either outside the scope of the proposed rules or disagreed with the legislation allowing for the salvage of road-killed animals. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 1: Twelve comments stated that it was unnecessary to even have a permitting system considering the animals were already dead, believed that a person should not have to report the animal, or felt that burdening peace officers or

department employees with an inspection was not necessary and a waste of resources.

Response 1: HB 247 amended current laws that prohibited the possession of animals not taken legally through hunting or through special permission by the department so as to provide a method by which animals killed in vehicular collisions could be salvaged while still tracking the ultimate disposition of the animals which is a primary responsibility of the department. A permitting system will provide a means to help ensure that the permits are not abused or that other than lawful use is made of animals taken under the permit. The adopted rule regarding how to handle the permitting procedure will not require onsite inspection by an individual peace officer but will include an affidavit that the applicant for the permit will allow inspection of the animal upon request of a peace officer should there be any question as to the legality of the animal.

Comment 2: Ten comments suggested using the salvaged meat to feed jail inmates or donating to food banks.

Response 2: The law allows for individual private citizens to salvage road-killed animals in their entirety. Montana Food Bank does not accept road-killed animals for distribution and the department has not attempted to coordinate with penal institutions.

Comment 3: Ten comments were received stating that road kill was unfit for human consumption and to eat it posed human health concerns.

Response 3: It is the responsibility of the permittee to ensure that any salvaged meat is edible and fit for consumption. The state assumes no liability for the consumption of meat salvaged by permit.

Comment 4: A few comments stated salvaged meat should be used for other purposes than human consumption such as for zoos or pets.

Response 4: The focus of HB 247 was not letting an otherwise useable animal go to waste with the emphasis on human consumption. Licensed zoos and permitted rehabilitation centers can get a permit to pick up road-killed animals for their use. Otherwise it still remains unlawful to utilize game meat that is fit for human consumption for any other purpose.

Comment 5: A few comments stated permitting the salvage of vehicular killed animals has the potential to encourage unlawful and intentional taking of wildlife, including "hunting" with motor vehicles or shot and then reported as road killed.

Response 5: Although the possibility remains for unlawful activity regardless of any stipulations placed upon the retrieval and possession of road-killed animals, the permit system will provide a tracking method of those who pick up animals. Furthermore, with the adoption of the rule allowing for the inspection upon request of

any permitted salvaged animal taken into possession, a prime means of investigating possible illicit activities associated with permitting will be available to wardens and other law enforcement officers.

Comment 6: Three people stated concern for people who would be field dressing animals on a road and the public safety risks that would present for both the person salvaging the animal as well as passing motorists. Additionally, concerns were expressed regarding viscera remaining on the side of the road after a salvaged animal being field dressed could attract other wildlife posing a danger of being struck by vehicles.

Response 6: The rule requires a person salvaging a deer, elk, antelope, or moose that has been killed in a vehicular collision to take the entire carcass from the site and dispose of unusable portions as prescribed by state health laws. As such, a person could field dress the animal on the roadway but would be required to take the viscera upon leaving the site with the carcass. This will significantly reduce the possibility of other wildlife being drawn to the site and hit by traffic if entrails are left at the site. Emphasis on highway safety will be made in the instructions that accompany the permit as well as informing permittees that individuals parked on a roadway to salvage animals do so at their own risk.

Comment 7: Two people commented that any antlers or horns should be collected by enforcement personnel.

Response 7: Discussion in legislative hearings indicated that the intent was to allow a person to keep animals in their entirety including all parts including antlers and ivories.

Comment 8: One person questioned if there is a charge for the permit.

Response 8: At this time, there is no charge planned for issuing a salvage permit.

Comment 9: One person requested the commission address trespassing issues so people stay off private land.

Response 9: Animals will be salvaged from road shoulders and right of ways. There should be no reason for anyone to go on private land in most cases.

Comment 10: One person wanted to assure this rule does not authorize someone wishing to obtain road kill for research and that salvaged meat may not be used for bait.

Response 10: The rule specifically forbids the use of salvaged animals for any kind of baiting and a collector's permit is necessary to collect managed wildlife for research.

Comment 11: Three people commented how important it is for the whole animal to be removed and disposed of properly and a person may not leave gut piles.

Response 11: The rule requires the animal and all parts be taken and that any unusable portion be disposed of in accordance with state and county laws. That would include taking any viscera that result from dressing out an animal on the roadway.

Comment 12: Four people stated it would be a problem to require someone to present the entire carcass for inspection and a moose would be almost impossible.

Response 12: The rule was amended and no longer requires a person to present a salvaged animal to obtain a permit. The rule does require a person to present an animal to a peace officer upon request should questions arise concerning the circumstances under which the animal was killed.

Comment 13: One person requested the permitting system be reasonable and accessible to citizens.

Response 13: A person has 24 hours to obtain a permit via the department's web site (www.fwp.mt.gov), a law enforcement officer, or a department office to get assistance obtaining a permit.

Comment 14: One person stated that published studies have indicated that in areas where chronic wasting disease (CWD) is active, there are a higher percentage of CWD-positive animals in road-killed cervids than in free-ranging cervids in the same area. Provisions should be in place to put an immediate stop to salvage in areas where CWD is detected. Movement of road-killed carcasses from these areas may not only have risks for human health, but for potential spread of CWD in cervids in new areas if carcasses are not properly disposed of.

Response 14: The commission agrees and although there are no documented cases of CWD in the wild in Montana at this date, the potential certainly exists. Should an outbreak be detected in an area, the commission has the authority to implement restrictions to protect wildlife populations in the state.

/s/ William Schenk
William Schenk
Rule Reviewer

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

Certified to the Secretary of State November 4, 2013.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.702, 17.36.345, 17.36.914, and 17.38.101 pertaining to Department Circular DEQ-4	)	NOTICE OF AMENDMENT
	)	(WATER QUALITY)
	)	(SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT)
	)	(PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On December 20, 2012, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-343 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2529, 2012 Montana Administrative Register, Issue Number 24. On January 31, 2013, the board published MAR Notice No. 17-343 regarding a Notice of Extension of Comment Period on Proposed Amendment at page 90, 2013 Montana Administrative Register, Issue Number 2. On June 6, 2013, the board published MAR Notice No. 17-343 regarding an Amended Notice of Proposed Amendment and Extension of Comment Period at page 895, 2013 Montana Administrative Register, Issue Number 11.

2. The board and department have amended the rules exactly as proposed.

3. The following comments were received and appear with the board's and department's responses:

GENERAL

COMMENT NO. 1: The board and department received several general comments recommending changes to formatting, grammar, syntax, and punctuation.

RESPONSE: The board and department agree with many of these comments. The circular has been reviewed and the appropriate changes have been made. Because they are numerous, these comments will not be summarized and the nonsubstantive changes have been made throughout DEQ-4. They are indicated by an "[NS]" following the change, except for punctuation and grammar changes. When references are made to subchapter, section, and subsection numbers, the citations are made to the numbers as they appear in the final version of the circular.

CHAPTER 1 INTRODUCTION

COMMENT NO. 2: The department should add an explanation for the chart

in section 1.1.1.

RESPONSE: The board and department agree that an explanation to the chart in section 1.1.1 would be helpful and the suggested change has been made to the circular. This section now explains that the reviewing authority can refer to the Montana Department of Environmental Quality or a division of local government and states "[c]hart 1 shows this relationship graphically."

COMMENT NO. 3: When section 1.1.2 states "[p]ressure-dosed distribution should be the method of choice," does this permit DEQ or a sanitarian to require pressure distribution? DEQ should delete this requirement.

RESPONSE: The United States Environmental Protection Agency Onsite Wastewater Treatment Systems Manual, Feb. 2002, states that pressure-dosed distribution should be the method of choice for onsite wastewater treatment systems. This recommendation is included in the circular for informational purposes so that installation of a pressure-dosed system will be considered in situations where such a system is possible. The circular does not specify that pressure-dosed drainfields must be used in situations where it is not specifically required by the circular or other rules. Some counties, however, have passed rules requiring pressure-dosing on all new systems. Section 1.1.2 allows the reviewing authority to evaluate the specific site conditions and determine the best method of distribution. The suggested change has not been made.

COMMENT NO. 4: Subsection 1.1.3.8 should not state that "gray water systems are used for irrigation." Instead that subsection should state that "gray water irrigation systems are used for irrigation." There are gray water systems that basically serve as drainfields receiving the gray water fraction of wastewater when waste segregation is used. One example of this type of system would be a cabin that does not have a piped water supply.

RESPONSE: The board and department agree and the suggested change has been made to the circular. Subsection 1.1.3.8 references that gray water irrigation systems are used for irrigation.

COMMENT NO. 5: The description of intermittent sand filters, at subsection 1.1.3.9, should be consistent with subsection 1.1.3.10 and include the phrase "small wastewater."

RESPONSE: The board and department agree and the suggested change has been made to the circular. The description of intermittent sand filters now includes the term "wastewater."

COMMENT NO. 6: Subsections 1.1.3.9 and 1.1.3.10 should be amended. Rather than refer to "prior to final disposal," these descriptions should be reworded to state "prior to application of effluent to the infiltrative surface." The reason these descriptions should be changed is because there is no definition for "final disposal."

RESPONSE: The board and department agree that there is no definition of "final disposal" and the suggested change has been made to the circular. Subsections 1.1.3.9 and 1.1.3.10 now replace the phrase "final disposal" with the phrase "prior to application of effluent to the infiltrative surface."

COMMENT NO. 7: Subsections 1.1.3.9 and 1.1.3.10 should not distinguish between "small wastewater systems" and "large wastewater systems," because there is no definition for a "small wastewater system."

RESPONSE: Subsections 1.1.3.9 and 1.1.3.10 give typical applications for onsite system components. These subsections are not intended to impose requirements. Rather, they are presented for informational purposes. Pressure distribution is not required in an intermittent sand filter. However, this type of system is often used where less than 1000 square feet of area is required or where Level 1b designation is required to comply with the Water Quality Act. Conversely, recirculating sand filters must use pressure distribution and are often used where more than 1000 square feet of area are required. The suggested change has not been made.

COMMENT NO. 8: Change subsection 1.1.3.12 so that it reads "Typically, these systems are used for limited areas, replacement systems, or where other systems cannot be installed."

RESPONSE: The board and department agree that the language could be clearer and the suggested change has been made to the circular.

COMMENT NO. 9: A component of waste segregation is gray water disposal. Gray water systems, however, cannot be installed where soil conditions preclude the use of a soil absorption system. This description should not be used to allow development on otherwise undevelopable lots. Subsection 1.1.3.13 should state "[w]aste segregation systems are used in areas of limited water availability or as a way to implement water saving measures."

RESPONSE: The board and department agree that the language could be clearer and the suggested change has been made to the circular.

COMMENT NO. 10: The difference between "variances" and "deviations" is unclear. It seems that variances and deviations are identical actions. Variance criteria, however, are different from the criteria listed in subsection 1.1.4.1. DEQ should consider if the criteria for variances and deviations should be identical. Having the same variance/deviation criteria in both circulars seems reasonable and more workable than having two standards.

RESPONSE: A "deviation" is a departure from a requirement in Circular DEQ-4. A "variance" is a departure from a requirement in the minimum standards set out in ARM Title 17, Chapter 36, subchapter 9. As a commenter notes, the deviation criteria in DEQ-4 subsection 1.1.4.1 and the variance criteria in ARM 17.36.922 are different. The board and department acknowledge that this can cause confusion. The department previously eliminated a similar disparity between the subdivision rules' waiver criteria and the DEQ-4 deviation criteria. See ARM 17.36.601(3). The board and department will consider a future rulemaking to address the commenter's concern, but amendment of ARM 17.36.922 is beyond the scope of this rulemaking proceeding.

COMMENT NO. 11: Change the definition of "absorption area," at section 1.2.1, to include those designs using a bed.

RESPONSE: The board and department agree and the suggested change has been made to the circular. "Absorption area" is now defined as "that area determined by multiplying the length and width of the bottom area of the disposal trench or bed."

COMMENT NO. 12: Consider using "subsurface wastewater treatment system" as an equivalent to "absorption system" or define "subsurface wastewater treatment system" separately. Include language that differentiates between the physical disposal of effluent and the treatment capabilities of the system.

RESPONSE: The term "subsurface wastewater treatment system" is defined in ARM 17.36.101(58) and is meant to be general in nature. This definition is applicable to DEQ-4. The circular discusses the capabilities of specific subsurface wastewater treatment systems in the chapters pertaining to their own design criteria. The recommended change has not been made.

COMMENT NO. 13: Regarding section 1.2.5, a guest house should not be considered an "accessory building," because it would need to be approved as a building for lease or rent before it can be used, since it would add additional sewage flow. Guest houses should be distinguishable from other accessory buildings.

RESPONSE: The board and department have used this definition of "accessory building" in the circular because the definition is identical to ARM 17.38.101(3)(a). Whether a guest house would be considered a subdivision under the lease or rent provisions is inconsequential to the application of DEQ-4. This circular provides guidance for what type of system would be appropriate based on how an accessory structure would be used and does not take into consideration whether subdivision review is required. No change has been made to the circular in response to this comment.

COMMENT NO. 14: In section 1.2.8, clarify the term "insufficient fines." Some counties have interpreted this definition of bedrock to mean that very gravelly soils are bedrock and, therefore, a system would not be permitted if these soils were <4-foot bgs. Give a percentage or take this part of the definition out. It conflicts with Table 2.1-1, which allows systems in gravel with less than 10 percent fines. If you have that type of soil, the type of system required (pressure-dosed sand lined) is already addressed and, in fact, is not prohibited as a system in bedrock would be.

RESPONSE: The board and department agree and the suggested change has been made to the circular. The use of the term "insufficient fines," in the definition of bedrock, makes the definition unclear and conflicts with quantity of fines allowed for systems in Table 2.1-1. The reference to "fines" in the definition of bedrock, under 1.2.8 and Table 2.1-1, has been deleted.

COMMENT NO. 15: Strike "on a regular basis" from the definition of "bedroom" in section 1.2.9. Leaving this language in the circular would make enforcement very difficult. In addition, septic systems are sized for how a house may potentially be used, not how a single owner plans to use it. The expected life of a septic system is 25 to 30 years and houses are sold once every seven years on average.

RESPONSE: The board and department agree and the suggested change has been made to the circular. "Bedroom" is now defined as "any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom."

COMMENT NO. 16: Consider changing the definition of "distribution pipe" in section 1.2.20 to include the phrase "absorption system" to replace "subsurface wastewater treatment system."

RESPONSE: DEQ-4 applies to those systems that rely on soils for treatment, whereas DEQ-2 applies to those systems that dispose of effluent. The current use of the phrase "subsurface wastewater treatment system" is appropriate for this circular. The recommended change has not been made.

COMMENT NO. 17: Add dosing siphon to the definition of "dosed system," at section 1.2.21, and remove actuated valve, as a valve does not deliver effluent to a system in the same basic manner as either a siphon or pump.

RESPONSE: The board and department agree and the suggested addition has been made to the circular. Siphons are a means of dosing a system. However, actuated valves may also be used in some larger systems to control the flow of effluent through pipes. Accordingly, both siphons and actuated valves should be included as part of this definition. The definition for "dosed system" now states "any system that utilizes a pump, siphon, or actuated valves to deliver treated effluent to a subsurface absorption area."

COMMENT NO. 18: In the definition of "dosing frequency," at section 1.2.22, use the phrase "other treatment component" rather than "sand mound" to be consistent with section 1.2.24.

RESPONSE: The current definitions do not use the phrase "sand mound." The recommended change has not been made.

COMMENT NO. 19: Consider whether the definition of "drain rock," at section 1.2.25, is a definition or a technical standard. The definition section should be used for definitions, not technical standards.

RESPONSE: The commenter is correct that the requirements should generally not be included in definitions. However, the term "drain rock" is used in a number of places in chapters 6 and 7; but elimination of the requirements from the definition would require those requirements to be repeated in those locations. In order to insure that those requirements are not overlooked, and to avoid repetition, references to those requirements have been inserted in subsections 6.1.5.3, 6.1.5.4, 6.7.3.5, 6.7.4.5, 6.8.3.2, 6.11.3.3, 7.2.2.7, 7.2.5.1, 7.3.2.3, 8.4.2.4, 8.4.2.5, and section 6.3.3. In addition, the definition has been modified to indicate that drain rock is used in absorption systems, sand filters, and seepage pits.

COMMENT NO. 20: Keep the definition of "dwelling," since the term is still used throughout the circular, unless the plan is to replace all instances of dwelling with living unit.

RESPONSE: The board and department replaced all references to the term

"dwelling" with "living unit" throughout the circular. The suggested change has not been made.

COMMENT NO. 21: Define the term "drop box."

RESPONSE: The board and department agree that the term "drop box" should be defined and has included the definition in the circular at section 1.2.26. The circular defines "drop box" as "a watertight structure that receives septic tank effluent and distributes it into one or more distribution pipes and into an overflow leading to another drop box and/or absorption system located at a lower elevation."

COMMENT NO. 22: The definition of "impervious layer," at section 1.2.42, conflicts with the requirements of Chapter 2, Site Modification, and the use of a Chapter 6.8 evapotranspiration absorption system. This definition and its use would preclude an ETA system from being installed because four feet of natural soil separation is required between the bottom of a trench and a limiting layer. Due to the fact that the ETA system is installed within a defined impervious layer, the separation can never be met. There should be some language that explains that ETA systems are not subject to separation to an impervious layer, but separation to bedrock and seasonal high ground water still apply.

RESPONSE: The board and department agree that a conflict exists between the definition of "impervious layer" and the use of ET or ETA systems and the circular has been amended in response to this comment. The intent of the board and the department is to define an impervious layer as one with a percolation rate greater than 240 minutes per inch (mpi). Section 2.1.7, Table 2.1-1 and subchapter 6.8 have been changed to eliminate the conflict between the definition of impervious layer and the use of ET or ETA systems.

COMMENT NO. 23: Why was the section 1.2.42 definition of "impervious layer" increased from 120 mpi to 240 mpi?

RESPONSE: The change in the definition of "impervious layer" in section 1.2.42 was increased from 120 mpi to 240 mpi because some bed and trench systems are allowed in these soils with an application rate of 0.15 gpd/ft^2. This change was made to maintain consistency within the circular. No change was made to the circular in response to this comment.

COMMENT NO. 24: Keep the definition of "chemical nutrient reduction" in subchapter 1.2, unless the plan is to remove all references to these systems from the circular.

RESPONSE: The board and department believe that chemical nutrient reduction systems must be included in the circular to allow greater flexibility and design, but that the description of those systems should be included in section 7.5.1 and not in a definition. The circular has been amended to include a more detailed description of chemical nutrient reduction systems in section 7.5.1.

COMMENT NO. 25: With the reference to "business," the definition of "industrial wastewater," at section 1.2.45, is too broad. Eliminate the reference to waste from the process of business from the definition of industrial wastewater.

RESPONSE: The board and department agree and the suggested change has been made to the circular. "Industrial wastewater" is now defined as "any waste from industry or from the development of any natural resource, together with any sewage that may be present."

COMMENT NO. 26: Eliminate the use of the terms "bedroom" and "kitchen" in the definition of "living unit," at section 1.2.51, and replace those with "sleeping areas" and "cooking areas" to allow the definition to incorporate uses such as studio apartments and guest houses.

RESPONSE: The board and department agree that the definition of "living unit" was potentially too restrictive and the circular has been amended in response to the comment. "Living unit" is now defined as "the area under one roof that can be used for one residential unit, and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units."

COMMENT NO. 27: Do not reference the requirements in this circular in the definition of "manhole," at section 1.2.53. This reference does not add to the plain meaning of the definition or clarify what a manhole is.

RESPONSE: The board and department agree that the definition of "manhole" included some unnecessary language and the suggested change has been made to the circular. "Manhole" is now defined as "an access to a sewer line for cleaning or repair."

COMMENT NO. 28: Clarify the definition of "multiple-user wastewater system," at section 1.2.56, to clarify which population statistics should be used to estimate the population that will be served by the proposed system. Base the definition on census data for the county rather than a state average of 2.5 people/living unit.

RESPONSE: This circular serves as a design guideline for the entire state and the state-wide average of 2.5 people per house is appropriate. Accordingly, the definition has not been changed to allow counties to use their own census data. However, the board and department agree that the definition of "multiple-user wastewater system" was unclear and have amended the circular in response to the comment. The definition now guides the reviewing authority to multiply the number of living units times 2.5 to reflect the state average of 2.5 people per living unit.

COMMENT NO. 29: In section 1.2.57, include the term "undisturbed" in the definition of "natural soil."

RESPONSE: The current definition states that the soil must have developed in place through a natural process. The term "undisturbed" does not add meaning to the definition of "natural" and could be read to preclude natural process, such as deposition and weathering. The suggested change has not been made.

COMMENT NO. 30: In 1.2.61, clarify the difference between uniform and non-uniform pressure distribution or include the term "uniform" in all references to pressurized systems. The ambiguity leads to the question of when non-uniform pressure distribution is acceptable.

RESPONSE: Uniform pressure distribution requires the flow in all pipes to have less than 10 percent variation. "Pressure distribution" is a more general term and is used primarily when describing system components such as type of pipe, valves, and pumps. The requirement for uniform distribution would not be applicable to these system components. The recommended change has not been made.

COMMENT NO. 31: Clarify why "2.5" is used in the section 1.2.67 definition of "public wastewater system." Base the population statistics on census data for the county.

RESPONSE: The board and department agree that the definition of "public wastewater system," at section 1.2.67, should be clarified and the circular has been amended in response to the comment. However, county census data is not appropriate because it is too variable and this circular is a guide for the entire state. The statewide average of 2.5 people per living unit is appropriate. The definition now specifies that the reviewing authority shall multiply the number of living units times "2.5 people per living unit."

COMMENT NO. 32: Eliminate the word "any" from the definition of "public wastewater system," at section 1.2.67. If the intent is to clarify that any 60 days of the year can be used in the calculation, use "any consecutive" or "non-consecutive" to make it clear. Alternatively, use the language in 75-6-102(14), MCA.

RESPONSE: The term "any" is used in section 1.2.67 to provide consistency between this circular and 75-6-102(14), MCA. The language has been modified to more closely resemble the language of the statute.

COMMENT NO. 33: The definition of "shared wastewater system," at section 1.2.80, can be interpreted to allow service to a combination of three residential and commercial units. This is not the intent. The intent is to limit a shared system to two units, regardless of whether they are commercial or residential. DEQ should revise this definition to limit a shared system to two units, if that is possible without first changing it in ARM 17.36.101(47).

RESPONSE: The board and department agree that the intent of the definition of "shared wastewater system" is to limit a shared system to two units and the circular has been amended in response to this comment. Amending ARM 17.36.101(47) is beyond the scope of this rulemaking. The definition of shared wastewater system has been amended to read "[s]hared wastewater system means a wastewater system that serves, or is intended to serve, two living units, two commercial units, or a combination of one living unit and one commercial unit. The term does not include a public sewage system as defined in 75-6-102, MCA."

COMMENT NO. 34: Clarify the definition of "siphon," at section 1.2.81, so that it is clear siphons can be used for multiple purposes.

RESPONSE: The board and department agree and have amended the circular in response to the comment. The definition of a siphon should not limit the understanding of how they may be used. "Siphon" is now defined as "a pipe fashioned in an inverted U shape and filled until atmospheric pressure is sufficient to force a liquid from a reservoir in one end of the pipe over a barrier and out the other

end."

COMMENT NO. 35: Eliminate the definition of "soil consistence," at section 1.2.83. Soil consistence has little, if any, relation to absorption field siting and is not taken into consideration in any of the siting criteria.

RESPONSE: "Soil consistence" is referenced in subsection 2.1.4.1 and should be defined in this circular. Evaluation of soil consistence helps the reviewing authority understand how wastewater may move through the soil. Information about soil consistence is used to estimate the shrink-swell capacity of the soil and thus its mineralogy. Information about soil consistence also is used to determine if the horizon or soil will have a low permeability. The recommended change has not been made.

COMMENT NO. 36: Do not delete the definition of "wastewater" from the circular. While it is already defined in 75-6-102(17), MCA, ARM 17.36.101(62), and ARM 17.36.901(37), that is true for a number of terms defined in this circular. If not deleting other definitions, keep the definition of wastewater in the circular.

RESPONSE: The board and department agree and have amended the circular to reinsert the definition of "wastewater," at section 1.2.93, in response to the comment. It is defined as "[w]astewater means water-carried waste including, but not limited to, household, commercial, or industrial wastes, chemicals, human excreta, or animal and vegetable matter in suspension or solution."

COMMENT NO. 37: The definition of "wastewater treatment system or wastewater disposal system" should include the phrase "The term includes all disposal methods described in this circular along with experimental systems."

RESPONSE: The board and department agree that the definition of "wastewater treatment system or wastewater disposal system" should include the phrase "The term includes all disposal methods described in this circular," but, because experimental systems are already addressed in the circular, felt that this language was repetitive. The circular has been amended in response to this comment and the definition of "wastewater treatment system or wastewater disposal system" states "[w]astewater treatment system or wastewater disposal system means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes all disposal methods described in this circular."

COMMENT NO. 38: Is a definition of "abandoned system" needed? A definition may be useful in the event that there is a proposal for reuse.

RESPONSE: DEQ-4 is intended for design and construction purposes. Abandonment of existing subsurface wastewater treatment systems, or their components, falls under the authority of the local board of health. The suggested change has not been made.

CHAPTER 2 SITE CONDITIONS

COMMENT NO. 39: The circular's recommendations in 2.1.4 that test pits be located outside the boundaries of the absorption area are too stringent.

RESPONSE: The circular recommends, but does not require, that test pits be located outside the boundaries of the drainfield. The suggested change has not been made.

COMMENT NO. 40: Delete the requirement in section 2.1.4 that drainfield locations be identified through staking or other acceptable means of identification on lots two acres or smaller. Requiring drainfield staking will result in increased costs to the developer and ultimately land owners.

RESPONSE: The board and department agree that staking or other forms of identification may result in a burden for interim uses of the property and have amended the circular in response to the comment by deleting the requirement.

COMMENT NO. 41: In some confined locations, excavating the profiles in the absorption area and requiring two soil profiles could tear up most of the native soil layer beneath the absorption system. In 2.1.4, rather than require two test pits in confined areas, leave the determination up to the discretion of the reviewing authority. Would four soil profiles be required even if the primary and replacement areas are adjacent to each other?

RESPONSE: The board and department agree that the reviewing authority should be given more discretion. In response to this comment, the circular now uses permissive language rather than requiring one soil profile at each end of both the absorption system and the replacement area.

COMMENT NO. 42: In 2.1.4.1, delete the language "as defined in section 1.2.68," because it is unnecessary.

RESPONSE: The board and department agree and the circular has been amended to delete this language.

COMMENT NO. 43: The requirements in 2.1.4.1 for reporting soil consistence and plasticity during a site evaluation should be eliminated. These methods of texturing soils have little to do with absorption system sizing or siting.

RESPONSE: Evaluation of soil consistence and plasticity helps the reviewing authority understand how wastewater may move through the soil. Information about soil consistence and plasticity is used to estimate the shrink-swell capacity of the soil and thus its mineralogy. Aspects of consistence and plasticity are used to determine if the horizon or soil will have a low permeability. The suggested change has not been made.

COMMENT NO. 44: In 2.1.4.1.B, is the intended word "consistency" or "consistence?"

RESPONSE: The intended word is "consistence." The board and department have amended the circular to reflect the proper term.

COMMENT NO. 45: The type of bedrock encountered is important for characterizing the site and area. Leave the words "and type of" in subsection 2.1.4.1.F.

RESPONSE: The board and department agree and the circular has been amended to reinsert the phrase "and type of" in response to the comment.

COMMENT NO. 46: In 2.1.5, define what "variable soils" are and quantify the number of tests that the reviewing authority may require.

RESPONSE: The board and department consider soils to be variable when there are multiple application rates within the same absorption area. Soil texture descriptions are defined in Table 2.1-1. In some instances variable soils could exist and percolation tests would not be required. A decision to require more than one percolation test would be made by the reviewing authority based on the size of the site, soil conditions, application rates and professional experience. Because the term is applied by the department to determine whether it will require additional percolation tests, and because requiring those tests is discretionary with the reviewing authority, a definition is not necessary for an applicant to prepare an application. Therefore, the suggested change has not been made.

COMMENT NO. 47: Clarify the requirement that "similar" percolation test values be used when calculating the arithmetic mean. For instance, if there are three perc tests with the results of 10, 35, and 60 (or even 5, 5, and 20), what would we average?

RESPONSE: Common statistical techniques such as averages are not valid for data with a skewed distribution. A normal distribution of similar percolation test values is necessary to ensure adequate drainfield sizing. If the influence of a single percolation test result changes the required application rate, then that number might be indicative of an error in the percolation test procedure. This dissimilar result should be eliminated from the statistical average or additional testing information provided to the reviewing authority.

COMMENT NO. 48: The first category in Table 2.1-1 may conflict with the definition of "bedrock."

RESPONSE: The board and department agree and the circular has been amended in response to the comment. The reference to "fines" in the definition of "bedrock," under 1.2.8, and in Table 2.1-1, has been deleted.

COMMENT NO. 49: There is a definition of "uniform distribution," but not a definition of "uniform pressure distribution," which is the term used in section 2.1.7, Table 2.1-1(a).

RESPONSE: The terms were not intended to be different. Since pressure distribution includes requirements for uniformity, the word "uniform" has been eliminated from sections 2.1.7, Table 2.1-1(a), 6.5.2, 6.7.1, and 7.2.3 and subsections 6.6.2.2, 6.9.3.3, and 6.11.2.2.

COMMENT NO. 50: Consider rewording section 2.1.7, Table 2.1-1(a) and replacing the square footage requirements with 300 lineal feet of gravity distribution line per section and 1,500 square feet of gravity distribution absorption trench area per section. Presby AES design standards allow up to 600 gpd per individual serial section (equating to 300 ft at 2.0 gpd/ft) within a treatment/absorption bed. As well,

in soils exceeding 120 mpi percolation, it is common for AES to be spaced at four to five feet on-center (equating to 5 sf/lf x 300ft = 1,500 sf) wherein the ASTM C-33 sand lens acts to evenly disperse the clear effluent.

RESPONSE: The proposed requirements insure that adequate treatment occurs in larger systems. Gravity distribution is characterized as unequal and localized distribution of effluent. Overloading of the infiltration surface may occur when there are no periods of little or no flow to allow the subsoil to dry. Through pressure-dosing, smaller quantities of effluent enter the soil matrix over a large area at a controlled rate and allow time for the subsoil to dry between applications. The suggested change has not been made.

COMMENT NO. 51: Consider changing the requirement in section 2.1.7, Table 2.1-1(c) by allowing either uniform pressure distribution or a sand meeting ASTM C-33.

RESPONSE: The systems discussed in section 2.1.7, Table 2.1-1(c) must be pressured-dosed and sand lined because soil conditions with fast percolation rates have a tendency to allow effluent to pass through the soil matrix without time for treatment. Sand lining allows the effluent to slow down and facilitates treatment. Uniform distribution insures that the quantity of effluent passing through the soil is controlled without large fluctuations or overloading. Sand lining a trench does not provide the same level of treatment as both uniform distribution and sand lining. The suggested change has not been made.

COMMENT NO. 52: Using the most conservative of either soil profile information or United States Department of Agriculture Natural Resources Conservation Service (NRCS) soils data is too restrictive and undervalues site-specific information. The size of an absorption system should be based upon an educated assessment of all the site-specific information gathered.

RESPONSE: The board and department agree that the existing and proposed language may be unnecessarily restrictive. Section 2.1.7, Table 2.1-1(b) has been amended to encourage review of soil profile information and NRCS soils data as part of an assessment of all site-specific information in response to the comment.

COMMENT NO. 53: Why are percolation tests required when some studies have demonstrated that perc tests are not the most reliable method of determining soil absorption rates? By putting more emphasis on perc test results, there is a risk that there will be more incorrect perc rates for soils that should have ETA beds. Some counties will put gravity systems in that will ultimately fail. Should soils with an app. rate of 0.2 or less be required to have ETA beds?

RESPONSE: Section 2.1.7, Table 2.1-1(e) does not require percolation tests. Rather, it requires that, when they are done, they must be done in accordance with Appendix A. Percolation tests are not required for most absorption systems, with the exception of ETA systems, as stated in section 6.7.1. Percolation tests are, however, a valuable tool when evaluating the ability for a soil type to accept an onsite wastewater treatment system. The department tries to give system designers as many options as possible and the information that percolation tests provide have

the potential to open up more options. The percolation tests, along with the soil profile information and the soil survey, are used together to choose the appropriate system. Section 2.1.7, Table 2.1-1 is designed to provide guidance to system designers, so that counties will not install systems that fail. The board and department do not believe that all clay, silt, and silty clay soil, or those with an app. rate of 0.2 or less, should have ETA beds. The EPA Onsite Wastewater Treatment Systems Manual allows traditional absorption systems for these types of soils and mandating ET or ETA beds would unnecessarily limit that option. If local health authorities desire to limit traditional absorption systems for soils with application rates of 0.2 gpd/sf or less, they may do so under the local health rules. The suggested change has not been made.

COMMENT NO. 54: With regard to section 2.1.7, Table 2.1-1(f), the board and department should consider whether the evaporative surface and storage capacity of a sand mound might be a preferable, or at least an optional, system in tight soils.

RESPONSE: The construction of a sand mound on a site with soil percolation rates greater than 240 minutes per inch would create an interface between sand (which is a fast percolating medium) and native soils (a slow percolating medium). This transition zone would have a tendency to create a path for effluent to surface at the top of the mound and subsequent failure of the system. The suggested change has not been made.

COMMENT NO. 55: With regard to 2.1.8.2, if floodplain maps are going to be required as part of an evaluation, base flood elevation (BFE) maps should be used. Flood insurance rate maps (FIRM) should not be allowed as part of the evaluation process.

RESPONSE: The board and department encourage the use of multiple sources of information when evaluating a site. A Flood Insurance Rate Map (FIRM) is published by the U.S. Federal Emergency Management Agency (FEMA) and shows a community's base flood elevations, flood zones, and floodplain boundaries. These maps may indicate different locations of flood zones. The board and department recommend that all sources of information be used for evaluation of a site, including information provided by the community floodplain manager, FIRM maps, models providing base flood elevations, topographic maps, and site-specific topographic information. The recommended change has not been made.

COMMENT NO. 56: Not all county sanitarians are knowledgeable in flood plain management. Would it be acceptable to have a determination of the potential for flooding and accumulation of surface water from storm events made by the county flood plain administrator?

RESPONSE: Not all counties have a flood plain administrator. If that resource is available, it should be used in the evaluation of a site for flood potential and subsection 2.1.8.2 allows that to occur.

COMMENT NO. 57: Consider rewording subsection 2.1.8.2 by replacing the term "storm events" with "runoff events."

RESPONSE: The term "runoff event" is not commonly used in describing runoff from a storm in this or other department documents. To provide consistency between DEQ-8, Montana Standards for Subdivision Storm Drainage, and DEQ-4, the term will remain unchanged.

COMMENT NO. 58: In section 2.2.1, the circular explains that site modifications may be used only for replacement of failing systems. Should "when no other system can work," be added to this statement?

RESPONSE: Section 2.2.1 allows site modifications only for replacement of failing systems. It is intended to allow lot owners, with existing development, the flexibility to solve site-specific problems through cut, fill, and artificially drained soil. There are many different types of onsite wastewater treatment systems that range in both price and complexity. The statement "where no other system can work" is more broad than the scope of this chapter and might be interpreted to require existing developments to use cost-prohibitive solutions, such as connection to municipal systems, additional treatment streams, or other techniques that are beyond the practical or financial means of the system owner. Site modifications are allowed in the circular to insure the current use of the lot can be continued even at time of replacement. The suggested change has not been made.

COMMENT NO. 59: Subsection 2.2.2.1 should include a requirement that assures the drainage system will be maintained, along with certification by an engineer and a maintenance plan. A deed restriction or other method to insure perpetual maintenance may be appropriate.

RESPONSE: The board and department agree that artificially drained systems need ongoing maintenance to insure they continue to function as designed. Maintenance of an artificially drained site, or any other component of an onsite system, is the responsibility of the system owner. If a drainage system is not properly maintained, the department has the ability to initiate an enforcement action. Requiring a deed restriction would be redundant. The board and department agree that artificially drained systems and major site modifications need certification, as-builts, and a maintenance plan. These requirements have been added to subsections 2.2.2.4, 2.2.3.3, and 2.2.4.6 of the circular in response to the comment.

COMMENT NO. 60: In regard to 2.2.2.2, how is adequate horizontal separation determined?

RESPONSE: Each site is unique and considerations, such as soil type, slope, and other physical features, may all be influencing factors. It will be the responsibility of the reviewing authority to use its professional expertise to determine this setback.

COMMENT NO. 61: The bottom of an infiltrative surface is not clearly defined and separation requirements between this interface and ground water in 2.2.2.2 and 2.2.5 are ambiguous.

RESPONSE: The term "infiltrative surface" is used to represent that part of the subsurface treatment system that has been added to the trench or bed above the in situ soil. By specifying the bottom of the infiltrative surface, we insure that a

minimum of four feet of natural soil is present between a drainfield and any ground water. This is apparent on the face of the current language. The suggested change has not been made.

COMMENT NO. 62: With regard to 2.2.2.3, if ground water monitoring is not required prior to installation, I think it is dangerous to require it after. What if a county permits a system, it is installed, and then, once monitoring is required, it is discovered that the separation distance no longer meets the criteria for separation between the bottom of the infiltrative surface to the seasonally high ground water level. Would the system then have to be abandoned?

RESPONSE: Monitoring is not required by subsection 2.2.2.3 as amended. It may, however, be a valuable tool for counties to insure all applicable local rules are followed in the permitting process. Artificially drained sites, as discussed in section 2.2.2, are for areas where ground water levels may need to be reduced through a subsurface network of curtain drains, vertical drains, under drains, or other components. Ground water monitoring, both before and after construction of the drain system, may be necessary to insure adequate results prior to permitting and construction of the replacement drainfield system. The circular allows observation of the seasonally high ground water in the area of an artificially drained site to insure there is at least four feet of natural soil between the bottom of the infiltrative surface and ground water is achieved. If the vertical separation distance is not maintained, the county health officer can require abandonment and replacement of the artificial drain and septic system.

COMMENT NO. 63: With regard to 2.2.3, why not use a cut system as a new system, if a 25 foot separation is maintained from the down gradient?

RESPONSE: Cut systems are used in areas of steep slopes. Allowing cut systems for replacement only insures that the initial primary area would still be available if the replacement fails.

COMMENT NO. 64: Clarify when a cut system must be physically completed in order to gain approval by the reviewing authority.

RESPONSE: The board and department agree that the language was unclear and the circular has been amended in response to this comment. Section 2.2.3 now states "site modification for replacement subsurface wastewater treatment systems must be completed prior to approval by the reviewing authority."

COMMENT NO. 65: Conducting a soil profile prior to construction of a cut system may not provide an accurate representation of the final receiving soils. The soil profile hole needs to be done after the site preparation is complete or the holes need to be deep enough to profile the final receiving soils.

RESPONSE: The board and department agree. Subsection 2.2.3.2 has been amended to require soil profile information of the final receiving soils to be submitted to the reviewing authority.

COMMENT NO. 66: Clarify whether a fill system must be physically completed when seeking approval by the reviewing authority.

RESPONSE: The circular requires physical completion of fill systems prior to approval by the reviewing authority. This requirement can be found in section 2.2.1, which states in pertinent part that "site preparation for cut and fill modifications must be completed prior to final approval."

COMMENT NO. 67: With regard to 2.2.4.2, why not use fill to achieve four feet separation on a replacement system.

RESPONSE: Four feet of natural soil separation is required under ARM 17.36.320(2) and 17.36.914(3). The rules do not distinguish between new and replacement systems. Additionally, this amendment would be beyond the scope of this rulemaking.

COMMENT NO. 68: Is there a conflict with the four feet separation specified in 2.2.4.2 between the bottom of the infiltrative surface and a limiting layer in filled systems when that is not required in shallow-capped systems in section 6.2.1?

RESPONSE: Both fill systems, as specified in subsection 2.2.4.2, and shallow-capped systems, as specified in sections 6.2.1., 6.1.2, and Chapter 2, must maintain four feet of natural soil between the bottom of the infiltrative surface and a limiting layer.

COMMENT NO. 69: With regard to 2.2.4.5.B, changing the setback distance from three feet to ten feet places an undue hardship on property owners. The protection provided by this rule change is not justified when compared to the owners' loss of property.

RESPONSE: Requiring ten feet of fill as opposed to three feet of fill provides extra room for treatment of effluent. The additional fill is necessary to insure that there will be no surfacing of effluent at the fill toe. Although this requirement creates additional restrictions for property owners, the additional fill will provide increased protection to adjacent property owners. On small lots, a variance from this requirement may be available. The suggested change has not been made.

COMMENT NO. 70: Remove the word "native" when describing vegetative cover from a fill site. The word does not add clarification and, as written, it implies that non-native species can stay.

RESPONSE: The board and department agree and the suggested change has been made to the circular.

COMMENT NO. 71: Does the second paragraph of section 2.2.5 conflict with the design nature of elevated sand mounds? Isn't the infiltrative surface the bottom of the sand bed, not native soil? Is minor leveling allowed for mounds?

RESPONSE: The board and department agree that the second paragraph of section 2.2.5 may conflict with the design of an elevated sand mound and the circular has been amended in response to this comment. After site modification, the soil that has been cut or filled is not considered to be native or natural. In the case of an elevated sound mound, soil that has undergone minor leveling may be considered part of the infiltrative surface. Plowing or keying an uneven surface for an elevated sand mound is allowed if four feet of unmodified or natural soil from the

bottom of the key or plowed area to a limiting layer is maintained. Section 2.2.5 has been changed to clarify that soil that has undergone minor leveling is not considered natural soil.

COMMENT NO. 72: The circular should not require detailed site plans for all minor leveling. That discretion should be left up to the reviewing authority.

RESPONSE: The board and department agree and section 2.2.5 has been amended in response to this comment to allow the reviewing authority to use its discretion in determining whether detailed site plans are required for minor leveling.

CHAPTER 3 WASTEWATER

COMMENT NO. 73: The sizing of a wastewater treatment system should be based on the size of the home, not the size of the home site. The reference to home "site" should be removed from section 3.1.1. Also the reference to ARM 17.36.326 is either out of place or unnecessary.

RESPONSE: The board and department agree that section 3.1.1 should refer to a home and not a home "site." The circular has been amended to reflect this suggested change. Referencing ARM 17.36.326 clarifies the easements and agreements necessary for shared, multi-user, or public subsurface wastewater treatment systems. The reference to ARM 17.36.326 has not been deleted in the circular.

COMMENT NO. 74: Section 3.1.2 states "[l]iving units will be considered to have three bedrooms unless otherwise specified." This implies that an applicant can specify that they want a system for less than three bedrooms. Keep the original word, "approved" instead of "specified." This will allow flexibility, while preserving the minimum sizing requirement.

RESPONSE: The board and department agree and the suggested change has been made to the circular. The last sentence in section 3.1.2 now states "[l]iving units will be considered to have three bedrooms unless otherwise approved."

COMMENT NO. 75: The methodology for determining the flow rate of systems serving three to nine living units on a single wastewater treatment system, in 3.1.2, should be changed. For a system serving nine or fewer homes, the design flow is inflated resulting in larger systems. As written, the size of homes will have to be regulated and limited on systems serving nine or fewer homes, but not for systems serving ten or more homes. The nexus between the number of bedrooms and daily wastewater flow produced by a home is attenuated.

RESPONSE: The proposed design flow rates for single systems, serving nine or fewer living units, is based on the number of bedrooms for each living unit. If the number of bedrooms is unknown, it is assumed to be three per living unit for design purposes. This design criteria accounts for the variability of wastewater flow rates in a day and applies an appropriate factor of safety to the system sizing. As the number of units on a single system increases, the hourly peaks on the system become less pronounced and the attenuation of peak flow rates becomes less important for design purposes. The design criteria for ten or greater living units was

selected to correspond to those systems that may meet the public definition of 25 people or more, based on a state census statistic of 2.5 people per household and the sizing criteria of Document DEQ-2. The suggested change has not been made.

COMMENT NO. 76: The ability to vary from minimum flow designs, as described in section 3.1.2, should be determined by the reviewing authority, not dictated by a permit applicant.

RESPONSE: The board and department agree and the circular has been amended in response to this comment. Section 3.1.2.B now states "[a]n average of 2.5 persons per living unit must be used to calculate total design flow unless the reviewing authority determines that a larger per-living-unit average is appropriate for a given project."

COMMENT NO. 77: With regard to 3.1.3, what parameters are there to determine if waste strength is residential? What information must be required to prove that nonresidential flows are not high strength? Requiring all nonresidential designs to demonstrate residential strength parameters is too broad, overly conservative, and costly.

RESPONSE: The board and department agree that this requirement is too broad and has amended the circular in response to the comment. Reviewing authorities should be allowed to request this information when their professional judgment deems it necessary, rather than requiring it of each applicant. Information regarding the strength of nonresidential wastewater can also be difficult to obtain. If information is requested by the reviewing authority, and direct sampling is not available, characterization data from similar facilities already in use may be submitted for review. Sections 3.1.3 and 3.2.1 now states "[t]he reviewing authority may require nonresidential establishments demonstrate that wastewater meets residential strength standards or complies with the requirements of Chapter 3.2."

COMMENT NO. 78: Section 3.1.3 should be rewritten. Change this section to clarify that the expansion of existing systems may not be used to determine design flow rates.

RESPONSE: The board and department agree and the circular has been amended in response to the comment. Section 3.1.3 now states "[f]or expansions of existing systems, the reviewing authority may approve the use of actual water use data to determine appropriate flows."

COMMENT NO. 79: Provide additional information regarding the characterization of nonresidential wastewater. Also, would these requirements apply to replacement systems? It seems unreasonable to put the financial burden of engineering costs and more sophisticated wastewater system on a facility that may not have a large budget and may not actually be generating high strength waste, simply because they are on a list or part of a broad definition. Due to the fact that subchapter 3.2 applies to all nonresidential establishments, the list under paragraph three serves no purpose. Delete the list or use it to clarify which nonresidential systems typically do not need to address high strength waste.

RESPONSE: The board and department rely on the professional judgment and expertise of the reviewing authority to determine the characteristics of wastewater for a proposed use. The list of establishments in section 3.2.1 is meant as a guideline for designers and the reviewing authority to determine possible sources of high strength waste. Wastewater generating activities in some nonresidential establishments are similar to those of residential dwellings and may not be appropriate for review under this section. Existing facilities should be characterized by metering and sampling the current wastewater stream. For those new or proposed developments, wastewater strength should be estimated based on available data. Characterization data from similar facilities already in use can provide that information. The suggested change has not been made.

COMMENT NO. 80: Requiring that all nonresidential establishments comply with the requirements of subchapter 3.2 unless it can be shown that wastewater meets residential strength standards places an undue burden on the applicant.

RESPONSE: Wastewater must meet the definition of residential strength or it is considered high strength. The application of high strength wastewater to a drainfield has been attributed to soil clogging to the point of hydraulic failure, anoxic soil conditions, and reduced wastewater treatment. High concentrations of biochemical oxygen demand (BOD_5), total suspended solids (TSS), and fats, oils, and greases (FOG) were indicative of these failures. To insure adequate treatment of wastewater and drainfield longevity, all facilities treating high strength waste must be designed in accordance with subchapter 3.2. The suggested change has not been made.

COMMENT NO. 81: The last sentence in section 3.2.1 should be reworded, because the explanation of the flow rates is redundant.

RESPONSE: The board and department agree and the circular has been amended in response to the comment. Section 3.2.1 now states "[t]hese establishments often produce effluent with variations of flow including intermittent, seasonal, or sporadic peak events."

COMMENT NO. 82: The reference to EPA Class V Injection Wells should remain somewhere in the circular. This information does apply to many installations whether they are multi-residential, commercial, or industrial in nature. DEQ should recognize or connect with this federal requirement, to assure both federal and state requirements are met. DEQ should inform system owners of this requirement.

RESPONSE: The department has not adopted rules to regulate, nor has it sought primacy for, the federal Class V Injection Well rule. Accordingly, DEQ-4 should not make reference to this rule. The reference to EPA Class V injection wells was also removed to prevent confusing the regulated public. In an effort to make the regulated public aware that other requirements may exist, the department has included a notice in the Foreword, page 2 of 216, paragraph 2, that EPA Class V injection well requirements may apply. The suggested change has not been made.

COMMENT NO. 83: High strength waste should be equal to or less than the criteria listed, not less than as shown in the proposed document.

RESPONSE: The board and department agree and have made the suggested change to the circular. Section 3.2.2 now explains that wastewater must be treated to levels equal to or less than the levels in the list.

COMMENT NO. 84: The meaning of the last paragraph of section 3.2.2 is unclear.

RESPONSE: The board and department agree and the circular has been amended in response to the comment. The last paragraph of section 3.2.2 now states "[s]ystems, accepting wastewater not treated to the following levels, must comply with this section prior to final disposal in a subsurface absorption system. Other conditions of system approval may be required by the reviewing authority."

COMMENT NO. 85: It is unclear what is meant by "special consideration should be given" to low BOD_5 influent systems. Subsection 3.2.2.1 should be written in such a way as to allow the reviewing authority to impose additional requirements on systems with low BOD_5 influent.

RESPONSE: The board and department agree and subsection 3.2.2.1 has been amended in response to the comment. The circular now states "[a]ll wastewater must meet residential waste standards for BOD_5 and TSS. The reviewing authority may impose additional requirements on systems with low BOD_5 levels where compliance with the Water Quality Act and nondegradation of state waters is a concern."

COMMENT NO. 86: Delete the use of the term "institution" from subsection 3.2.2.2 and replace it with "facility."

RESPONSE: The board and department agree and the suggested change has been made to the circular. Subsection 3.2.2.2 now refers to "facilities" rather than "institutions."

COMMENT NO. 87: The requirement, in subsection 3.2.2.A.3, to plumb grease tanks separately from the remaining wastewater sewage treatment system may be difficult to achieve in established buildings.

RESPONSE: There is some level of treatment for fats, oils, or greases (FOGs) in septic tanks. However, drainfield failures have shown that this level of treatment is not sufficient for establishments that produce high levels of FOGs, such as restaurants. FOGs must be removed from the effluent stream and provided a sufficient period of cooling time to allow grease separation to occur. While plumbing may be difficult in established buildings, these difficulties would be minor in comparison to replacing an entire drainfield. No change has been made to the circular in response to the comment.

COMMENT NO. 88: Subsection 3.2.2.2.A.3 is confusing, because it refers to baffles in grease tanks with a schematic showing a tank using sanitary Ts with a central baffle. Explain how sanitary Ts and baffles should be used on the inlet and outlet of tanks.

RESPONSE: The board and department agree that subsection 3.2.2.2.A.3 should be clearer and the circular has been amended in response to the comment.

Subsection 3.2.2.2.A.3 now states "[g]rease tanks must have sanitary Ts on the inlet and sanitary Ts or baffles on the outlet."

COMMENT NO. 89: The requirement for pressure distribution of all high strength waste systems should be deleted. Once residential strength is achieved this section would be in conflict with other sections. This requirement would be also be onerous in addition to high strength wastewater pretreatment.

RESPONSE: The board and department agree and section 3.2.4 has been deleted from the circular.

COMMENT NO. 90: Requiring operation and maintenance plans or contracts is difficult to enforce, especially to ensure compliance.

RESPONSE: While requiring an operation and maintenance plan may make enforcement difficult, proper operation and maintenance of all subsurface wastewater treatment systems is important to protect water quality and public health. The requirement has not been removed from section 3.2.4.

COMMENT NO. 91: Subsection 3.2.4.2 should designate how long sampling records must be maintained.

RESPONSE: Not all high strength waste treatment systems will be required to keep sampling records. Accordingly, if the reviewing authority determines this is an appropriate requirement for approval, it must specify how long records must be kept in the sampling agreement. The suggested change has not been made.

COMMENT NO. 92: Consider providing a more comprehensive list of systems that produce water residuals in section 3.3.1, as is done in section 3.3.3.

RESPONSE: Section 3.3.1 already includes a comprehensive list of systems that produce water residuals. The list includes ion exchange water treatment systems, water softening treatment systems, demineralization water treatment systems, and other treatment systems that produce discharge. In response to this comment, section 3.3.3 has been amended to include the same list.

COMMENT NO. 93: Reword section 3.3.3 to include all technologies cited in section 3.3.1.

RESPONSE: The board and department agree and the suggested change has been made to sections 3.3.3 and 3.3.4.

COMMENT NO. 94: In section 3.3.4, define dry well and describe how it will be sized and the necessary setbacks.

RESPONSE: A drywell is defined in ARM 17.36.101(11) as "a storm water detention structure that collects surface runoff and discharges the water below the natural ground surface." The term is used in relation to storm water and should not be used in this circular. All proposed references to dry wells have been deleted. Section 3.3.4 of the circular has been amended in response to the comment and now states "[w]astewater from ion exchange water treatment systems, water softening treatment systems, demineralization water treatment systems, or other water treatment systems that produce a discharge may be discharged to a separate

drainfield, other approved absorption system, or into the ground, if not prohibited by other rules or regulations."

COMMENT NO. 95: Be more specific in 3.3.5 about what systems require operation and maintenance plans for water treatment residuals.

RESPONSE: All water treatment residual disposal systems must have an operation and maintenance plan in accordance with Appendix D. The level of detail provided in that plan must take into account the system complexity and no change has been made to the circular in response to this comment.

CHAPTER 4 COLLECTION, PUMPING, AND EFFLUENT DISTRIBUTION SYSTEMS

COMMENT NO. 96: Chapter 4 is needlessly complicated for individual and shared systems. It appears that a great deal of information comes from DEQ-2. DEQ should make the document more user-friendly by either removing or changing the location of those sections that apply to only public systems.

RESPONSE: The board and department agree that repetition of information from Circular DEQ-2 is redundant. Chapter 4 has been rewritten to direct designers to those areas of DEQ-2, when appropriate. In addition, some sections have been combined to make the document more user-friendly. Grammatical errors, typos, etc., throughout the circular have been corrected.

COMMENT NO. 97: The references to "water," in subsections 4.1.1.2 and 4.1.1.3, appear to be errors.

RESPONSE: Subsections 4.1.1.2 and 4.1.1.3 were originally intended to repeat the definition of "service connection" and "main" found in ARM 17.38.101. Since this document refers only to wastewater applications, the definitions should not include references to pipes that convey water. All references to sewer connections and mains in this document have been limited to those collection systems that relate to wastewater applications. Subsections 4.1.1.2 and 4.1.1.3, as contained in the initial proposal language, have been combined as subsection 4.1.1.2, which now states "[s]ewer collection systems, including sewer service lines and sewer mains, must maintain the setback distances required in ARM Title 17, chapter 36, subchapter 3 or 9, as applicable." In response to a comment, section 4.1.6 has been deleted and the new language in subsection 4.1.1.3 directs users to Department Circular DEQ-2.

COMMENT NO. 98: Delete the space at the start of the first sentence in subsection 4.1.1.4.

RESPONSE: The board and department agree and the circular has been amended to delete that space.

COMMENT NO. 99: The word "the" should appear in subsection 4.1.1.5 before the word "ultimate."

RESPONSE: The board and department agree with the recommendation and have made the suggested change to the circular.

COMMENT NO. 100: In subsection 4.1.2.8, consider removing the word "discourages." This is not a good regulatory term and cannot be enforced.

RESPONSE: The board and department agree and subsection 4.1.2.8 of the circular has been deleted, because the requirements appear in Department Circular DEQ-2. The board and department may consider this comment in a future rulemaking.

COMMENT NO. 101: With regard to subsection 4.1.3.4, the former standard for a sewer main slope is 1/4 inch drop per foot for a four-inch pipe. This subsection complicates installation.

RESPONSE: The requirement for sewer service pipe slope is 1/4 inch per foot for a four-inch diameter pipe and is currently addressed in subsection 4.1.2.1. Sewer mains are pipes that serve multiple service connections and have different size and slope requirements. Sewer mains are addressed in Department Circular DEQ-2. Subsection 4.1.3.4 has been deleted from the circular.

COMMENT NO. 102: The typical user of this chapter will not understand what Type 1 or Type 2 bedding is.

RESPONSE: The board and department agree that some system designers may not be familiar with the construction material and specifications required of sewer mains. Subsection 4.1.3.8 is deleted from the circular, because sewer main construction requirements are addressed in Department Circular DEQ-2.

COMMENT NO. 103: DEQ should reorganize this chapter to clearly delineate between the requirements that apply to public systems, systems over 2500 gallons per day, and those that apply to smaller systems.

RESPONSE: The requirements for public wastewater systems and those wastewater systems that are over 2,500 gallons per day are found in ARM Title 17, chapter 38 and Title 17, chapter 36. Department Circular DEQ-4 is intended as a design circular for all onsite wastewater systems. In response to this comment, the circular has been reorganized to clearly delineate between service connections and mains to differentiate between small and large system requirements.

COMMENT NO. 104: In subsection 4.1.4.4, it is unclear what is meant by the requirement that "[s]urge protection chambers should be evaluated." By whom and against what criteria?

RESPONSE: The design recommendations in subsection 4.1.4.4 no longer appear in this circular, since the requirements appear in Department Circular DEQ-2. Surge protection chambers should be evaluated by the design engineer for problems associated with water hammer pressures and stresses that are expected with the cycling of wastewater lift stations. These chambers must be designed to withstand these stresses.

COMMENT NO. 105: With regard to subsection 4.1.4.8, would heat flow calculations need to be shown for individual systems? This seems to be excessive for an individual homeowner.

RESPONSE: Force mains, including heat flow calculations, must be designed in accordance with the requirements of Department Circular DEQ-2, as stated at section 4.1.4 of this circular. Individual systems are not mains and are not subject to these requirements. Subsection 4.1.4.8 has been deleted.

COMMENT NO. 106: Subsection 4.1.4.11 should be specific about what leakage tests can be used.

RESPONSE: There are a number of hydrostatic leakage tests applicable to sewer force mains depending on the type of construction method, pipe material, and available equipment. System designers must specify the proposed leakage test for review and approval by the reviewing authority. Subsection 4.1.4.11 no longer appears in this circular, since the requirements for leakage tests appear in Department Circular DEQ-2.

COMMENT NO. 107: The requirement for effluent pumps is unclear because there are no pumps listed by the *National Electrical Code* (NEC) for Class 1, Division 2 locations. These locations are defined as those where flammable gases or vapors, flammable liquids, combustible dust, or ignitable fibers or flyings may be present but not in explosive concentrations. The requirements specifying the use of these pumps should be removed from the circular.

RESPONSE: The board and department believe that there are pumps listed for Class 1, Division 2 locations. The NEC and National Fire Protection Association (NFPA) 820, *Standard for Fire Protection in Wastewater Treatment and Collection Facilities,* has identified certain wastewater treatment locations as prone to hazardous conditions. Pump manufacturers have developed specialized pumps that are made to operate safely under these conditions. Pumps certified to operate under Class 1, Division 2 locations are listed with Underwriters Laboratories (UL) under many different certifications including, but not limited to, UL 1604. Subsection 4.1.5.7 has been deleted in this circular and the designer directed to the requirements in Department Circular DEQ-2. The requirements for Class I, Division 2 pumps, used for effluent, are addressed in subsection 4.2.3.1. The board and department have clarified this subsection in response to public comment. In lieu of meeting the requirements for NEC Class 1, Division 2 locations, pumping stations receiving effluent from five or less living units, those stations vented in accordance with the requirements of Department Circular DEQ-2, Chapter 40, or advanced treatment effluent pumping units that are preceded by a septic tank, may use submersible pumps and motors designed specifically for totally submerged operation with controls and wiring that are corrosion-resistant.

COMMENT NO. 108: In subsection 4.1.5.10, DEQ should define "alternative systems." What systems must be owned, operated, and maintained by a "responsible authority" and who is the "responsible authority?"

RESPONSE: The board and department agree that this subsection was unclear and have amended the circular in response to this comment. Section 4.1.5 now states "[a]lternative wastewater collection systems include pressurized sewers carrying raw wastewater from grinder pumps, pressurized or gravity sewer mains carrying effluent, and combinations thereof, and must be designed in accordance

with the requirements of Department Circular DEQ-2. This would include grinder pump systems, septic tank effluent pump systems, and small diameter gravity systems." These systems must be operated and maintained by a responsible authority that may include, but not be limited to, a homeowners association, sewer district, or municipality.

COMMENT NO. 109: The sections on separation distances seem inconsistent with the minimum horizontal distances required in Title 17, Chapter 36, subchapters 3 and 9. When sewers are proposed in the vicinity of any water supply facility, requirements of Circular DEQ-1, Circular DEQ-3, and ARM Title 17, chapter 36 should be used to confirm acceptable isolation distances.

RESPONSE: Sewer collection systems and their components must maintain setback distances as required in ARM Title 17, chapter 39, subchapter 3 or 9, as applicable. The information regarding inverted siphons or those to be constructed near stream crossings, at water main crossings, or with aerial crossings, are for circumstances when the setbacks are not maintained. This information was included in Circular DEQ-4 at section 4.1.6, but was transferred to subsection 4.1.1.3 in response to a comment. That subsection states that those types of facilities must be designed in accordance with Department Circular DEQ-2.

COMMENT NO. 110: Strike the first sentence of subsection 4.1.6.3.A, as it does not appear to add to the rest of the language under that subsection. If there are other isolation distances they should be specified.

RESPONSE: This information was included in the circular at section 4.1.6, as a reference for the designers and the reviewing authority, but was transferred to subsection 4.1.1.3 in response to a comment. That subsection states that those types of facilities must be designed in accordance with Department Circular DEQ-2.

COMMENT NO. 111: The overall structure of subsection 4.1.6.4 is confusing. Also, take out the word "gravity," unless there are different requirements for gravity and pressure mains.

RESPONSE: This information was included in the circular at section 4.1.6, as a reference for the designers and the reviewing authority, but was transferred to subsection 4.1.1.3 in response to a comment. That subsection states that those types of facilities must be designed in accordance with Department Circular DEQ-2. Department Circular DEQ-2 has different requirements for gravity and pressure mains.

COMMENT NO. 112: Subsection 4.2.3.1 should require alarms for high and low water levels. In the alternative, if DEQ is going to require only one or the other, it should require an alarm for the high water level.

RESPONSE: The board and department agree that it is important to have high water alarms on all pump stations and the circular has been amended in response to this comment. Although low water alarms may provide useful information for pump longevity, they do not provide the same level of protection to the system. Subsection 4.2.3.1 now requires that an audible or visible alarm must be provided to indicate high water levels.

COMMENT NO. 113: Subsection 4.2.2.3 uses "the" 100-year or "the" 25-year floods. DEQ should use "a" 100-year or "a" 25-year flood.

RESPONSE: Subsection 4.2.2.3 has been deleted from this circular. Designs that include raw wastewater pumping stations will be directed to Department Circular DEQ 2. The board and department may consider this comment in a future rulemaking pertaining to Department Circular DEQ-2.

COMMENT NO. 114: Subsection 4.2.3.3 should be reworded, so that the language matches section 2.1.7, Table 2-1.1(a).

RESPONSE: The board and department agree that consistent terminology should be used and have amended the circular in response to this comment. Section 2.1.7, Table 2-1.1(a) has been amended to require pressure distribution rather than uniform pressure distribution. "Pressure distribution" is defined in section 1.2.61 and means "an effluent distribution system where all pipes are pressurized and the effluent is pumped, or delivered by siphon, to the next portion of the treatment system in a specific time interval or volume." In accordance with subsection 4.2.3.3, pressure distribution must show less than 10 percent variation across the distribution pipe. This is consistent with the requirements of uniform distribution. To provide consistency throughout Circular DEQ-4, the term "uniform pressure distribution" has been replaced with "pressure distribution."

COMMENT NO. 115: All dosed systems, both those with siphons and pumps, should include a dose counter. This component functions to insure that the system is performing at original dosing specifications. Secondly, the word "should" in a regulation has virtually no effect on common practice. In the case of subsection 4.2.3.3 as drafted, conservative designers will include a dose counter in each system, by practice. The designer who is not incorporating conservative design parameters, however, will opt-out on the inclusion of a dose counter because he or she is not required to include one.

RESPONSE: The board and department do not make dose counters mandatory in order to facilitate flexibility in design. Those systems using a siphon could also install a flow meter or take individual measurements of the tank to achieve the same information as obtained through a dose counter. This circular is a set of state minimum design standards. Recommendations using language such as "should" and "may" are intended for those instances where the inclusion of the component is not required to maintain public health and safety. However, it is still appropriate for the board and department to indicate what is better practice. The suggested change has not been made.

COMMENT NO. 116: In subsection 4.2.3.3.B, the last sentence is confusing. Consider separating this into more than one sentence, or simplify the whole thing by just referring to square footage of absorption area, calculated before applying any reductions.

RESPONSE: The board and department agree that subsection 4.2.3.3.B could be written more clearly and has amended the circular in response to this comment. The last sentence in subsection 4.2.3.3.B now states "[t]he effective length of the absorption area is the actual length of the trench or bed, calculated

prior to any applied reductions. The effective length cannot exceed the length of the pipe by more than one-half the orifice spacing."

COMMENT NO. 117: The requirement in subsection 4.2.3.3 for "two times" the distribution pipe volume is arbitrary and unsupported. As the pipe network fills, the flow is initially non-uniform. Dose volume should be based on pipe volume to provide a reasonable assurance that, after the pipes fill, there is still sufficient volume to uniformly dose the soil.

RESPONSE: As the pipe network fills, the flow is initially non-uniform, but, as the volume stabilizes and air is expelled, full-pipe conditions are reached. Under full-pipe conditions, system-wide dosing of the drainfield occurs. A dose, equal to the volume of the transmission line, manifold, and "two times" the distribution pipes, approximates the amount of liquid necessary to achieve instantaneous full-pipe conditions. The suggested change has not been made.

COMMENT NO. 118: Subsection 4.2.3.3.G needs to make it clear that cleanouts must be placed at both ends of every lateral. Many designers make the mistake of placing the header at one end of the laterals and one row of cleanouts at the other end. A proper design puts the header in the middle of the laterals and cleanouts at both ends. In this manner, a high pressure cleaning nozzle can be inserted in one end, pass through the header, and push the pipe solids out the other end of the pipe. If only one set of cleanouts is installed, the jetter has no place to push the solids.

RESPONSE: Circular DEQ-4 presents minimum standards to drainfield design. The department's and the board's intent is to allow flexibility with design components that are not required to maintain public health and safety. The suggested change is not necessary to maintain health and safety. The location of cleanouts, whether at one end or both ends of the lateral, the location of the manifold relative to the laterals, and the angle of, and type of cleanout, is left to the discretion of the designer as long as the requirements for the operation and maintenance of the systems are met. The suggested change has not been made.

COMMENT NO. 119: In subsection 4.2.3.3.E, the increase in residual pressure to ten feet for orifices smaller than 3/16 inch and to five feet for larger orifices is not necessary. In some circumstances this increase could necessitate a more expensive, high-head dosing pump.

RESPONSE: The board and department agree that, while there may be marginal benefits to increasing pressure at the end of a distribution line, those benefits are not offset by the increased cost of a high-head dose pump. The circular has been amended in response to this comment. Subsection 4.2.3.3.E now recommends the "size of the dosing pumps and siphons must be selected to provide a minimum pressure of 1 psi (2.3 feet of head) at the end of each distribution line. For orifices smaller than 3/16-inch, the minimum pressure must be 2.16 psi (5 feet of head) at the end of each distribution pipe."

COMMENT NO. 120: Subsection 4.2.3.3.G should add a sentence that states "[p]ressure-dosed lines must not be connected (or looped) on the ends, because this would interfere with subsequent flushing of the lines."

RESPONSE: The current language in the circular precludes the connection or looping of pressure-dosed systems. Subsection 6.1.5.5 states "the ends of the distribution pipes must be capped or plugged." Additionally, subsection 4.2.3.3.G requires that "cleanouts must be provided at the end of every lateral." These two requirements could not be met with looped lines. If a design required, or if a designer chose to connect or "loop" ends of a pressure-dosed system, a deviation would be required. The suggested change has not been made.

COMMENT NO. 121: The last sentence in subsection 4.2.3.3.H.2 is redundant with what is stated in subsection 4.2.3.3.H.1.

RESPONSE: The board and department agree and have amended the circular in response to this comment. The last sentence of subsection 4.2.3.3.H.2 is redundant and has been deleted.

COMMENT NO. 122: In subsection 4.2.3.3.H.3, the term "weep hole" should be added for clarification.

RESPONSE: Although weep holes are one way to protect against siphoning from the septic tank, there are other design considerations that may be implemented. The intent of the circular is to allow designers flexibility with design. The suggested change has not been made.

COMMENT NO. 123: With regard to 4.2.3.3.H.3, it is not necessary for the designer to project finished riser height. The final height to finished grade may be different based on final site work. If the concern is that other requirements may be necessary based on bury depth, then make that clear in the language. Otherwise, requiring a riser to finished grade is adequate.

RESPONSE: The board and department agree and have amended the circular in response to this comment. The length of the dose tank risers is often difficult to specify at the design stage and access to the ground surface is often a primary concern. Subsection 4.2.3.3.H.3 no longer requires that dosing tank depth and riser height be determined prior to installation.

COMMENT NO. 124: On the Standard Dosing Tank Drawing, in subsection 4.2.3.3, DEQ should add a requirement that floats must be mounted on PVC pipe independent of the discharge piping. This allows the float to be easily lifted out of the pump station and allows the floats to be adjusted without disturbing the pump. This is a simple requirement that makes a huge difference in maintenance.

RESPONSE: The Standard Dosing Tank Drawing does show a separate "float tree" for the floats. However, it does not require a PVC float tree. Float trees can be made out of different materials. The only items specified are the four-inch inlet size, the sanitary T, and the reserve volume requirements. Due to the fact that there are different designs for dosing tanks, the department's and the board's intent is to leave these design decisions up to the designers. The suggested change has not been made.

COMMENT NO. 125: Subsection 4.2.3.3.G should make it clear that cleanouts must be placed at both ends of every lateral.

RESPONSE: Circular DEQ-4 presents minimum standards to drainfield designs. The department's and the board's intent is to allow flexibility with designs. The location of cleanouts, the location of the manifold relative to the laterals, and the angle of, and type of cleanout, is left to the discretion of the designers, because placement of cleanout at both ends is not necessary to protect public health. The suggested change has not been made.

COMMENT NO. 126: In subsection 4.2.3.3.H.4, all dosing systems that use pumps should include a control panel that has a manual/off/auto switch, so that a pump can be started from above ground in the case of float failure.

RESPONSE: The department's and the board's intent is to allow flexibility with designs. The alarm requirements of subsection 4.2.3.3.H are meant to insure that, if there is a failure, the owner is made aware of a problem. Although the use of an electronic control panel with float sensors would achieve that goal, other configurations might also alert homeowners to the situation, including a flashing light or audible alarm. The addition of a manual, above ground, on/off pump switch would increase the cost to system owners and is beyond the scope of this rulemaking. The suggested change has not been made.

COMMENT NO. 127: All distribution boxes should have access risers so they can be inspected and adjusted.

RESPONSE: Risers are typically cylinders that extend from the box or tank to the surface. Due to their shape, they provide limited line of site and make access to the corners of the tank or box difficult. Risers on distribution boxes do not allow adequate visibility for inspection of the outlets or facilitate the adjustment of distribution pipes. The suggested change has not been made.

COMMENT NO. 128: Specifications for distribution boxes and drop boxes are illustrated in Drawings 4.3-2 and 4.3-4. These include 12 inches of gravel. Are other materials or methods acceptable?

RESPONSE: Please refer to the specific rules in this circular pertaining to each element for details. The department's and the board's intent is to allow flexibility with designs. Although both drop boxes and distribution boxes must be set level and bedded to prevent settling, specific bedding depth, materials, and methods may vary.

COMMENT NO. 129: Drop boxes seem to be a bit archaic. Since they do not provide equal distribution, what is the justification for leaving them in subsection 4.3.2.2?

RESPONSE: Drop boxes are not designed to provide equal distribution. They are designed to provide successive distribution. As the lower lateral fills, the effluent level in the box increases to feed the next lateral. They are not widely used, but they are still an allowable system. The circular has not been changed in response to this comment.

COMMENT NO. 130: In subsection 4.3.2.2.C, the requirement for Schedule 40 PVC for distribution systems is overkill. These pipes are always shallow buried. Moreover, a Class 200 PVC is more than adequate and about half the price.

RESPONSE: The board and department agree and have amended the circular in response to the comment. Subsections 4.2.3.3.E and 4.3.2.2.C now require that pressure-dosed distribution lines must be at least Class 200 PVC or Schedule 40 PVC.

COMMENT NO. 131: Section 4.3.3 should not allow continued use of manifold pipes on gravity fed systems.

RESPONSE: A gravity drainfield, using manifold distribution, is still a system used throughout the state. Public health is not jeopardized by use of these systems and it is the department's and board's intent to maintain flexibility in design. The suggested change has not been made.

COMMENT NO. 132: In subsection 4.2.3.3.I, is there an alternative to a squirt test to determine equal distribution?

RESPONSE: The board and department do not require a squirt test to determine equal distribution. It does require that equal distribution is field verified. Alternative methods might include mechanical or electronic pressure measuring equipment.

CHAPTER 5 PRIMARY TREATMENT

COMMENT NO. 133: Is there a way to incorporate septic tank abandonment procedures into the circular? Some replacement systems will need to follow DEQ-4's guidelines and, in those cases, there may be an old tank that needs to be abandoned. When septic tanks are not properly abandoned there could be safety hazards for people, especially children.

RESPONSE: The board and department appreciate this comment, but it is beyond the scope of this rulemaking. The board and department may consider addressing the commenter's concerns in a future rulemaking.

COMMENT NO. 134: There should be a statement that, when alternative septic tank lids or access ports are used, they must be of durable construction, secured with hex screws, lag bolts, locks, or other method to prevent child access. Section 5.1.1 should also be changed to require safety nets in all septic tanks.

RESPONSE: This circular sets forth requirements for the design and preparation of plans and specifications for subsurface wastewater treatment systems. While safety basket screens are recommended, the board and department do not require their installation, because their purpose is not directly related to wastewater treatment or the protection of water quality. The board and department agree that secured tank lids and access ports are necessary to insure proper design, sizing, operation, and maintenance of all septic tanks and have amended the circular in response to the comment. Section 5.1.1 now provides that "[a]ll septic tanks and access ports must have lids. The lids must be of durable construction and be secured with hex screws, lag bolts, locks, or other methods to prevent unauthorized

access. Safety basket screens (child catchers) should be installed in all septic tanks."

COMMENT NO. 135: In section 5.1.1, consider breaking the sentence starting with "The septic tank must be …" into two sentences.

RESPONSE: The board and department agree and have amended the circular in response to the comment.

COMMENT NO. 136: The units used to describe the access risers for septic tanks should be changed from square feet to a diameter in inches.

RESPONSE: Units used to size the openings of septic tank lids must be applicable to all shapes of openings. Not all septic tanks have circular openings and a measurement of diameter would not be appropriate. A square-foot requirement sets a minimum that can be applied to differently shaped openings. The suggested change has not been made.

COMMENT NO. 137: DEQ should not change the minimum septic tank volume to 3.0 times the daily flow unless it is demonstrated that septic tanks designed under the old standard are causing environmental or operational problems. In the alternative, design criteria should be rewritten to allow the engineer design flexibility based upon actual settling velocity calculations and sludge storage volumes. The standard requirement for most states is 1.5 to 2.0 times the average daily flow. Larger septic tanks do not equate to better on-site systems. The costs of the proposed change will greatly exceed any benefits and, therefore, should not be required. In addition, it was suggested to require a septic tank volume of 3.5 times the design flow for residential systems serving two to nine living units.

RESPONSE: EPA's Onsite Wastewater Treatment Systems Manual states that, for buildings other than one- or two-family residential homes, septic tanks should be able to accommodate "two to three times the estimated design flow. This conservative rule of thumb is based on maintaining a 24-hour minimum hydraulic retention time when the tank is ready for pumping, for example, when the tank is one-half to two-thirds full of sludge and scum." Additionally, biological activity significantly decreases as temperatures decrease. Given that average annual temperatures in Montana are significantly lower than national averages, tank sizes in Montana may need to be larger than nationally recognized to allow for adequate retention time and to insure that biological activity will break down the waste. Although EPA recommends up to three times the estimated flow for septic tanks, the board and department believe that requiring a septic tank to accommodate three times the daily flow is more than what is necessary to insure adequate retention time. Due to the fact that Montana's temperatures are significantly lower than national averages, septic tank sizing in Montana should adopt a more conservative standard. The board and department do not adopt the suggested change. The board and department did amend the circular in response to this comment by lowering the minimum septic tank capacity from 3 to 2.5 times the design flow for residential and nonresidential systems.

The suggested requirement to size a septic tank volume at 3.5 times the design flow for residential systems serving two to nine living units would result in larger tanks than outlined in this document. An increase in the size of tanks is beyond the scope of this rulemaking and the suggested change has not been made.

COMMENT NO. 138: Please explain why there are different external standards for pre-cast concrete, cast-in-place concrete, fiberglass, and polyethylene septic tanks. Why not use one standard for all types of septic tanks.

RESPONSE: There are a variety of reasons why there are different external standards for pre-cast concrete, cast-in-place concrete, fiberglass, and polyethylene septic tanks. These include industry norms, prevailing use, and applicability. Historically, organizations have created standards that relate to that particular organization's area of expertise. For example, fiberglass and ethylene products have long been used in the plumbing industry. As a result, the plumbing industry developed standards for those products that have evolved into minimum criteria used by fiberglass and ethylene septic tank manufacturers. Most fiberglass and ethylene septic tanks reference standards were created through the plumbing industry. In addition, some standards are more appropriate for certain applications. For example, cast-in-place septic tanks are utilized primarily where pre-cast tanks are either unavailable or cost prohibitive. Standards that would allow the design of these tanks by a professional engineer are necessary to insure adequate construction. Those standards may be more appropriately found in one resource rather than another. Accordingly, different external standards are necessary for different types of septic tanks.

COMMENT NO. 139: The last line in subsection 5.1.2.2 may be inconsistent with subsection 5.1.4.3

RESPONSE: Subsections 5.1.2.2 and 5.1.4.3 pertain to different components of a septic system. Accordingly, it is appropriate that subsections 5.1.2.2 and 5.1.4.3 set forth different requirements. These provisions allow for flexibility in design of the septic ventilation system. Subsection 5.1.2.2 requires that each compartment of the septic tank be vented back to the inlet pipe and subsection 5.1.4.3 requires that each compartment of the septic tank be vented to the atmosphere. Although venting through the inlet pipe and a vent stack, located in the house or building, is the most common method of providing air exchange in the septic tank, there may be other design alternatives available.

COMMENT NO. 140: For many pump vault units, the filter is incorporated into the unit itself, which would be in the dosing compartment. If this is adequate, maybe the language could be changed accordingly.

RESPONSE: The board and department agree that there are some other filtering devices that could be used in place of an effluent filter and have amended the circular in response to this comment. Subsection 5.1.5.1 now requires effluent filters in all systems "unless the reviewing authority approves another filtering device such as a screened pump vault."

COMMENT NO. 141: Subsection 5.1.5.5 states that effluent filter manufacturers must show that filters meet ANSI/NSF standards. Is that still 1/8-inch?

RESPONSE: ANSI/NSF Standard 46 requires all effluent filters to have an effective opening no larger than 1/8-inch.

COMMENT NO. 142: In section 5.1.6, change word "two" to "multiple," unless the intent is to allow no more than two septic tanks to be used in series to total the required amount of septic tank sizing.

RESPONSE: The board and department agree that the designer should not be limited to a number of tanks when connecting septic tanks in series and have amended the circular in response to this comment. Section 5.1.6 now allows "multiple" single compartment tanks to be connected.

COMMENT NO. 143: Subsection 5.1.6.2.A implies each living unit must have its own tank, but subsection 5.1.6.2.B implies living units can share a tank. Does each living unit in a multi-unit structure need its own tank or not?

RESPONSE: The board and department agree that there was an inconsistency and have amended the circular in response to this comment. Subsections 5.1.6.2.A and 5.1.6.2.B specify a septic tank capacity rather than a septic tank size serving an individual living unit.

COMMENT NO. 144: Subsection 5.1.7.1.D is poorly written.

RESPONSE: The board and department agree that subsection 5.1.7.1.D should be reworded and have amended the circular in response to the comment. The language for subsection 5.1.7.1.D now states "[a]ll concrete tank sealants must be flexible, appropriate for use in septic tanks, and must conform to ASTM C 990-09."

COMMENT NO. 145: Requiring that manufacturers mark the name, number of gallons, and depth of bury for pre-cast concrete tanks in subsection 5.1.7.1.E is a good idea, but we are guessing that this information will just be painted on because the manufacturers will not want to change their concrete molds.

RESPONSE: The requirement in subsection 5.1.7.1.E does not specify the manner in which the information must be marked on the tank. Accordingly, painting would be an appropriate method. The intent is that a specific tank's information be available to the installer at the time the tank is placed in the ground. If, over time, it is deemed necessary for the information to be maintained for a longer period of time, the board and department will consider modifying the requirement in a future rulemaking.

COMMENT NO. 146: In subsection 5.1.7.2, DEQ should require that poly tanks must be watertight. A method and standard for this testing would be useful as an appendix.

RESPONSE: The board and department agree that all tanks should be water tight and have amended the circular in response to this comment. Subsection 5.1.7.2 now states "[t]hermoplastic and fiberglass septic tanks must be water tight

and made of materials resistant to the corrosive environment found in septic tanks." Methods for testing thermoplastic and fiberglass tanks for tightness are found in subsection 5.1.7.2 and so are not necessary in an Appendix.

COMMENT NO. 147: Subsection 5.1.7.2 specifically identifies polyethylene as the only acceptable thermoplastic that can be used for tank manufacture. The board and department have approved the use of Infiltrator's IM-1060 tank, which is manufactured with either polypropylene or polyethylene. Structurally, polypropylene has been successfully used to manufacture Infiltrator Quick4 chambers for years. Polypropylene can be used in structural applications in the same ways that polyethylene can be used, provided that minimum physical characteristics are satisfied. DEQ-4 should expand the allowable thermoplastics to include polypropylene.

RESPONSE: The board and department agree that the circular should include all tank materials suitable for wastewater treatment and has amended the circular in response to this comment. Subsection 5.1.7.2 now refers to all thermoplastic tanks.

COMMENT NO. 148: Plastic and fiberglass tank manufactures have spent millions of dollars on the tooling necessary to manufacture their products. The equipment is large, complicated, and generally cannot be modified once it has been produced by a toolmaker. Establishing a two-foot distance from the outlet of the tank for markings is likely to create a requirement that many manufacturers cannot comply with, without spending millions of dollars on new equipment. The circular should be amended to allow more flexibility in the location of markings on thermoplastic and fiberglass tanks.

RESPONSE: The board and department agree that thermoplastic and fiberglass tank manufacturers should not have to change current practices if the necessary information is clearly marked on each tank in a visible location. The circular has been amended in response to the comment and subsection 5.1.7.2 now provides that "[a]ll thermoplastic and fiberglass tanks must be clearly marked near the outlet or on the top surface of the tank with the name of the tank manufacturer, tank model, number of gallons, date of manufacture, and maximum depth of bury."

COMMENT: NO. 149: IAPMO is misspelled in the draft DEQ-4, appearing as "IAMPO."

RESPONSE: The board and department agree that the abbreviation for the International Association of Plumbing and Mechanical Officials found in the circular contained an error. The circular has been amended to reflect the correct acronym.

COMMENT NO. 150: Remove the date from the IAPMO standard reference (page 214, Appendix F), so that the latest version of the standard is applicable.

RESPONSE: The board and department are prohibited from adopting future versions of standards without review and approval. Further, Montana law requires references to specific editions of documents, if they are to be incorporated by reference into administrative rules. The current version, IAPMO/ANSI Z1000-07, is

the only version that has been reviewed and approved for use in the circular. The suggested change has not been made.

COMMENT NO. 151: Why do tanks need to be marked with the name of the tank manufacturer, tank model, number of gallons, date of manufacture, and maximum depth of bury?

RESPONSE: Pre-cast concrete tanks should be marked with the information in subsection 5.1.7.1.B to insure that the appropriate tank is being used for the intended site.

COMMENT NO. 152: Owners should maintain their tanks in accordance with recommendations from MSU Extension.

RESPONSE: The board and department agree and the circular has been amended in response to this comment. Section 5.1.9 now states "[o]wners of septic systems should follow the septic tanks maintenance recommendations published by Montana State University Extension Service ...."

CHAPTER 6 SOIL ABSORPTION SYSTEMS

COMMENT NO. 153: Subchapter 3.2 should have been included as a reference in section 6.1.1, along with subchapter 3.3.

RESPONSE: The board and department agree that section 6.1.1 should direct the reader also to subchapter 3.2 and the suggested change has been made to the circular.

COMMENT NO. 154: What drainfield square footage do we give a "Presby" type network that does not necessarily need a two-foot wide trench?

RESPONSE: A proprietary system, such as a "Presby," may have design-specific trench widths that are dictated by the manufacturer. The board and department agree that subsection 6.1.3.3 did not address those types of systems and the circular has been amended to allow flexibility with proprietary design configurations. Subsection 6.1.3.3 now provides that "[a]bsorption trenches, utilizing proprietary design configurations, with effluent meeting NSF 40 criteria for 30 mg/L BOD_5 and 30 mg/L TSS, may have trench separation distances that meet manufacturer recommendations."

COMMENT NO. 155: Why does subsection 6.1.3.2 prohibit interlacing a replacement area between primary area trenches? If the minimum distance between trench centers can be maintained, what is the justification? Interlacing between primary area trenches can save a few feet, which is sometimes necessary in small spaces.

RESPONSE: Replacement areas are intended for sites where the primary drainfield has failed. Failed systems often leave a site and surrounding area unusable for wastewater treatment. If the two sites are interlaced, the replacement area may be compromised. No change has been made to the circular in response to this comment.

COMMENT NO. 156: Is it correct that, if the reviewing authority approves lateral spacing of less than five feet on center for a proprietary system classified as an "other absorption method," then subsection 6.1.3.3 does not apply? Also, is it correct that, if the reviewing authority approves lateral spacing of greater than 18 inches for a proprietary system classified as an "other absorption method," then subsection 6.1.3.4 does not apply?

RESPONSE: Subsections 6.1.3.3 and 6.1.3.4 refer to standard absorption trench design. Proprietary absorption trench designs are addressed in subchapter 6.6.

COMMENT NO. 157: The proposed changes to subsection 6.1.3.5 now require that absorption system trenches must be 24 to 36 inches in depth. Up to 80 percent of effluent treatment by soils occurs within the top two feet of the soil cap. By keeping trenches at 24 to 36 inches, the primary treatment media is eliminated. Why isn't a shallow, pressure-dosed system with a soil "cap" promoted? Doesn't this allow for more aerobic activity and better treatment?

RESPONSE: The circular has been configured to offer a variety of trench designs. Subchapter 6.1.addresses design and construction of drainfield trenches that are 24 to 36 inches deep and subchapter 6.2 addresses the design and construction of drainfield trenches that are 6 to 24 inches deep. Both subchapters 6.1 and 6.2 allow either gravity distribution or pressure-dosing of the system. The board and department agree that a large percentage of treatment occurs within the aerobic zone of the soil horizon systems, but also recognize that trenches less than 24 inches deep must be protected against freezing and surfacing effluent. The circular has not been changed in response to this comment.

COMMENT NO. 158: With regard to subsection 6.1.3.6, DEQ should not allow serial distribution unless it is a manufacturer requirement for a proprietary system. DEQ should encourage methods that promote equal distribution whenever possible.

RESPONSE: The board and department agree that methods promoting equal distribution should be encouraged, but all systems must comply with the requirements of this circular. Longer trenches, as seen in serial distribution, can cause failure in gravity systems. Subsection 6.1.3.6 now states "[i]f more than 500 lineal feet, or 1000 square feet, of absorption area, calculated before applying any reductions, is needed, then pressure distribution must be provided."

COMMENT NO. 159: Subsection 6.1.4.1 should not direct applicants to select the most conservative USDA application rate. The USDA soils report is a generalization of what soils are in an area, which is why site-specific information is required in the first place. Larger drainfields should not be required on the basis of a broad brush report when site-specific information is available. The report can, however, be useful in areas with highly variable soils. Under these circumstances, the reviewing authority may want to use the report to increase the size of a drainfield.

RESPONSE: The board and department agree that an important consideration for determining drainfield sizing is site-specific information and have

amended the circular in response to this comment. Subsection 6.1.4.1 now states that the USDA soils report must be submitted, but also incorporates more site-specific information.

COMMENT NO. 160: With regard to subsection 6.1.4.3, requiring a full size replacement area is problematic on sites that have size constraints and is inconsistent with section 6.6.1 on elevated sand mounds. Assuming that an advanced treatment unit was required for a smaller drainfield, an advanced treatment unit would also be required when the replacement area was put to use. Accordingly, a full size drainfield replacement should not be needed.

RESPONSE: A full size replacement area is required for all systems, including elevated sand mounds and those with advanced treatment. Effluent from advanced treatment typically has very low BOD_5 and TSS effluent characteristics. If the drainfield fails, it will be from other factors than the use of advanced treatment. Since the board and department cannot predict what those factors may be, a full-sized replacement area is required. If site constraints do not allow this configuration, the designer may request a deviation from the requirement. The suggested change has not been made.

COMMENT NO. 161: In subsection 6.1.4.3.A, after stating that the area may be reduced by 50 percent, add another sentence that states "[i]f 6 inches of sand meeting ASTM C-33 is applied over infiltrative surfaces having percolation rates faster than 3 minutes per inch, then the 50 percent area reduction will additionally apply to these soils." This will make subsection 6.1.4.3.A consistent with subsection 1.1.3.3 and section 2.1.7, Table 2-1.1(a).

RESPONSE: Neither subsection 1.1.3.3 nor section 2.1.7, Table 2-1.1(a) allow a 50 percent reduction in the absorption area for the use of sand lined trenches. A 50 percent or 25 percent reduction in final absorption area is only allowed for those systems that demonstrate they can effectively reduce the amount of BOD_5 and TSS in the effluent prior to final distribution in native soils. The circular allows a reduction in the absorption area for some proprietary distribution systems utilizing a six-inch deep sand bed or trench that have demonstrated, through an independent third party, that BOD_5 and TSS levels have been reduced to 30 mg/l each. The rate of reduction is dependent upon the hydraulic capacity of the receiving soils. The level of treatment and reduction in effluent BOD_5 and TSS levels in a six-inch deep sand-lined trench using standard distribution methods has not been demonstrated to the department. Furthermore, for sand-lined trenches and deep trenches, the minimum depth of sand is 12 inches. For systems utilizing intermittent and recirculating sand filters as described in chapter 7, a 24-inch column of sand is required. The suggested change has not been made.

COMMENT NO. 162: In clay soils, should a reduction in absorption area be allowed? Do advanced treatment systems reduce volume of effluent?

RESPONSE: Reduction of an absorption area size should be allowed in clay soils. Advanced treatment systems do not reduce the volume of effluent, but they do reduce the amount of BOD_5 and TSS in the effluent. The lower BOD_5 and TSS levels allow receiving soils a greater hydraulic capacity. In clay soils, this greater

capacity relates to a 25 percent reduction in final drainfield sizing for those systems that meet the testing criteria and performance requirements for NSF Standard No. 40 for Class 1 certification, or meet the testing requirements outlined in ARM 17.30.718 for 30 mg/L BOD_5 and 30 mg/L TSS.

COMMENT NO. 163: Subsection 6.1.5.1 should make it clear that uniform distribution of effluent must be verified at time of installation via "squirt test."

RESPONSE: The board and department do not require a squirt test to determine uniform distribution at time of installation. It does require that uniform distribution be verified. Alternative methods might include mechanical or electronic pressure measuring equipment. No change has been made to the circular in response to this comment.

COMMENT NO. 164: In section 6.2.1, the board and department should consider deleting the reference to "uniform pressure distribution." It would be better to provide a consistent and unambiguous sand specification. ASTM C-33 is commonly available throughout Montana.

RESPONSE: Uniform pressure distribution and sand lining is not required for all shallow-capped systems described in section 6.2.1. Uniform pressure distribution is, however, required for all sand lined trenches as described in subchapter 6.4. Uniform distribution is required to facilitate maximum treatment of effluent through the use of the entire sand column and to avoid the creation of conduits or cones of depression in the sand matrix. Although ASTM C-33 sand is commonly used for construction, the board and department cannot confirm that it is commonly available to all markets at all times. Moreover, it is the department's and the board's intent to allow flexibility with design components that will not affect the functionality of a system. The suggested change has not been made.

COMMENT NO. 165: The requirement that the soil cap extend two feet beyond the required absorption area, as contrasted with simply capping the trenches, results in significant additional expense and increases the visual impact of these systems. Also, it is not clear why the soil cap is required to be sandy loam or loamy sand in shallow-capped designs, whereas deep trenches may use native backfill. The requirements for shallow-capped systems should be relaxed, not made more restrictive.

RESPONSE: The requirements for shallow-capped trench designs are proposed to insure stability of the system and to protect against the potential for effluent to surface. Requiring that the soil cap extend two feet beyond the absorption trench, insures there will not be areas of depression where surface water may accumulate between trenches. A soil cap is required to be sandy loam or loamy sand to insure adequate aerobic activity within the trench systems. It is assumed, in a shallow-capped system, that material will need to be imported from off site to construct the cap, whereas, with a deep trench, there will be excess native material to backfill the drainfield. The suggested change has not been made.

COMMENT NO. 166: Section 6.2.1 should be rewritten in order to clarify that natural soil is needed.

RESPONSE: The board and department agree and have made the suggested change to the circular. Section 6.2.1 now states "[a] shallow-capped absorption trench is used to maintain a 4-foot natural soil separation …."

COMMENT NO.167: Consider providing concise numerical definitions of porous soils in section 6.2.1. Also in section 6.4.1, consider providing concise numerical definitions of rapid permeability situations in order to be consistent with other sections.

RESPONSE: Table 2.1-1 and footnote (c) explain the specific requirements for porous or fast-draining soils. Those soils are classified as having a percolation rate of less than three minutes per inch and may be found at a number of different sites. Because Table 2.1-1 specifies the requirements for fast-draining soils, a specific numerical definition in each absorption trench chapter is not necessary. The suggested change has not been made.

COMMENT NO. 168: Subsection 6.2.3.2, is unclear. Is DEQ requiring the chamber be no *higher* than ground level or no *lower* than ground level?

RESPONSE: The board and department agree that the language in subsection 6.2.3.2 was unclear and have amended the circular in response to this comment. Subsection 6.2.3.2 now states "the top of the chamber must be no higher than the level of the natural ground."

COMMENT NO. 169: Trenches more than 12 inches deep don't need a shallow cap.

RESPONSE: Subsection 6.2.2.1 defines shallow-capped absorption trenches as those with infiltrative surfaces between six to 24 inches below the natural ground. A soil cap is required for these configurations, because trenches constructed less than 24 inches in depth must be protected against freezing and surfacing effluent. The soil cap acts as both an insulator and a physical barrier to ensure pathogens and other elements of untreated effluent do not become a public health threat. The circular has not been changed in response to this comment.

COMMENT NO. 170: Specifying only chambers for a type of effluent distribution is too restrictive. Subsection 6.2.3.2 should be reworded to include other manufactured distribution devices.

RESPONSE: The board and department agree that there may be many types of effluent distribution and the circular has been amended in response to this comment. Subsection 6.2.3.2 now states "the top of the chamber or other manufactured distribution device must be no higher than the level of the natural ground."

COMMENT NO. 171: The board and department received comments both in support of and in opposition to deleting at-grade systems from the circular. If at-grade systems are reinstated, please remove the 500 gallon-per-day restriction for these systems.

RESPONSE: It is not the intent of the board and department to limit potential design options for designers. The board and department agree that a properly

designed, at-grade system should not be limited to 500 gallons per day. In response to this comment, the board and department have amended the circular to reinstate the at-grade absorption trench design standards at subchapter 6.3 and the circular will not limit at-grade systems to 500 gallons per day.

COMMENT NO. 172: Subsection 1.1.3.1 states that there should be no depth limits to deep absorption trench designs. Accordingly, the references to a maximum of five feet below natural ground surface in section 6.4.1, Drawing 6.3-1, and Drawing 6.3-2 should be deleted.

RESPONSE: It was not the intent of subsection 1.1.3.1 to provide design standards for deep absorption trench designs or to assume that variable depths are acceptable. The different absorption trench designs described in this circular are intended to meet the many site characteristics encountered for subsurface systems. A deep absorption trench must not be more than five feet below ground surface to insure adequate air transfer, oxygenation, and treatment of effluent. The suggested change to section 6.4.1 has not been made. However, the board and department have amended subsection 1.1.3.1 of the circular in response to this comment. That subsection now states "[t]he bottom of the trench must not be more than 5 feet below natural ground surface."

COMMENT NO. 173: Sections 6.4.3 and 6.4.2 should provide a consistent and unambiguous sand specification. ASTM C-33 sand is commonly available throughout Montana and should be required by these sections.

RESPONSE: Medium sand will meet the same performance criteria of ASTM C-33 sand for both backfilling deep absorption trenches and sand lining trenches. If ASTM C-33 sand is available it can also be used. DEQ-4 specifies medium sand to allow flexibility in design of systems. The suggested change has not been made.

COMMENT NO. 174: In section 6.4.3, DEQ should require pressure distribution for deep trenches. Backfilling with sand into a better soil layer is basically the same as using a sand liner. It creates a system analogous to systems that already require pressure.

RESPONSE: The board and department agree that the required sand lining in deep trenches is similar in design to that of a standard sand-lined trench and have amended section 6.4.1 in response to this comment.

COMMENT NO. 175: What should the square footage be for a drainfield in a "Presby" type network that doesn't necessarily have or need a two-foot wide trench?

RESPONSE: Proprietary systems, such as a "Presby," must meet all of the requirements of this circular. Sand-lined trenches must meet the same requirements as standard absorption trenches found in subsection 6.1.3.3, which states "[a]bsorption trenches, utilizing proprietary design configurations, with effluent meeting NSF 40 criteria for 30 mg/L BOD_5 and 30 mg/L TSS, may have trench separation distances that meet manufacturer recommendations."

COMMENT NO. 176: Section 6.6.1 says "manufactures" when it should say "manufacturer's."

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 177: In subsection 6.6.2.1, DEQ should include a requirement that manufacturers must provide evidence that chamber construction complies with IAPMO PS 63-2005.

RESPONSE: The board and department agree that subsection 6.6.2.1 should require leaching chambers to be constructed in accordance with IAPMO PS 63-2005 and have amended the circular in response to this comment to state that the evidence must be made available to the reviewing authority upon request.

COMMENT NO. 178: With regard to 6.6.2.3, why is a full size replacement area required when using gravelless chambers in the primary area? The use of this technology allows a reduction in drainfield sizing.

RESPONSE: A full-size replacement area is required to allow flexibility for future systems. When a gravelless system fails, the owner may want the option to install a different type of system. Requiring a full-size replacement area allows flexibility in design where owners build bigger homes than developers had intended. The suggested change has not been made.

COMMENT NO. 179: Distribution pipes in gravelless chambers should be hung from the top of the chamber rather than placing them at the bottom of the chamber. This protects the pipes from plugging with fines and may provide better storage capacity if the infiltrator has periodic standing effluent.

RESPONSE: Manufacturers of infiltration chambers allow both spray down and spray up configurations. Consequently, both designs will be allowed in the circular. The suggested change has not been made.

COMMENT NO. 180: In subsection 6.6.2.3, DEQ should keep the sentence stating "[c]hambers that are 15 inches in width will be equal to an 18-inch trench width, a 22-inch width chamber will be equal to a 24-inch trench width, and 34-inch width chambers will be equal to a 36-inch width trench for calculating absorption system sizing."

RESPONSE: The board and department agree that information regarding the effective width of the chambers may be helpful to the reviewing authority and have amended the circular in response to this comment by reinserting that sentence.

COMMENT NO. 181: Subsection 6.6.3.1 is unclear. This subsection seems to conflict with the definition of absorption system in section 1.2.3 and distribution pipe in section 1.2.20. Subsection 6.6.3.1 does not make it clear whether only a certain portion or the entirety of the "other absorption system" must have a pore space.

RESPONSE: The board and department agree that subsection 6.6.3.1 should be clearer and have amended the circular in response to this comment. Subsection 6.6.3.1 now requires that other absorption systems "meet or exceed the same system performance as conventional gravel-filled absorption systems ...." The reference to "pore space of gravel" has been deleted.

COMMENT NO. 182: Subsection 6.6.3.3 is awkwardly written. DEQ should remove "review prior to" at the end of the sentence, leaving "approval."

RESPONSE: The board and department agree that subsection 6.6.3.3 is confusing and have amended the circular in response to this comment. Subsection 6.6.3.3 now states "[a]ll other absorption systems must be installed in accordance with manufacturer's recommendations, although specific proprietary designs which conflict with requirements of this circular will require reviewing authority approval."

COMMENT NO. 183: Subsection 6.6.3.4 is awkwardly written. DEQ should remove "Approval for" at the beginning of the sentence and change the last word to "approval."

RESPONSE: The board and department agree that subsection 6.6.3.4 is confusing and have amended the circular in response to the comment. Subsection 6.6.3.4 now states "[a] reduction in other absorption system sizing may be allowed on a case-by-case basis as supported by documentation and justification submitted by the manufacturer to the reviewing authority for approval."

COMMENT NO. 184: With regard to section 6.7.1, elevated sand mounds are used for multiple purposes including addressing minimum separation distances. The statement that one can use the mound to achieve separation is misleading and should be changed. Fill, or a sand mound, cannot be used to achieve separation to a limiting layer. Sand mounds are also used in confined areas that require a smaller footprint and in circumstances where a trench system is not preferred.

RESPONSE: The board and department agree that section 6.7.1 should be clarified and have amended the circular in response to this comment. Section 6.7.1 now states that sand mounds "may be used to achieve separation distance between the treatment system and a limiting layer. Four feet of natural soil must be maintained between the modified site and the limiting layer."

COMMENT NO. 185: Should section 6.7.1 use the phrase "advanced treatment" to describe all elevated sand mounds?

RESPONSE: Elevated sand mounds were at one time considered advanced wastewater treatment systems. However, they no longer have this classification. Sections A and B refer to those elevated mound systems that have advanced treatment as described in Chapter 7. The suggested change has not been made.

COMMENT NO. 186: Section 6.7.1 should allow smaller elevated sand mounds for systems that meet NSF 40 Class 1 criteria for reduced BOD_5 and TSS levels.

RESPONSE: The board and department agree and have amended the circular in response to this comment. Section 6.7.1 now states "[i]f an advanced wastewater treatment system is used prior to distribution in an elevated sand mound, or the distribution system meets the requirements of NSF 40 Class 1, as described in subsection 6.1.4.3 …."

COMMENT NO. 187: The proposed measurement in subsection 6.7.2.2 creates more difficulty for locating sand mounds. The amount of effluent wicked into

the 4:1 vs 3:1 slope is most likely not significant. The language in the prior version of DEQ-4 is preferred.

RESPONSE: The board and department agree and the circular has been amended to reinsert that setback distances should be determined from the toe of the system as if the 3:1 slope were used. Subsection 6.7.2.2 now states "[s]eparation distances must be measured from the outside of the mound where the topsoil fill meets the natural ground surface or, if the design uses a lesser slope for landscaping purposes, where the toe of the mound would be if the 3:1 slope were used."

COMMENT NO. 188: It is disappointing that the sand mound has become the default system for areas that have 48 inches depth to ground water. Sand mounds are very good at removing BOD_5 and TSS, but fall short on nitrogen removal. I believe the wide spread misuse of the Bauman Schaeffer nondegradation model is doing a major disservice to the waters of our state. The circular should try to encourage the use of better nitrogen removal systems.

RESPONSE: This circular addresses the requirements for the design and preparation of plans and specifications for subsurface wastewater treatment systems. ARM Title 17, Chapter 30 discusses nitrogen removal and degradation of state waters. These subjects are beyond the scope of this rulemaking. The board and department allow flexibility in design of systems and do not promote one design over another. The circular has not been changed in response to this comment.

COMMENT NO. 189: In subsection 6.7.2.4, please clarify what is meant by "the land area 25 feet from the toe ... must not be disturbed?"

RESPONSE: The toe of the sand mound is the area of the system that interfaces with the natural ground surface. In other words, no disturbance of the natural ground is allowable for a lineal distance of 25 feet down gradient from any location on the perimeter of the sand mound. The circular has not been changed in response to this comment.

COMMENT NO. 190: With regard to 6.7.2.5, requiring sand mounds to have a separate replacement area is unreasonable and unnecessary. Mounds are often used for site-limited conditions and this requirement would be virtually impossible to meet in many settings.

RESPONSE: The board and department agree that the requirement for a separate replacement area may not be appropriate for all sites that use an elevated sand mound and have amended the circular in response to this comment. Subsection 6.7.2.5 now grants the reviewing authority the discretion to require a separate replacement area.

COMMENT NO. 191: The requirement that all wastewater strength discharged to an elevated sand mound be residential strength is already stated in subchapter 3.2.

RESPONSE: The board and department agree that the requirement that all wastewater strength discharged to an elevated sand mound be residential is already stated in subchapter 3.2 and have deleted subsection 6.7.3.2.

COMMENT NO. 192: In subsection 6.7.3.4 (now subsection 6.7.3.3), consider specifying whether or not the bottom area application rate of 0.8 gpd/sf is before or after any area reductions detailed in section 6.7.1.

RESPONSE: The area application rate of 0.8 gpd/ft^2 is applied before any reductions are applied. Subsection 6.7.3.3 now includes the clarification "before any reduction in bed size allowed in this circular."

COMMENT NO. 193: Why is the application rate for a mound in subsection 6.6.3.4 (now subsection 6.7.3.3) being reduced from 1.0 to 0.8? The basis for this change should be explained. Is there a maximum application rate that should not be exceeded?

RESPONSE: The design application rate in Table 2.1-1 for coarse sand is 0.8 gpd/ft^2. Since the same sand is used both in the sand mound and found on site for use in a standard absorption trench, the maximum application rate should not exceed 0.8 gpd/ft^2.

COMMENT NO. 194: An application rate of 0.8 gpd/ft^2 in subsection 6.6.3.4 (now subsection 6.7.3.3) is already generous. Why provide a section allowing an increase if "finer sand" is used?

RESPONSE: The board and department agree that the application rate of 0.8 gpd/ft^2 is adequate and have amended the circular in response to this comment. The language allowing an increase in application rate, if finer sand is used, has been eliminated from subsection 6.7.3.3.

COMMENT NO. 195: Subsection 6.6.3.4 (now subsection 6.7.3.3), should provide that the sand specifications are stated as maximum fines passing the No. 200 or the No. 100 sieve. Typical ASTM C-33 requires less than three percent passing the No. 200.

RESPONSE: The ASTM C-33-13 specifications for fine aggregate indicate a maximum of three percent fines passing the number 200 sieve or, conversely, a maximum of two percent passing the number 100 sieve. The circular has not been changed in response to this comment.

COMMENT NO. 196: The shape of a sand mound is often determined by the space available. Perhaps there should be some discretion allowed to the reviewing authority for local permitting in subsection 6.6.3.7 (now subsection 6.7.3.6).

RESPONSE: The length of an elevated sand mound should be at least three times the width. The board and department agree that site conditions may require different design specifications and have amended the circular in response to this comment. Subsection 6.7.3.6 now states "[t]he length of a sand bed should be at least three times the width of a sand bed …."

COMMENT NO. 197: In 6.6.3.7 (now 6.7.3.6), why must leaching chambers be placed edge to edge if we are measuring the absorption area based on three-foot wide trenches, even in sand beds?

RESPONSE: The board and department agree that the chambers are not required to be placed edge to edge. Flexibility in design is allowed, if gravelless

trench technology is installed in accordance with the manufacturer's recommendations. In response to this comment, the circular has been amended to delete the requirement and now requires leaching chambers to be placed "in accordance with the manufacturer's recommendations."

COMMENT NO. 198: The requirement to measure depths after settling is unclear. How does one monitor this after installation and inspection?

RESPONSE: The board and department agree that subsection 6.7.3.8 should not require measurements after settling and have amended the circular to delete the sentence "These depths are measured after settling."

COMMENT NO. 199: Subsection 6.7.4.1 should clarify if the key can infringe upon the four feet of natural soil separation. The potential to key into the four-foot separation and meet the separation regulation must be understood.

RESPONSE: A minimum of four feet of natural soil between the bottom of the key or scarified area to a limiting area must be maintained for all elevated sand mounds. The board and department agree that the requirement should be clarified and the circular has been amended in response to this comment. Subsection 6.7.4.1 has been amended to state "[a] minimum of 4 feet of natural soil from the bottom of the plowed surface, scarified surface, or key to the limiting layer must be maintained."

COMMENT NO. 200: Why would a system designer have the expertise to determine if trees located within an elevated sand mound will enhance nutrient uptake? Although this language was in prior versions of DEQ-4, it does not make sense.

RESPONSE: The board and department agree and have amended the circular in response to this comment. Subsection 6.7.4.3 now states "[a]boveground vegetation must be closely cut and removed from the ground surface throughout the area to be utilized for the placement of the fill material. Tree stumps should be cut flush with the surface of the ground, and roots should not be pulled. Trees may be left in place within the 3:1 side sloped portion of the fill."

COMMENT NO. 201: Certification and as-builts should be required for all wastewater systems. This requirement should be located at the front of the document and apply to all systems.

RESPONSE: This circular addresses the design and preparation of plans and specifications for both simplistic and complex subsurface wastewater treatment systems. Certification and as-builts can provide valuable information regarding final component specifications and construction techniques, but offer limited value for more simplistic designs. The board and department believe that requiring as-builts on all systems would be overly burdensome, expensive to both the public and the regulating authority, and difficult to enforce. The circular has been amended to reflect the suggested change for the following systems:

Public Wastewater Systems, regardless of type, in accordance with ARM 17.38.101 Cut, Fill, and Artificially Drained Systems (subchapter 2)

Drainfields that serve 10 or More Living Units (section 3.1.2)
High Strength Wastewater Treatment Systems (section 3.2.4)
Alternative Wastewater Collection Systems (section 4.1.5)
Raw Wastewater Pumping Stations (section 4.2.2.2)
Elevated Sand Mounds (subsection 6.7.4.6)
Evapotranspiration Absorption and Evapotranspiration Systems (section 6.8.5)
Gray Water Irrigation Systems (subsection 6.10.5.2)
Intermittent Sand Filters (section 7.2.6)
Recirculating Sand Filters (section 7.3.3)
Aerobic Wastewater Treatment Units (section 7.4.8)
Chemical Nutrient Reduction Systems (section 7.5.3)
Alternative Advanced Treatment Systems (section 7.6.4)

COMMENT NO. 202: Evapotranspiration is misspelled.

RESPONSE: The board and department agree and the suggested change has been made to the circular.

COMMENT NO. 203: This chapter does not include the statement "ET and ETA must meet the same requirements as a standard absorption trench as described in Chapter 6.1, except where specifically modified in this chapter." Subsections 6.8.2.1, 6.8.2.2, and 6.8.3.8 could be removed if this sentence was included.

RESPONSE: While section 6.1.2 specifies setback distance requirements for standard absorption trenches, subsection 6.8.2.1 also clarifies that the distance between setbacks must be measured from the edge of the ET or ETA system. This clarification is necessary for these systems and this portion of subsection 6.8.2.1 has not been changed in response to the comment.

The board and department agree that subchapter 6.1 addresses wastewater flow rate and sizing applications and the circular has been amended to delete subsections 6.7.2.2 and 6.7.3.8 in response to this comment.

COMMENT NO. 204: Providing that ET and ETA systems should be used in conjunction with wastewater flow reduction strategies is not the best solution. Perhaps it would be more helpful to require time-dosing with a dose counter so that wastewater flow can be monitored.

RESPONSE: ET and ETA systems are not required to be pressure-dosed and may be gravity fed into the absorption area. Consequently, the requirement for a dose counter would not be appropriate for a gravity fed system. The board and department agree that, for continued success of these systems, wastewater flow strategies should be implemented. Depending on system design and configuration, other approaches to reduce wastewater flow might include, but are not limited to, repairing plumbing leaks, water conservation fixtures, or altered use practices. It is the intent of the circular to provide flexibility in design and the suggested change has not been made.

COMMENT NO. 205: The requirement in section 6.8.1 for a percolation test for all ETA systems may not be necessary or appropriate, if the local health authority

knows the soils well.

RESPONSE: ETAs are typically installed in soils with very slow percolation rates and success of these systems is highly dependent on proper sizing. Percolation tests provide an additional source of information regarding the hydraulic capacity of the receiving soils. Whereas conventional subsurface wastewater treatment systems have periods of saturation and drying, an ETA system provides continuous wetting of the soil interface. To better anticipate the receiving capacity of the soils, 24 hours of presoak of the hole, prior to the test, is required for ETAs. This requirement exceeds the typical procedures outlined in Appendix A. The circular has not been amended in response to this comment.

COMMENT NO. 206: The reason for allowing ET/ETA systems on 15 percent slopes is not apparent. Please explain why the increase in slope is reasonable. Typically these systems require fairly flat ground to install, unless they are installed in multiple stepped beds.

RESPONSE: ET and ETA systems may be installed on slopes with a 15 percent grade if terracing, serial distribution, and other necessary design features are incorporated. Berms can be used on the downhill side to accommodate proper bed depth. The increase in allowable slope allows flexibility in design and siting for these systems.

COMMENT NO. 207: Add "if necessary" to the end of last sentence of subsection 6.7.2.3 (now subsection 6.8.2.2).

RESPONSE: The board and department agree that protective berms or trenches may not be necessary in all design situations and have made the suggested change to the circular. Subsection 6.8.2.2 now states "[p]rotective berms or drainage trenches must be installed to divert storm drainage and snow-melt run-off away from the system, if necessary."

COMMENT NO. 208: Subsection 6.7.3.1 is inconsistent with the diagram provided.

RESPONSE: The board and department agree that subsection 6.8.3.1 should be clarified and have amended the circular to match the diagram. Subsection 6.8.3.1 now states "ETA and ET systems must not be deeper than 30 inches from the natural ground surface."

COMMENT NO. 209: What are the specifications for the void ratio and the wicking characteristics? The information in subsection 6.8.3.2 is not useful unless the purpose and specification is understood.

RESPONSE: Void ratio is a numeric description of the volume of voids in a media to the volume of solids and allows the designer to accurately estimate the wastewater capacity of an ET or ETA system. Void ratios change depending on the type of media. For example, loose sand with angular edges has a void ratio of 0.65, whereas glacial till has a void ratio of 0.3. To allow flexibility of design, ranges for acceptable void ratio are not specified in this circular. However, calculations determining system volume must include void ratio for size justification. Wicking characteristics for sands can be a useful tool in determining the amount of

evaporation that will occur in ET and ETA systems. The wicking characteristics for sands are usually laboratory determined, but are often not readily or easily available. The board and department have amended the circular in response to this comment by requiring wicking information only when it is available.

COMMENT NO. 210: In subsection 6.8.3.3 make "system" plural.
RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 211: Subsection 6.8.3.5 could be clearer. Consider rewording to state that "[a] minimum of 2 inches of sand fill must be placed between the native soil surface and/or any projecting rocks and the liner."
RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 212: The last paragraph of subsection 6.8.3.6 should clarify that measurements are to be taken from the center of the pipe.
RESPONSE: The board and department agree that subsection 6.8.3.6 should be clearer and have amended the circular in response to the comment.

COMMENT NO. 213: Subsection 6.8.3.6 should be consistent throughout. Insure the term "other absorption systems" is used consistently rather than "other absorption trenches."
RESPONSE: The board and department agree and have amended the circular in response to the comment to replace the term "other absorption trenches" with the term "other absorption systems" in subsections 6.2.3.2 and 6.8.3.6 and sections 6.3.3, 6.6.1, 6.11.4, and 7.1.4.

COMMENT NO. 214: The language in subsection 6.8.3.7 contains a conflict. ETA soil is defined as an impervious layer, but the system is installed within that layer.
RESPONSE: The board and department agree that ET and ETA systems must not be used in soils with percolation rates greater than 240 mpi, as this is the definition of an impervious layer. For soils with initial percolation rates greater than 240 mpi (see Appendix A), a percolation test following the ASTM D5093-02 test procedure entitled Standard Test Method for Field Measurement of Infiltration Rate Using Double-Ring Infiltrometer with Sealed-Inner Ring may be used to determine if the percolation rate is still greater than 240 mpi. Only those soils with rates less than 240 mpi, using either the Appendix A procedure or ASTM D5093-02 test procedure, may accept ET or ETA systems. The board and department have amended the circular in response to this comment. Section 2.1.7, Table 2.1-1(f), subsection 6.8.3.7, and Appendix A now clarify those requirements.

COMMENT NO. 215: Subsection 6.8.3.7 should say "soils with a percolation rate of 120-240 mpi" as it would not be correct to use an ETA with >120mpi.
RESPONSE: The board and department agree that ET and ETA systems can be used in soils with percolation rates between 121-240 mpi and have amended

6.8.3.7 and Table 2.1-1 in response to this comment.

COMMENT NO. 216: In subsection 6.8.3.7, add some additional information (including common name, if applicable) about what the ASTM D5093-02 test is.

RESPONSE: The board and department agree that the name of the procedure would provide clarification of the requirement. The common name for ASTM D5093-02 is Field Measurement of Infiltration Rate Using a Double-Ring Infiltrometer with a Sealed-Inner Ring and is now listed in Appendix A in response to this comment. The test method (double-ring infiltrometer) describes a procedure for measuring the infiltration rate of water through in-place soils using a double-ring infiltrometer with a sealed inner ring. It is required for soils where the initial percolation rate is slower than 240 mpi. This standard has been adopted by reference, because it would be unduly cumbersome to publish the entire procedure.

COMMENT NO. 217: With regard to 6.8.3.8, making ETA beds 50 percent larger would be very expensive and require a large area for both the initial and replacement system. It would be better to simply plan for the replacement area. The basis for this size increase is not understood unless there is a history of failure. Any wastewater system design has the same progressive failure issues.

RESPONSE: ET and ETA beds are generally used in areas where the underlying soils preclude the use of a conventional system. Additionally, the uncertainty of the quality of the wastewater entering the system coupled with the lack of information regarding evaporation rates and transpiration rates has led to premature system failure rates in some areas of the state. The factor of safety adds additional capacity to account for changing site conditions while allowing flexibility for these designs in difficult site conditions. The suggested change has not been made.

COMMENT NO. 218: Subsection 6.8.3.9 requires a water balance and then admits that the data to do the balance is not readily available. Perhaps an appendix for sizing ET or ETA systems would be useful, if this level of detail is required. Additionally, the reason for this level of detail for small systems is not understood. Finally, it is not clear what "C" is asking for regarding storage capacity. What is the required storage capacity?

RESPONSE: Pan evaporation data for Montana usually is tabulated at dam sites and can be found at NOAH web sites or in the DEQ office. The department has accepted data that is not site-specific, but would prefer site-specific data, if it can be obtained.

Appendix E provides examples for sizing ET & ETA systems.

Subsection 6.8.3.7 clarifies, for the designer, soils that can be used for an ET or ETA system and the corresponding percolation test requirements. This level of detail is necessary because ET and ETA systems are generally used in areas where the underlying soils preclude the use of a conventional system.

The storage capacity requirement is necessary for months when there is little or no evaporation. A water balance will show the required extra storage capacity for the non-evaporative months. According to subsection 6.8.3.9, ET and ETA systems must be sized to accept total flow in less total flow out for a one-year period. The capacity must take into account site-specific design information, including

wastewater flow rates, precipitation, evaporation, transpiration, and soil absorption.

COMMENT NO. 219: Subsection 6.8.3.9.B does not need to reference the soil application rate procedure. That regulation already applies to this subsection.

RESPONSE: The board and department agree and have deleted the reference in response to the comment.

COMMENT NO. 220: In subsection 6.8.3.9.D, change "may need to" to "must."

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 221: Add "The" to the beginning of the last sentence in subsection 6.8.4.4.

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 222: In subsection 6.8.4.5, it is not clear how soil depth should be measured after settling, when this should be inspected, and who should do the inspection.

RESPONSE: There are a number of methods to measure soil depth, two of which are soil cores or pot-holing. This information must be provided by the system owner with certification and as-built plans provided in accordance with section 6.8.5. As-built plans are required within 90 days of construction.

COMMENT NO. 223: Subsection 6.7.4.6 is redundant with the new language in subsection 6.7.2.3 (now subsection 6.8.2.2).

RESPONSE: The board and department agree that the requirement for berms around ET and ETA systems to divert runoff is mentioned in both subsections 6.7.4.6 and 6.8.2.2 and have amended the circular to delete the language in subsection 6.7.4.6.

COMMENT NO. 224: Why does section 6.8.5 require an O & M plan for an ET or ETA system? ET and ETA systems are very simple to construct. O & M plans don't seem necessary.

RESPONSE: The operation and maintenance of an ET or ETA system is important to insure proper functioning. Although the construction of the systems may be simple when compared to other systems, regular monitoring of effluent levels within the system can alert operators to problems that can be rectified before system failure. Information regarding the O & M of a system would be included in a plan and should be available to the system owner.

COMMENT NO. 225: In subchapter 6.8, the ET and ETA Trench Design Schematic has what appears to be a regulatory statement: "Gravel trenches or leaching chambers required for sand media. Trenches or chambers are not required for gravel media." This language is not found in the body of the circular. DEQ should add this language to subchapter 6.8 or delete it from the schematic.

RESPONSE: The board and department agree that the statement "Gravel trenches or leaching chambers are required for ET and ETA systems constructed with a sand media. These methods of distribution may be used, but are not required, for ET and ETA systems constructed with a gravel medium." is regulatory in nature and have amended the circular to add this language to subsection 6.8.3.6.

COMMENT NO. 226: Drip systems can be used on slopes steeper than 25 percent. DEQ-4 now incorporates the slope restriction found in the ARMs. While it would require a rule change, DEQ should consider adopting language that would allow drip systems on steeper slopes.

RESPONSE: The comment is beyond the scope of this rulemaking. However, the board and department may consider a future rulemaking to address this comment.

COMMENT NO. 227: The requirement that a replacement drainfield cannot be installed within the same footprint of an existing drainfield should not apply to drip systems. A drip system would be an excellent replacement system over an existing system since it uses only the topsoil and vegetation for treatment and disposal.

RESPONSE: ARM 17.36.320(3) requires that proposed subsurface sewage treatment areas must include an area for 100 percent replacement of the system. The suggested amendment would require amending an administrative rule. Accordingly, the suggested amendment is beyond the scope of this rulemaking. Moreover, placing a drip system over an existing drainfield is already a possibility. Applicants who would like to use a drip system as a replacement over an existing system may request a variance.

COMMENT NO. 228: The last paragraph in section 6.9.1 should be moved to section 6.9.3.

RESPONSE: The board and department agree that standards relating to the required size of a subsurface drip system should be grouped together and have amended the circular to move the last paragraph in section 6.9.1 to subsection 6.9.3.4.

COMMENT NO. 229: Subsections 6.9.3.3.A and B are redundant with 6.9.3.1. DEQ should eliminate the redundancy.

RESPONSE: The board and department agree that both 6.9.3.3.A and B are redundant with 6.9.3.1 and the circular has been amended to delete the sentence "[w]astewater and gray water entering a subsurface drip system must include both primary and advanced treatment as described in this circular."

COMMENT NO. 230: It is not clear what "minimum wastewater characteristic criteria" means regarding drip irrigation systems. The filtration, BOD_5, and TSS reduction provided by advanced wastewater treatment is necessary, but the meaning of this language is not clear.

RESPONSE: Advanced treatment systems reduce the amount of BOD_5 and TSS in wastewater and are necessary for subsurface drip systems. The level of treatment can vary, but the minimum amount is generally a reduction to 30mg/l

BOD_5 and 30 g/ml TSS. These levels of treatment have been found to be achieved through the systems outlined in Chapter 7. The board and department agree that the language should be clarified and have amended subsection 6.9.3.3.B in response to this comment.

COMMENT NO. 231: DEQ should delete the following unnecessary words: in the first sentence of subsection 6.9.3.3.C, take out "for all subsurface drip systems" and in the third paragraph of C, take out "on all systems" in the first sentence and "in all soil types" in the second sentence.

RESPONSE: The board and department agree that the phrases "on all systems," "for all subsurface drip systems," and "in all soil types" do not contribute to the clarity of the regulation and the circular has been amended to delete the references.

COMMENT NO. 232: DEQ should require all subsurface drip systems to operate in accordance with the manufacturer's specifications.

RESPONSE: The board and department agree that the manufacturer's specifications should be the requirement and have amended the circular in response to this comment. Subsection 6.9.3.3.C now requires operation "at pressures indicated in the manufacturer's specifications."

COMMENT NO. 233: In subsection 6.9.3.3, the automatic backflush is unnecessary. As long as the system can be flushed manually, and the orifices are 1/8 inch in diameter, the requirements should not be different than a pressure-dosed system. Additionally, local equipment distributors may not be able to provide equipment that complies with this requirement. Engineers should be allowed the discretion to determine if this is necessary.

RESPONSE: Backflushing of system lines and filters are necessary to prevent clogging of both the drip line and the emitters and is required in this circular. The emitters used in a subsurface drip system are smaller than typical 1/8 inch diameter orifices used in a pressure-dosed system and, therefore, require different flushing techniques. Automatic backflushing insures that the pressures recommended by the manufacturer are achieved. Most manufacturers recommend automatic backflushing for their systems and the pumps to provide this service should be available through local equipment distributors. The suggested change has not been made.

COMMENT NO. 234: In subsection 6.9.3.3.E, the second paragraph seems out of place because it refers to more than supply and return manifolds. Consider creating a new subsection.

RESPONSE: The board and department agree that the information regarding the materials and design criteria used for subsurface drip components would make sense as a separate subsection and have amended the circular in response to the comment to add a new subsection 6.9.3.3.F and to renumber the subsequent subsections.

COMMENT NO. 235: Drainback of drip lines is essential. Does subsection

6.9.3.3.G refer to excessive drainback?

RESPONSE: The board and department agree that drainback is important for subsurface drip system drip lines and is required as shown in subsection 6.9.3.3.G.

COMMENT NO. 236: Remove the language "for all systems" from subsection 6.9.3.3.K.

RESPONSE: The board and department agree that the phrase "for all systems" does not contribute to the clarity of the regulation and have amended the circular to delete that phrase from subsection 6.9.3.3.K.

COMMENT NO. 237: Subsection 6.9.3.3.L seems to be contradictory. The language for valve boxes is given as both "must" and "should."

RESPONSE: At least one air/vacuum relief valve is required at all high points of the supply or manifold lines of the system and must be included in the design. This subsection has been reviewed by both the manufacturers of Netafim and Geoflow subsurface drip systems and common practice was included as "should" requirements. Those requirements were not necessary to protect public health and safety and have been deleted. The board and department agree that this subsection should be clarified and have amended the circular in response to the comment. Subsection 6.9.3.3.L now states "[a]ir/vacuum relief valve(s) must be installed at the high point(s) of each supply or return manifold. All valves must be installed in a valve box with access to grade and include a gravel sump. They must have constant venting to the atmosphere."

COMMENT NO. 238: Installation within frozen ground, or when there is not adequate time to revegetate, can create system function issues. The reviewing authority should have the authority to determine the installation season for drip irrigation systems.

RESPONSE: The board and department agree that seasonal timing for the construction of a subsurface drip system may be important to system functionality and have amended the circular in response to this comment. Subsection 6.9.3.5 now provides the reviewing authority with the discretion to direct the timing for installation based on weather conditions.

COMMENT NO. 239: Table 6.10-1 dealing with gray water systems reveals an inconsistency in the daily flow rates of DEQ-4. Section 3.1.2 states that the daily flow per person is 100 gpd using a normal system. With modern toilets using 1.6 gallons per flush, this number cannot be correct unless the average person is flushing a toilet 31 times per day. The average person does not use 100 gallons per day.

RESPONSE: The design flow rates for whole house wastewater and gray water reflect the difference in flow stream origins from different fixtures or sources in a typical residence or commercial building. Gray water systems collect water from showers, sinks, baths, and washing machines. Combined black water and gray water wastewater systems collect wastewater from gray water sources along with kitchen and toilets. Maximum total hourly flows as high as 100 gallons per hour are

not unusual from whole house systems given the variability of typical fixture and appliance usage characteristics and residential water use demands. Hourly flows exceeding this amount can occur in cases of plumbing fixture failure or appliance misuse such as a broken pipe or fixture or dripping faucets. The design flow rates for gray water and whole house systems in this circular are intended to reflect peak water usage for a residence or commercial business along with a factor of safety. The factor of safety required for gray water systems is smaller due to the exclusion of both black water uses and in some cases kitchen sources. It is the department's and board's intent to provide guidance for design that is reasonable and that will protect most systems from hydraulic overloading and premature failing. The circular has not been changed in response to this comment.

COMMENT NO. 240: Why is storm water excluded from drip irrigation systems?

RESPONSE: Rainwater is excluded from all onsite wastewater systems to insure proper functioning and attenuation of expected peaks. The inclusion of rainwater into a drip irrigation system would cause large peaks in hydraulic loading and over sizing of components and potential operational issues when flows decrease. Reasonable estimates of flow rates are required to insure proper functioning of the system. The suggested change has not been made.

COMMENT NO. 241: Subsection 6.10.3.13 should be rewritten. It makes more sense to start that subsection with the phrase "[w]hen a supplemental year round system is used …."

RESPONSE: The board and department agree that subsection 6.10.3.13 should be clarified and have amended the circular in response to this comment.

COMMENT NO. 242: "Whole house wastewater" is a confusing term. Use "black water" instead.

RESPONSE: The board and department agree that subsection 6.10.3.13 should be clarified and have amended the circular in response to this comment.

COMMENT NO. 243: Remove the "and" from the end of subsection 6.10.4.6.A. This subsection should be consistent with the rest of the lettered statements in the circular.

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 244: Subsections 6.11.2.3 and 6.10.3.4 are redundant.

RESPONSE: The board and department agree that the two subsections are redundant and have amended the circular to delete subsection 6.10.3.4 and renumber the subsequent subsections.

COMMENT NO. 245: The language pertaining to covering with straw or geofabric should be consistent throughout the circular.

RESPONSE: The board and department agree and have amended section 6.3.3 and subsections 6.1.5.4, 6.7.3.5, 6.7.4.5, 6.8.4.3, 6.11.3.5, 7.2.2.11, and

8.4.2.7 of the circular in response to the comment.

COMMENT NO. 246: The last sentence in subsection 6.11.3.6 should be rewritten to say "High clay or silt content soils may not be used for backfill." This is more direct than using the ambivalent term "avoided."

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 247: Subsection 6.11.3.6 has a good description for backfill requirements. That description should be used for all systems.

RESPONSE: The backfill requirements for systems in this circular vary depending on design. In some cases, sands are required and in others, loams. Beds are unique in that often the native soil is used for backfill prior to a topsoil cap. Accordingly, the circular needs to explain the criteria for each system's backfill requirements differently. The suggested change has not been made.

COMMENT NO. 248: The second sentence in section 6.11.4 should start with the word "Gravelless."

RESPONSE: The board and department agree that section 6.11.4 omitted the word "gravelless" and has amended the circular in response to the comment. Section 6.11.4 now starts with the word "gravelless."

CHAPTER 7 ADVANCED WASTEWATER TREATMENT SYSTEMS

COMMENT NO. 249: In section 7.1.1, the phrase "special consideration" is too vague. Consider rephrasing this section to allow the reviewing authority to impose additional design requirements for systems with extremely low BOD_5 levels.

RESPONSE: The board and department agree that section 7.1.1 could provide more specific guidance and have amended the circular in response to the comment to state that "[t]he reviewing authority may impose additional design requirements for systems with extremely low BOD_5 levels to insure adequate treatment of effluent in the soil."

COMMENT NO. 250: The same typographical error appears in subsections 7.1.1, 7.4.1 and 7.6.2. The word "are" should be replaced with "area."

RESPONSE: The board and department agree and have amended the circular in response to the comment. Subsections 6.1.4.3.A, 6.7.1.A, 7.1.1.A, 7.2.1.A, 7.3.1.A, 7.4.1.A, and 7.6.2.A have been amended to change the word "are" to "area."

COMMENT NO. 251: Requiring a separate, full-size replacement area is not always feasible. While this may be appropriate for larger public systems, this is a very difficult standard for the small lot situation that we often deal with in local permitting.

RESPONSE: A separate subsurface absorption replacement area, sized without reductions, protects a landowner's ability to continue to use their property in the event of a system failure. Failure of a system with advanced treatment is likely

due to site conditions that were not apparent at the time of design or beyond the abilities of the advanced treatment system. Requiring a full-size replacement area insures that, when a system fails, the owner of the property will have flexibility to design an adequate replacement system without site constraints. The circular has not been changed in response to this comment.

COMMENT NO. 252: In section 7.2.1, the word "were" is used when it should say "where."

RESPONSE: The board and department agree and have amended the circular to correct the typographical error in sections 7.1.1, 7.2.1, and 7.3.1.

COMMENT NO. 253: DEQ should allow the area to be reduced by 50 percent if six inches of sand, meeting ASTM C-33, is applied over infiltrative surfaces having percolation rates faster than three minutes per inch.

RESPONSE: A reduction for the sizing of an infiltrative surface is allowed by systems that include advanced treatment, not because there is an application of ASTM C-33 sand, but because of historical evidence that these systems produce lower amounts of BOD_5 and TSS than standard absorption systems and adequate treatment levels of effluent are achieved. Subsection 1.1.3.3 and section 2.1.7, Table 2-1.1(a) both reference soils that have very fast percolation rates and situations where the formation of an initial biomat can be problematic. In these environments, it is important to slow the rate of effluent through the soil matrix so that an effective biomat can form. To slow the rate of effluent and to help formation of the biomat, ASTM C-33 sand, or equivalent, is applied to the infiltrative surface. It has not been demonstrated that a reduction in absorption area results in adequate effluent treatment for sand-lined trenches and beds. The two scenarios are different and the circular has not been changed in response to this comment.

COMMENT NO. 254: In subsection 7.4.7.1, DEQ should keep the language from the last version of DEQ-4, unless there will be a prohibition on using effluent disinfection in conjunction with ATUs.

RESPONSE: The board and department agree that sampling ports for ATUs using effluent disinfection are an important part of the design of these systems and have amended subsection 7.4.7.1 to state that "[f]or ATUs using effluent disinfection to meet the fecal coliform criteria, the sampling port must be located downstream of the disinfection component, including the contact chamber if chemical disinfection is used, so that samples will accurately reflect disinfection performance."

COMMENT NO. 255: In subsection 7.4.7.2 the reference to section 7.4.6 does not address protection against unauthorized intrusion. Should subsection 7.4.7.2 actually reference subsection 7.4.4.2?

RESPONSE: The board and department agree that the incorrect section was referenced and have amended subsection 7.4.7.2 of the circular to reference subsection 7.4.4.2 instead of section 7.4.6.

COMMENT NO. 256: In section 7.5.2, is the EPA manual that is listed the current version of this document?

RESPONSE: The EPA manual referenced in section 7.5.2 is the, *On-Site WastewaterTreatment Systems Manual* (February 2002). If other, more recent versions exist, they were not referenced as part of this rulemaking and are not applicable to this circular.

CHAPTER 8 MISCELLANEOUS

COMMENT NO. 257: In section 8.1.1, DEQ should replace "retention" with "storage" to keep this section consistent with the definition of a wastewater treatment and disposal system. Using consistent language reduces the potential for someone to argue that a holding tank is not a wastewater treatment and disposal system.

RESPONSE: The board and department agree that consistent terminology should be used whenever possible and have amended section 8.1.1 in response to the comment.

COMMENT NO. 258: Section 8.1.4 should say "... in Chapter 5 ...."

RESPONSE: The board and department agree and have made the suggested change to the circular.

COMMENT NO. 259: Holding tanks that are not properly stabilized will stress at the sewer pipe inlet if the tank is emptied during high ground water season. We have seen multiple leaks because of this in tanks that are emptied frequently. In section 8.1.6, DEQ should require that an engineer or other qualified party insure that tanks are stabilized against flotation. We have tanks in our county that are in high ground water settings and we find it important that the stabilization be calculated by an engineer or qualified party, i.e., the pre-cast concrete company, since this is an expertise not commonly held by the local health authority.

RESPONSE: The board and department agree that buoyancy and flotation of holding tanks must be evaluated and stabilized where high ground water conditions exist. The board and department also agree that it is important to have a qualified individual make this determination. The board and department have amended the circular in response to the comment and section 8.1.6 now states that such tanks "must be evaluated for buoyancy by a qualified individual and flotation prevented. The tanks must be a single pour (seamless) tank design ...."

COMMENT NO. 260: In subsection 8.2.2.2, DEQ should require that, in high ground water settings, vault toilets must have a stabilized design by an engineer or other qualified party.

RESPONSE: The board and department agree that, in high ground water sites, vault toilets should be protected against flotation and have amended the circular in response to the comment. Subsection 8.2.2.2 now requires that a "vault must be evaluated for buoyancy by a qualified individual and flotation prevented."

COMMENT NO. 261: Local governments are permitted to install vault toilets under ARM 17.36.918.

RESPONSE: The board and department agree that vault toilets may be approved under ARM 17.36.918 and have amended the circular in response to the

comment to delete the reference to "public recreational facilities operated by governmental institutions" from subsection 8.2.2.2.

COMMENT NO. 262: Subsection 8.2.2.4 should specify that the construction standards for an unsealed pit privy are found in subchapter 8.3.

RESPONSE: The board and department agree that the applicable section of the circular should be referenced when additional requirements are stipulated. Subsection 8.2.2.4 now refers the reader to section 8.3.2.

COMMENT NO. 263: In subsection 8.3.3.3, add the word "abandoned" before pit. Also the requirement that the abandoned pit should be marked does not make sense. After a short amount of time there is no health or safety hazard to be concerned about.

RESPONSE: The board and department agree that the requirements in subsection 8.3.3.3 apply to abandoned pit privies and that the requirement, that they be marked as abandoned, is an undue burden to the property owner. The circular has been amended in response to this comment and subsection 8.3.3.3 now states "[the] abandoned pit must be filled with soil, which is free of rock. There must be sufficient fill material to allow for 12 inches or more of settling." The requirement that the site must be marked has been deleted.

COMMENT NO. 264: Section 8.5.2 should make it clearer that "100 percent replacement site" refers to having enough room to put in a full-size system.

RESPONSE: The board and department agree that the requirements for replacement area for a waste segregation replacement site should be clarified and have amended the circular in response to the comment. Section 8.5.2 now provides that the replacement site have "adequate area for a full-size system if waste segregation is not used."

COMMENT NO. 265: Subsection 8.5.3.1.K should refer to MCA Title 75, Chapter 10 not the ARMs.

RESPONSE: The board and department agree and have amended the circular to make the correction.

COMMENT NO. 266: Subsections 8.5.3.1.A and 8.5.3.2.B seem to have some unnecessary requirements. DEQ should strike the word "either" and the phrase "or demonstrate through a third party." We recommend replacing the word "provide" with "have."

RESPONSE: The board and department agree that requiring the applicant to provide documentation, as to whether the composting or incinerating toilet meets the requirements of NSF Standard 41, is unnecessary, if the unit has documentation. The board and department believe that a third independent party can certify that a composting toilet or incinerating toilet is able to meet the testing requirements of NSF Standard 41 without actual certification from the National Sanitation Foundation. The circular has been amended and subsections 8.5.3.1.A and 8.5.3.2.B now reflect that the applicant must have documentation or demonstrate that the unit is able to meet testing criteria.

COMMENT NO. 267: In subsections 8.5.3.1.K and 8.5.3.2.G, DEQ requires compliance with CFR Part 503 and Title 75, Chapter 10, Part 2, MCA. These subsections are too lengthy to be easily understood. If it is not possible to simplify the requirements and include them in the circular, then we suggest DEQ create guidance to assist local reviewing authorities and the regulated community with determining and understanding disposal requirements.

RESPONSE: The board and department understand that the requirements for disposal under 40 CFR Part 503 and Title 75, Chapter 10, Part 2, MCA, are extensive. This is the reason they are not included in the circular and are adopted by reference. The department is available to work with reviewing authorities and the regulated community to aid in understanding the disposal requirements. The circular has not been changed in response to this comment.

COMMENT NO. 268: Subsection 8.5.3.2.F should be reworded to make it clear that the device must be able to handle the maximum possible load that would be experienced during full time usage.

RESPONSE: The usage of an incinerating toilet is highly variable and definitive estimates are not readily available. It is the intent of this circular to provide practical design guidance for the reviewing authority where those standards exist. Requiring that an incinerating toilet be capable of accommodating full- or part-time usage is not for sizing purposes but for operational purposes. This is to insure the incinerating toilet can be utilized in all settings. The circular has not been changed in response to this comment.

COMMENT NO. 269: Subsections 8.5.3.1.L and 8.5.3.2.J state that the owners of composting and incinerating toilets shall maintain the waste disposal system. This statement could be made for any wastewater system. It is not clear why it is stated here. Perhaps this is related to smell that may be considered a public nuisance?

RESPONSE: The board and department agree that all wastewater systems must be maintained to insure proper function and to protect public health. Composting and incinerating toilets, however, are unique systems that require continuous attention. Improper maintenance can lead to cleaning difficulties, public health concerns due to unprocessed material, and a public nuisance due to smell. It is particularly important that owners maintain the waste segregation systems for composting and incinerating toilets. For this reason, subsections 8.5.3.1.L and 8.5.3.2.J have not been changed in response to this comment.

COMMENT NO. 270: DEQ should require deed restrictions to insure that the requirements in sections 8.6.3 and 8.6.4 are fulfilled.

RESPONSE: Section 8.6.3 requires that future property owners must be made aware of all permit, monitoring, operation, and maintenance requirements of an experimental system. Section 8.6.4 imposes these requirements. However, other adequate methods, such as written notice, are available, and the board and department wish to allow sellers flexibility. A deed restriction is one possible method

of disclosure. Sections 8.6.3 and 8.6.4 have not been changed in response to this comment.

APPENDIX A PERCOLATION TEST PROCEDURE

COMMENT NO. 271: DEQ should not remove Percolation Test Procedure II from Appendix A. Method II was incorporated as an approved method of determining percolation rates in the transition from WQB-4 to circular DEQ-4. In the same transition, the pre-soak time for Test Method I was reduced from a minimum 8-hour pre-soak to a 4-hour pre-soaking period (unless soils met sandy soils draining criteria). Frequently, Method I tests performed in finer soil fractions ($\leq$0.4 gpd/ft^2) utilizing the 4-hour pre-soak have yielded results that are not consistent with site soils and exhibit faster percolation rates than should be associated with site soils. In all cases where a second Method I test was conducted utilizing a minimum 8-hour pre-soak, a percolation rate consistent with soils was achieved. Conversely, when conducted according to prescribed procedures and graphically extrapolated utilizing the "best straight line of fit," Method II tests have consistently provided percolation rates in accordance with the site soils regardless of soil consistencies. It is also significant to note that Method II is much more efficient and cost-effective in terms of both the time required and the volume of water that must be supplied for completion of percolation test using this method versus Method I.

RESPONSE: The results from the Method II percolation tests are highly variable depending on the experience of the site evaluator and the type of soil. Method I and Method II, of Appendix A, are similar in efficiency and accuracy for coarse, fast-draining soils, but differ significantly in fine, slow-draining soils. Under Method I, fine, slow-draining soils are required to have a 4-hour pre-soak whereas no pre-soak is required for Method II. Method I requires a minimum of one hour of testing after the pre-soak to achieve statistically consistent readings. Method II requires the evaluator to take seven readings and provide a graphically extrapolated best-fit line to determine final percolation rate. While Method II may be more cost and time efficient than Method I, it may not yield reliable results, because it often takes more than seven readings to achieve saturation of the soil. The circular has not been changed in response to this comment.

COMMENT NO. 272: I am happy the DEQ took out the Perc Type II test from Appendix A.

RESPONSE: The board and department acknowledge the comment.

COMMENT NO. 273: It is our firm belief that Percolation Test Procedure II is a viable tool for site analysis that should remain within the accepted procedures and not be combined with the Appendix B soil and site characteristics. It is our opinion that a percolation test can stand alone as the one test that provides a useful, real world, cost effective tool. When it is combined with soil and site characteristics it can diminish the actual in-the-field results that percolation tests provide with other more theoretical soils characteristic data. We wish to point out that using only the soils and site characterization in Appendix B can often require a significant increase in the cost of the site analysis created by the extensive soils testing that we feel is not

justified and will stop many projects from moving forward. It is our request that the percolation test procedure be allowed to stand alone in Appendix A and the applicability of the results, as it has always been, up to the discretion of the reviewer.

RESPONSE: The board and department have not proposed that percolation tests must be combined with the Appendix B soil and site characteristics. While test pits evaluated in accordance with Appendix B are required for all sites, percolation tests are not. Test pit evaluations have consistently proven a reliable method to determine in-situ soil types, whereas the accuracy of percolation tests vary significantly depending on the skills of the site evaluator and the soil types. It is the intent of this circular to provide guidance to determine the most accurate method for determining soil types and consequently system sizing. The board and department understand that, in some situations, additional information regarding soils is necessary. As stated in section 2.1.5, the reviewing authority may require percolation tests when the soils are variable or other conditions create the need to verify system sizing. The circular has not been changed in response to this comment.

COMMENT NO. 274: In tight clay type soils, a longer saturation period is necessary in order to achieve accurate percolation results.

RESPONSE: The board and department agree that, in tight clay type soils, a longer saturation period is necessary in order to achieve accurate percolation results. ETA systems using clay, silt, and silty clay soils must have a minimum 24-hour pre-soak as required in section 6.7.1.

COMMENT NO. 275: The introduction to Appendix A states that percolation tests "are" needed and this is not always the case.

RESPONSE: The board and department agree that percolation tests are not always needed to determine absorption system site suitability or to size the absorption system, and have amended the circular in response to the comment. The introduction to Appendix A now states that percolation tests "may be" needed.

COMMENT NO. 276: In Appendix A, it may be useful to label the SANDY SOIL TEST as such and label the other soils as OTHER SOIL TEST. Under soaking, it speaks of sandy soil test, but it is not immediately clear where to go for this test method

RESPONSE: The board and department agree that labeling the test procedure for different soil types may be useful to the site evaluator. Appendix A of the circular has been changed in response to this comment.

APPENDIX B SOILS AND SITE CHARACTERIZATION

COMMENT NO. 277: Appendix B should be revised. Rather than recommending that soil texture be lab verified, state that the reviewing authority can require lab analysis of soil texture.

RESPONSE: The board and department agree that the reviewing authority should be able to require laboratory confirmation of soil texture and results adjusted

when necessary. Appendix B of the circular has been changed in response to this comment.

APPENDIX C GROUND WATER OBSERVATION WELL INSTALLATION AND MEASURING PROCEDURES

COMMENT NO. 278: The definition of seasonally high ground water includes "to the upper surface of the zone of saturation." If this means the highest level saturated, ground water monitoring pipes will not pick this up. The pipes will only measure the level where free water reaches. This should be clarified.

RESPONSE: Seasonally high ground water, as defined in section 1.2.76, means the depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated observation well. This means the highest level saturated, and, although this will not be seen in ground water monitoring pipes, it will be seen in an unlined hole. Further clarification is not needed, and the circular has not been changed in response to this comment.

APPENDIX D OPERATION AND MAINTENANCE PLAN

COMMENT NO. 279: We support requiring service contracts for proprietary and high strength treatment systems in Appendix D.

RESPONSE: The board and department acknowledge the comment.

MISCELLANEOUS COMMENTS

COMMENT NO. 280: I would like DEQ to make all of the external references available for review. It is difficult to obtain things like the American Concrete Institute standards or an ASTM standard or other standards. We have to pay to get those online. Many of these documents are also referenced in other DEQ circulars. As an example, ACI 318 is a collection of circulars of a variety of different issues. I would like to see DEQ make the specific language from these references in circular available, or make the reference material available so that we could review it against what is being proposed.

RESPONSE: 2-4-307, MCA, sets forth the standards that must be followed when an agency adopts publications by reference. The department has complied with these requirements. A notice of amendment for adoption of rules for Circular DEQ-4 was published and mailed to interested parties allowing the public additional time to review and comment on all standards that were adopted by reference. A web link to those references was published on the DEQ Subdivision web page and the comment period was extended to July 5, 2013. All references mentioned in proposed Circular DEQ-4 are available for viewing at the Helena Office. In addition to complying with the requirements of 2-4-307, MCA, the board and department have added a new appendix in response to this comment. Appendix F provides additional information where individuals may find the documents adopted by reference.

4. No other comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Robin Shropshire*
JOHN F. NORTH ROBIN SHROPSHIRE
Rule Reviewer Chairman

Certified to the Secretary of State, November 4, 2013.

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

In the matter of the adoption of New Rules I and II, the amendment of ARM 24.11.204, 24.11.207, 24.11.335, 24.11.450A, 24.11.452A, 24.11.485, 24.11.613, 24.11.616, 24.11.1205 and 24.11.1209, and the repeal of ARM 24.11.461 pertaining to unemployment insurance	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 19, 2013, the Department of Labor and Industry published MAR Notice No. 24-11-275 pertaining to the public hearing on October 16, 2013, regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 1649 of the 2013 Montana Administrative Register, Issue Number 18.

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

3. The department has adopted the above-stated rules as proposed: New Rule I (24.11.208) and II (24.11.617).

4. The department has repealed the one above-stated rule as proposed.

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

COMMENT # 1: One commenter at the public hearing stated his approval of all rule changes, as proposed. The commenter remarked that, in particular, he approves of New Rule I, which establishes consequences for employers who fail to timely provide information to the department regarding an employee's separation from work

RESPONSE # 1: The department acknowledges the comment.

/s/ Judy Bovington
Judy Bovington
Rule Reviewer

/s/ Pam Bucy
Pam Bucy
Commissioner of Labor
Department of Labor and Industry

Certified to the Secretary of State on November 4, 2013.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.101 and the adoption of New Rules I and II regarding water right combined appropriation	))))	NOTICE OF DECISION ON PROPOSED AMENDMENT AND ADOPTION

To: All Concerned Persons

1. On August 22, 2013, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-175 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1496 of the 2013 Montana Administrative Register, Issue Number 16.

2. A public hearing on the notice of proposed amendment and adoption of the above-stated rules was held on September 19, 2013, in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana.

3. On September 10, 2013, the Water Policy Interim Committee expressed concerns in a letter regarding the manner in which the above-referenced publication was noticed. On September 13, 2013, the Environmental Quality Council also objected to the proposed rulemaking under 2-4-305(9), MCA

4. The department shall not proceed with amending or adopting the rules as proposed but shall withdraw this proposal notice. Withdrawing this proposal notice will allow the department to further evaluate and propose rules regarding water right combined appropriation.

/s/ John E. Tubbs
John E. Tubbs
Natural Resources and Conservation

/s/ Candace West
Candace West
Rule Reviewer

Certified to the Secretary of State November 4, 2013.

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

In the matter of the adoption of New Rules I and II, the amendment of ARM 37.106.301, 37.106.302, 37.106.306, 37.106.310, 37.106.313, 37.106.314, 37.106.320, 37.106.321, 37.106.322, 37.106.330, and 37.106.331, and the repeal of 37.106.311 pertaining to minimum standards for all health care facilities	))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 20, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-640 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1029 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended ARM 37.106.302, 37.106.306, 37.106.310, 37.106.313, 37.106.314, 37.106.320, 37.106.321, 37.106.322, and 37.106.331, and repealed ARM 37.106.311 as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.106.315) MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: EMPLOYEE FILES (1) and (2) remain as proposed.

(3) Volunteers may be utilized at a health care facility, but may not be included in the facility staffing plan in lieu of employees. All volunteers who are performing duties which are commonly performed by facility staff must have a file which is maintained at the facility and documents the following:

(a) and (b) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-106, 50-5-204, MCA

NEW RULE II (37.106.316) MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: SECURED CARE UNIT WITHIN A LICENSED LONG-TERM HEALTH CARE FACILITY (1) through (4) remain as proposed.

(5) Observation beds cannot be located in secured care units.

(5) through (9) remain as proposed, but are renumbered (6) through (10).

AUTH: 50-5-103, MCA

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

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.106.301 DEFINITIONS The following definitions apply in this subchapter:

(1) through (4) remain as proposed.

(5) "Observation bed or unit" means a bed or unit within a hospital, critical access hospital, specialty hospital, or medical assistance facility that includes ongoing short-term treatment, assessment and reassessment, and is not considered an inpatient bed.

~~(a)~~ Patient stays in observation beds are limited to 48 hours during which time a decision must be made whether a patient requires further treatment as an inpatient.

~~(b) Observation beds cannot be located in secured care units.~~

(6) and (7) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

37.106.330 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that describes all services provided in the health care facility must be developed, implemented, and maintained at the facility. The manual must be available to staff, residents, ~~and visitors~~ resident family members, resident legal representatives, and the department and must be complied with by all facility personnel and its agents. Policies and procedures must be reviewed at least annually by either the administrator or the medical director with written documentation of the review.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

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

COMMENT #1: One comment was received regarding the proposed definition of an observation bed. To illustrate his point, the commenter used an example involving an emergency room (ER) patient. The commenter's organization opposes the adoption of the definition as proposed.

RESPONSE #1: The department agrees that observation is a service provided by a hospital, critical access hospital, or medical assistance facility; the department

further agrees that observation services may be provided in an ER or other area of a hospital. The department believes the commenter's discussion concerning the use of an ER patient bed is moot because regardless of where the patient is, they are not determined to be in an observation or inpatient status until ordered so by a physician. The patient then remains in the physician-ordered status until he or she is admitted, transferred, or discharged. A health care facility can always use an inpatient bed for observation services; however, the facility cannot use an observation bed for inpatient purposes. This rule seeks to clarify when and where observation services can be provided and at what point those services should be terminated.

COMMENT #2: One comment was received indicating that the observation definition was an extraneous piece of administrative rule.

RESPONSE #2: The department disagrees. Observation services are frequently provided in hospitals and critical access hospitals and are a service often discussed with the department. The discussions typically involve questions which serve to clarify observation services. As a result of these discussions, this rule seeks to clarify what, when, and where an observation service can be provided. To further address the commenter's concerns, the department will remove (5)(b) from ARM 37.106.301 and insert this language in New Rule II.

COMMENT #3: One comment was received indicating that it is not appropriate for Montana to adopt administrative policies related to insurance as a definition related to licensing.

RESPONSE #3: The department disagrees with the comment. The proposed language was not derived from insurance standards; however, the department agrees that CMS limits observation services to 48 hours in critical access hospitals. The department did look to the CMS standard to be consistent and concurs that the 48-hour limitation is reasonable. By utilizing this timeframe, the department eliminates any potential conflicting definitions, especially for facilities in the rural areas of the state.

Further, it is the department's opinion that observation of a patient within a 48-hour timeframe is a sufficient amount of time for the physician to determine whether that patient needs to be admitted to inpatient services, transferred, or discharged. To indicate otherwise has immense impact to the people of Montana. The department frequently hears from people who are asking for clarification around the consequences of observation status.

COMMENT #4: One comment was received with respect to New Rule I. The commenter is concerned that the department's intent and use of the word "volunteer" is too broad. The commenter indicates that volunteers serve in facilities in a variety of ways not all of which pertain to direct caregiving duties. To require all "volunteers" to participate in a formal orientation process would be an unnecessary burden to facilities.

RESPONSE #4: The department agrees. The intent of this proposed regulation was not to prohibit those volunteers who entertain, serve cake and ice cream at birthday parties, or call numbers at bingo from engaging in those activities in facilities such as nursing homes or assisted living; rather, the intent is to require the formal orientation process to be completed by those volunteers who are performing duties which are commonly performed by staff. The department has amended the proposed rule.

COMMENT #5: Two comments were received with regard to proposed New Rule II concerning secured-care units. The first comment asks why the department simply doesn't refer to the Life Safety Code when discussing regulations concerning special locking arrangements or acceptable alternatives. The second comment is in regard to (3) of New Rule II which discusses the need for a nurse's station within the locked unit and the requirement that a medication storage and preparation area be included. The commenter indicates that some facilities have one central medication storage area and should be allowed to continue using it. It is the commenter's contention that one central storage area may allow for better monitoring of medications by the facility and allow for better safeguards.

RESPONSE #5: With respect to the first comment, the department is not precluding facilities from using the Life Safety Code; a facility may always use the more stringent standards contained within the Life Safety Code. What the department is proposing is an equivalent or alternative means of compliance. This alternative means may be less disruptive to the daily living needs of the unit, while providing the appropriate degree of safety.

With respect to the second comment, the department disagrees. Secured units are considered completely separate from all other areas of the health care facility; thus, the secured area must be self-contained, meaning the secured unit must independently meet all the facility requirements. Central to that concept is the nursing station.

Coordination with a central medication storage area could certainly be permissible; however, the actual dispensing of the medication must be provided within the secured unit. If this were being done, the department would have to review the facility's policies and procedures to determine whether the intent of the rule was being met.

COMMENT #6: One comment was received regarding the amendment of ARM 37.106.310 striking subsections (1)(c) and (d). The commenter is not clear whether the department no longer planned to charge a fee or whether the department was simply removing the fee out of the rules. If the fee is going to be continued, the commenter requests the department place this information back into the rule so that if, and when, changes take place, interested parties can be notified.

RESPONSE #6: The rule is being stricken because it already exists in 50-5-202(1) and (2), MCA. As such, it is not necessary to repeat this in the administrative rule. With respect to the commenter's concerns about fee changes, because this information is statutory, changes would be subject to the legislative process. This process includes an opportunity for interested parties to comment for or against.

COMMENT #7: One comment was received regarding the length of time a facility is required to maintain a medical record. The commenter believes the five year retention period is appropriate and should be retained.

RESPONSE #7: Montana law indicates that medical records for health care facilities (excluding hospitals) must be retained for five years following the date of discharge or death. However, facilities that participate in the Medicaid, Medicare, or both programs typically keep all medical records for those programs' minimum retention periods, which is six years. Since this rule concerns all health care facilities, and most facilities have involvement with Medicaid and Medicare at some level, it made sense to add the additional time to records retention.

COMMENT #8: One comment was received regarding the amendment to ARM 37.106.330. The commenter takes exception to the department's proposed language allowing visitors to have access to the facility policy and procedure manual. Specifically, the commenter feels that the rule is unreasonable and alludes to an expectation that a facility's policies and procedures are open to everyone, thereby indiscriminately contributing to disclosure of policies and procedures with competitors. The commenter asks the department to change the wording of the rule to reflect only what the state may legitimately regulate.

RESPONSE #8: It was never the department's intent to require disclosure such as the commenter believes could occur. Rather, the intent was facility "policy and procedure transparency" for residents, family members, and staff. However, the department understands the commenter's concerns and has amended the rule in ARM 37.106.330.

/s/ Kurt R. Moser
Kurt R. Moser
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.85.105 and 37.86.1105 pertaining to Medicaid pharmacy unit dose prescription fee and mental health youth services fee	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 5, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-646 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1579 of the 2013 Montana Administrative Register, Issue Number 17. On September 19, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 1661 of the 2013 Montana Administrative Register, Issue Number 18.

2. The department has amended ARM 37.86.1105 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

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

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

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 77 Federal Register ~~222, 68891~~ 68892 (November 16, 2012), effective January 1, 2013 which is adopted and incorporated by reference.

(b) through (6) remain as proposed.

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

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

COMMENT #1: A comment was received informing the department that one of the citations to the Federal Register in this rule was incorrect.

RESPONSE #1: The department will correct the citation to the Federal Register in ARM 37.85.105(2)(a).

5. These rule amendments are effective November 1, 2013.

/s/ John Koch
John Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.87.701, 37.87.703, 37.87.733, 37.87.809, 37.87.903, 37.87.1013, 37.87.1401, 37.87.1404, 37.87.1405, 37.87.1407, 37.87.1410, and 37.87.2233, and the repeal of 37.87.1015, 37.87.1017, and 37.87.1411 pertaining to home support services and Medicaid mental health services for youth authorization requirements	))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 19, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-648 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1667 of the 2013 Montana Administrative Register, Issue Number 18.

2. The department has amended ARM 37.87.701, 37.87.703, 37.87.733, 37.87.809, 37.87.903, 37.87.1013, 37.87.1401, 37.87.1410, and 37.87.2233 as proposed and repealed ARM 37.87.1015, 37.87.1017, and 37.87.1411 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.87.1404 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), INDIVIDUALIZED TREATMENT PLAN (1) through (3) remain as proposed.

~~(4) The licensed person on each treatment team must coordinate the ITP for each service with that of the other service(s) the youth, caregiver, or both receive.~~

~~(5) The ITP is in place for 90 days unless the youth is discharged.~~

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

37.87.1405 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), ASSESSMENTS (1) remains as proposed.

~~(2) If a youth has received a clinical assessment as described in (1) within the past 12 months, a copy of the clinical assessment will be accepted.~~

~~(3) A clinical assessment must be completed annually.~~

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

37.87.1407 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVISIONS OF SERVICE (1) remains as proposed.

(2) The following must be available and provided as clinically indicated by a mental health professional ~~and in accordance with ARM 37.87.903~~:

(a) conduct a treatment team meeting with the caregiver to develop an individualized treatment plan in accordance with ARM ~~37.87.1404~~ 37.106.1916(5);

(b) through (4) remain as proposed.

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

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

COMMENT #1: Several commenters expressed concern regarding the removal of prior authorization for therapeutic group home (TGH) care. Commenters stated that this proposed change sets providers up to make expensive guesses as to whether the youth meets the "ambiguous" clinical guidelines. Furthermore, one commenter stated the department is being cynical and second-guessing every admission into TGH by requiring providers to submit a prior authorization form along with the certificate of need to the UR contractor.

RESPONSE #1: Reductions to the state's contract with Magellan Medicaid Administration required the department to choose between prior authorization and continued stay authorization for TGH. The department chose continued stay authorization in order to ensure that youth are being placed at the least restrictive level of care for their needs over time.

The comment that the department is being overly cynical and second-guessing providers about requiring prior authorization with the certificate of need (CON) at 120 days is a misinterpretation of the department's intent. A prior authorization must be included at 120 days rather than a continued stay authorization because neither the state's claim system nor the utilization review contractor's system can handle a continued stay authorization in the absence of a prior authorization. The intent is not to retroactively prior authorize the first 120 days; the intent is to generate a prior authorization for continued stay at 120 days.

The department is in the process of developing a group of on-staff licensed clinicians. We are researching the possibility of doing some group-home authorizations internally at which time we can further address this issue.

COMMENT #2: One commenter requested clarification regarding what level of practitioner is needed to complete the CON.

RESPONSE #2: As stated on page 9 of the proposed clinical guidelines manual, "A CON is based on the determination by a team of mental health care professionals that has competence in diagnosis and treatment of mental illness, and that has knowledge of the situation of the youth, including the psychiatric condition of the youth. The interdisciplinary team must include a physician and a licensed mental health professional."

COMMENT #3: One commenter expressed concern about the requirement for family/legal representative engagement in treatment as an approval criterion for continued stay in a TGH. They state they agree with family involvement when it is possible and appropriate but that there are many instances when family involvement is not possible or appropriate and that may indicate an even greater need by the youth for services.

RESPONSE #3: The department reviewed the continued stay criteria for TGH and agrees with the commenter; however, this comment is outside of the scope of this rulemaking. The department intends to review this issue further in future rulemaking.

COMMENT #4: One commenter requested clarification regarding when a CON is required for CBPRS.

RESPONSE #4: The department will correct the table in the clinical management guidelines to provide a CON is needed for CBPRS only when provided concurrently with other services which require a CON.

COMMENT #5: One commenter stated that the proposed criteria for Home Support Services (HSS) make the service extremely restrictive and inaccessible and that it forces youth to fail out of unnecessary services prior to being eligible for the level of care HSS provides.

RESPONSE #5: The criteria do not require failure into the service. The clinical guideline manual contains the following language: "In the event a youth is acute enough to require HSS without meeting the above criteria, a provider must call the Children's Mental Health Bureau at (406) 444-4545 in order to request services." The department's assumption is that, in general, providers will try other, less intensive approaches before using an approach that is intensive and expensive. The department understands that on rare occasion a more intensive approach is required at intake.

COMMENT #6: One commenter stated that the matrix of services excluded from simultaneous reimbursement states that outpatient therapy requires prior authorization for any youth in a TGH while the authorization chart states it is managed by retrospective review. The commenter points out that this is contradictory.

RESPONSE #6: The commenter is correct; the matrix will be corrected to remove the requirement for prior authorization of outpatient therapy for any youth in a TGH.

COMMENT #7: One commenter stated that the table in 2.1.1 of the clinical guidelines manual reflects that a CON is required to be submitted for TGH; however, the new proposed regulations state they are to be maintained in the file for the youth. The commenter also expressed confusion regarding whether a new CON will be required for the 120-day continued stay review or if the CON maintained in the file for the youth upon entry will be sufficient. The commenter also stated that the changes to the TGH authorization requirements are confusing and unnecessary.

RESPONSE #7: The department agrees in part. The department will specify that the CON must be maintained in the file for the youth. A new CON will be required for the 120-day continued stay review. The department addresses in Response #1 the necessity of the changes to the TGH requirements and will update the manual to provide clarification in relation to the changes to TGH authorization requirements.

COMMENT #8: One commenter stated they feel strongly that technical denials should not require the provider to pay back fees already paid for treatment.

RESPONSE #8: In ARM 37.85.410, general Medicaid requirements state that "The department shall only make payment for those services which are medically necessary…" The proposed rules establish the discretion of the department to manage the various aspects of the Medicaid program in conformance with federal authority, the appropriated budget authority, and as otherwise determined appropriate by the department. This application of discretion to the Medicaid program is necessary to ensure continuing conformance with the governing federal authority so as to avoid withdrawal of federal approval for the funding and to avoid federal recoupment for inappropriate expenditures of federal monies. Under federal regulations this may be done before payment or after payment.

COMMENT #9: One commenter stated that limiting HSS to 365 days is arbitrary, not based upon individual need, and flies in the face of the ACES study. The commenter states that the proposed limit will negatively impact young children. Moreover, the commenter indicated that the rule takes the choice out of the hands of clinicians and puts it in the hands of the state.

RESPONSE #9: The department disagrees with the commenter that the 365-day limit is arbitrary. The department met extensively with stakeholders in order to establish best practices and to create a service that provides for the needs of youth with serious emotional disturbances. One of the outcomes from the stakeholder meetings was to establish consensus on the proposed 180- and 365-day reviews.

The department believes that youth, especially children under the age of six, should receive the least restrictive treatment options. HSS is a high-level intervention for seriously emotionally disturbed youth. The department presumes that providers will

try to use other, lower-level, less invasive approaches to treatment before attempting a potentially intrusive in-home service, particularly for young children.

Additionally, the department added the option to extend the 365-day limit, established on needs-based criteria, in order to continue to serve youth past 365 days. After 365 days, the process of determining eligibility is put directly into the hands of clinicians, not removed from them. A licensed clinician at the department will review another licensed clinician's suggestion and determine if the need meets the established criteria for an extension.

COMMENT #10: One commenter indicates that the proposed HSS criteria blend medical necessity and quality assurance measures for providers. As evidence of this, the commenter notes that a youth may not continue to receive services if a provider fails to document attendance at meetings.

RESPONSE #10: The department assumes that as a standard of practice, the provider would document meeting attendance regardless. The admission criteria states "…the parent/caregiver agrees to actively participate in treatment planning and presence at agreed-upon meeting times." Meeting attendance is noted as a measure because attendance at meetings is a valid way to document parent/caregiver participation, which is absolutely essential as part of the HSS service.

COMMENT #11: One commenter stated that there are certain activities involved with targeted case management (TCM) that are nonbillable and are necessary activities. The commenter also made comments regarding the role of a case manager during crisis situations.

RESPONSE #11: These comments are beyond the scope of the proposed rule changes. The purpose of the TCM rule change was solely to change the admission criteria. TCM rules will be reviewed at a later date to consider the reimbursement of services.

COMMENT #12: One commenter expressed disagreement about allowing TCM concurrent with HSS. The commenter stated the bundling of HSS and TCM has proved to be a great success during their trial demonstration which began May 1, 2013.

RESPONSE #12: In conversations with providers about the purpose of HSS, providers noted that HSS is a high-intensity, in-home service with a behavioral intervention focus. TCM, by contrast, is an indirect service. Upon further examination through discussions with a provider workgroup we agree the services are different and not duplicative. Allowing families the choice of HSS and TCM, as opposed to disallowing concurrent services, will allow providers to tailor services to the needs of individual clients as opposed to offering families a defined package of services.

COMMENT #13: One commenter asked how to determine the 365-day maximum benefit for HSS.

RESPONSE #13: The 365-day limit will begin the date the rule becomes effective. Providers will be able to access information about the billing limits in two ways: either by calling Xerox, who processes Medicaid claims; or, if a youth has received 300 days or more of service, there will be a notation on the Explanation of Benefits providers receive.

COMMENT #14: One commenter stated that ARM 37.87.1404 (2) through (5) is redundant with ARM 37.106.1916.

RESPONSE #14: The department agrees in part. The requirements that a licensed person coordinate the ITP and that an ITP is in place for 90 days are redundant and will be removed. However, there is nothing in ARM 37.106.1916 that specifically states the caregiver, who is defined differently than the legal representative/guardian, may choose the team members. There is also no existing specific requirement for coordination in ARM 37.106.1916. In the proposed notice, the department removed the requirement for a strengths, needs, and cultural assessment from ARM 37.87.1404 to be consistent with other rule changes.

COMMENT #15: One commenter expressed concern regarding the assessments required in ARM 37.87.1405. The commenter stated that the requirements in (2) and (3) are not clear because the assessment required in (1) is a "clinical intake assessment" and the department is requesting it be done not only at intake but also annually. The commenter proposes a solution to add a reassessment of the serious emotional disturbance (SED) eligibility at the 180-day review.

RESPONSE #15: The department agrees with the commenter that the annual requirement for an intake assessment is confusing. The department will remove the language in ARM 37.87.1405 (2) and (3). Also the department will add the reassessment of the SED eligibility at the 180-day and 365-day reviews in the UR manual.

COMMENT #16: One commenter stated that the connection between ARM 37.87.1407(2) and ARM 37.87.903 is unclear. They also stated that ARM 37.87.1407(2)(a) is redundant because it is already contained in ARM 37.106.1916(5).

RESPONSE #16: The department agrees that the connection between ARM 37.87.1407(2) and ARM 37.87.903 is unclear and will remove that reference. The department agrees that ARM 37.87.1407(2)(a) is redundant and will remove it.

COMMENT #17: Several commenters asked the department to review the UR manual closely for inconsistency with the rules.

RESPONSE #17: The department will review the manual closely for inconsistencies and make any needed amendments to ensure the manual is consistent with rule language. Furthermore, it is the department's intention in a future rulemaking to revamp the UR manual and any further concerns will be addressed during that time.

COMMENT #18: Several commenters stated that they would like to express their genuine appreciation of the department for facilitating a collaborative, transparent process for resolving differences and developing solutions. They further stated that the department's competence and positive approach have made this an excellent rule process. The commenters also requested six-month review meetings to review this new rule and the UR manual and the ongoing effect of the rule changes.

RESPONSE #18: The department appreciates the comments and agrees that administrative rule changes should be incremental and well reasoned, to allow for organizational learning and will arrange to hold a six-month review meeting.

COMMENT #19: Several commenters thanked the department for hearing their complaints about the rule process prior to initiating the workgroup to look at the HHS rules. These commenters appreciated the collaborative process that the rule rewrite entailed and the department's direct and open approach in dealing with the providers. They stated that the rules have been simplified and are more understandable. In addition, one commenter stated they appreciated the department's trust and willingness to address misbehavior by addressing the outliers rather than creating more complex rules and matrix management.

RESPONSE #19: The department agrees and is thankful for the participation of provider agencies in the process to improve children’s services.

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 37.87.2203 pertaining to non-Medicaid services program	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 19, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-649 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1677 of the 2013 Montana Administrative Register, Issue Number 18.

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 few commenters stated that while they support the concept of parental participation in the treatment of the youth, they do not agree with the sliding fee scale as proposed by the department. They stated that the percentage of payment from families for the room and board costs is too high for most of the FPL categories.

RESPONSE #1: The department disagrees with the commenters and believes the proposed sliding fee schedule is reasonable.

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 4, 2013.

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

In the matter of the amendment of ARM 38.5.1902 pertaining to qualifying facilities	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 23, 2013, the Department of Public Service Regulation published MAR Notice No. 38-5-218 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 827 of the 2013 Montana Administrative Register, Issue Number 10.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.5.1902 GENERAL PROVISIONS (1) through (4) remain as proposed.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~100KW~~ 3 MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012. Between competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than ~~100KW~~ 3 MW in size shall be accomplished in accordance with negotiation of a short-term written contract. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~100KW~~ 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) through (j) remain as proposed.

(6) All purchases and sales of electric power between a utility and a qualifying facility shall be compatible with the goal of the commission's integrated least cost resource planning and acquisition guidelines, ARM 38.5.2001 through 38.5.2012, and the commission's procurement plan guidelines, ARM 38.5.8201 through 38.5.8229.

(7) An existing qualifying facility ~~that entered into a~~ smaller than 10 MW whose contract with a utility expires prior to July 1, 201~~3~~5 will not be subject to

the ~~100 KW~~ 3 MW size limitation for the purpose of obtaining a new or extended contract under an existing standard rate option.

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-602, 69-3-603, MCA

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

COMMENT 1: Many commenters expressed concerns about the potential impact of the proposed rule on rural economic development. Commenters generally supported the development of small-scale renewable energy projects in rural communities as a way of generating additional revenue from taxes and impact fees, which would help fund needed services and infrastructure. Some commenters highlighted economic benefits of landowner lease payments. Others pointed to additional good-paying jobs associated with QF development in rural communities.

RESPONSE 1: The commission appreciates the potential for economic benefits in rural Montana communities from renewable energy resource development generally and QF projects specifically. PURPA requires that QF contract rates must not exceed the utility's cost of alternative resources and must be just and reasonable to consumers. The commission's decisions in this proceeding are designed to improve compliance with these requirements. The rule adopted in this notice does not prevent rural economic development that is compatible with the requirements of PURPA.

COMMENT 2: Several commenters indicated that although expanding the use of competitive bidding to acquire QF projects might have conceptual merits, in practice utility competitive solicitations do not treat QF projects fairly. Commenters observed that resource solicitations are not held at regular intervals, are not monitored by an independent entity to ensure fairness, and QF bidders never win. Commenters questioned whether current solicitation practices adequately check a utility's incentive to choose resources it will own and profit from over QF resources. These commenters expressed concern over the utility's monopoly power and suggested that administratively determined rates provide QFs a way to compete. Other commenters stated that competitive solicitations are a useful and necessary check on administratively determined avoided costs and contend that QF-type resources have been successfully developed through competitive procurements.

RESPONSE 2: The commission agrees that competitive solicitations must treat all bidders, including QFs, fairly and must foster genuine competition between bidders to properly implement PURPA and provide economic benefits for consumers. Montana law requires NorthWestern to use open, fair, and competitive resource procurement processes whenever possible, and the commission has defined standards for open, fair, and competitive resource procurement processes. The commission is not persuaded that utility resource solicitations treat bidders

unfairly or are insufficiently monitored. The commission evaluates whether utility solicitation processes conform to Montana law and commission rules when a utility requests approval to procure a resource or when it presents a procured resource for cost recovery. These evaluations occur in contested cases which provide QFs and other affected parties an opportunity to challenge the openness, fairness, and competitiveness of the utility's resource solicitation. In addition to these safeguards, a QF may challenge the reasonableness of the standard rate schedule approved by the commission at any time, or petition the commission to set contract rates and conditions under certain circumstances. In recent cases, the commission has determined that utility solicitation processes complied with applicable laws and rules. The commission believes that, taken together, the contested case processes that enable QFs to challenge competitive solicitations and standard rate schedules adequately prevent utility resource bias, safeguard the fairness of solicitations, and adequately check a utility's monopoly power. Requiring regular competitive solicitations would increase the risk of bid rigging and collusion among bidders and result in unjust and unreasonable rates when a utility does not need additional resources.

COMMENT 3: Several commenters questioned the reasonableness of a 100 kilowatt (kW) standard rate eligibility threshold. Some commenters asserted that 100 kW QF projects are not economically feasible because, at that size, they are unable to exploit economies of scale and, therefore, cannot compete with utility-scale generation alternatives. According to these commenters, a 100 kW threshold will effectively eliminate QF projects in Montana. One commenter stated that a threshold of 3-6 MW would accommodate economically feasible small hydro projects. Another commented that standard rates should be available to smaller, unsophisticated QFs and recommended a 3 MW threshold. Yet another recommended a threshold of 500 kW, which would allow larger solar projects to obtain standard rates but require utility-scale wind projects to compete. Others recommended leaving the threshold at 10 MW or increasing it to 20 MW.

RESPONSE 3: The commission is not persuaded that reducing the standard rate eligibility threshold below 10 MW precludes QF project developers from exploiting available economies of scale. By requiring more QF projects to compete, the rule encourages project developers to economically size their projects based on a utility's resource solicitation. The commission agrees with comments that associate the appropriate standard rate eligibility threshold with the transactions costs of bidding and other burdens placed on smaller QFs. The commission adopts a 3 MW threshold rather than a 100 kW threshold because QFs 3 MW and smaller may be discouraged from participating in competitive solicitations or challenging unfair bidding practices due to high transactions costs relative to total revenue potential. However, bid preparation costs and potential costs to litigate a complaint against a utility for unfair treatment in a bidding process should be small relative to total revenue potential for QFs larger than 3 MW.

COMMENT 4: Some commenters recommended creating separate standard rate thresholds for wind and hydro QFs to encourage small hydro projects and recognize the distinct attributes of these resources.

RESPONSE 4: As discussed in the response to Comment 3, the commission is persuaded that an appropriate standard rate threshold prevents transactions costs (e.g., bidding and litigation costs) from discouraging small QFs from participating in a solicitation or challenging the fairness of a solicitation. Such transactions costs should be similar for small wind and hydro projects. Therefore, the commission is not persuaded that a separate standard rate threshold for hydro QFs is reasonable.

COMMENT 5: Several commenters stated that a 100 kW threshold would be inconsistent with the intent of the 2013 Montana Legislature, which considered reducing the standard rate eligibility threshold to 3 MW in House Bill 188.

RESPONSE 5: Although House Bill 188 was vetoed by the Governor, the commission adopts a 3 MW threshold for the reasons stated in the response to Comment 3.

COMMENT 6: Several commenters stated that there are better alternatives to reducing the standard rate eligibility threshold. These better alternatives included imposing capacity limits in a utility's tariff schedule, adjusting standard rates more frequently, further refining standard rate options, setting QF project-specific rates, and supporting regional, independently administered, auction-based day-ahead and real-time wholesale markets.

RESPONSE 6: The commission believes that the suggested alternatives are inferior to the rule adopted in this notice. To the extent resource solicitations are fair and competitive (see Response 2), the rule adopted in this notice is more likely to ensure that QF contracts correspond to utility needs and do not exceed the cost of alternatives. Administratively determined rates are prone to deviate from the cost of alternatives because market conditions and public policies often change abruptly, and adjusting rates requires lengthy administrative proceedings. Procedural requirements and practical considerations limit how frequently contested cases may be used to adjust standard rates. While an organized wholesale market may be beneficial, neither the commission nor any one utility can create such a market.

COMMENT 7: Some commenters asserted that the proposed rule would violate Montana's energy policy, specifically the goal to "develop contracts between qualifying small power production facilities, as defined in 69-3-601, MCA, and utilities, which facilitate development of small power production facilities by identifying fair and reasonable costs for integration of their power." The commenters asserted that a 100 kW threshold would not facilitate development of small power production facilities.

RESPONSE 7: The commission does not agree that the rule adopted in this notice violates Montana's energy policy; rather, it facilitates small power production

facilities that meet the avoided cost standard, which for larger QFs is determined by competitive bidding. Montana's energy policy also promotes energy sources that represent the lowest economic cost, and the goal referenced by commenters appears to focus on the cost of integration service. A competitive bidding process can fairly identify integration costs, facilitate development of small power production facilities, and promote energy sources that represent the lowest long-term cost.

COMMENT 8: Some commenters addressed the proposal to eliminate the phrase "all-source" from the existing rule. One commenter stated that all-source solicitations are important to ensure a utility considers all available alternatives and to impose discipline on the procurement process. Another commenter supported eliminating the phrase to allow a utility to tailor solicitations to specific products and resources.

RESPONSE 8: As adopted, the rule retains the phrase "all-source." The meaning of the phrase has been misinterpreted by commenters and in recent QF proceedings. As defined in commission rules, "all-source solicitation" means all potential providers able to offer a specific resource or product requested in a utility solicitation, including QFs, other non-utility providers, and other utilities. An all-source solicitation may request only the specific types of resources or products needed by a utility. If a competitive bidding program is used to implement PURPA, bidding must be open to all providers.

COMMENT 9: Some commenters expressed concerns that reducing the standard rate eligibility threshold would reduce resource diversity and increase rates due to a diminished regulatory focus on a utility's long-run marginal cost. These commenters contend that contested avoided cost proceedings provide the best evidence of the marginal cost of new generation capacity, and that administratively determined avoided costs impose competitive pressure on a utility seeking to develop its own resources.

RESPONSE 9: Reducing standard rate eligibility to 3 MW will not diminish regulatory focus on a utility's long-run marginal or avoided costs. Estimates of such costs are critical to utility resource planning and retail rate design in addition to standard QF rate design. The commission believes competitive bidding, which involves an actual market for purchasing incremental generating capacity, provides better evidence of current long run marginal costs than administrative proceedings, which often rely on generic and quickly outdated resource costs. Because a utility examines its entire portfolio through least-cost resource planning, and competitive solicitations are an economically efficient method of acquiring new resources, the rule adopted in this notice will not reduce resource diversity or increase rates.

COMMENT 10: Several commenters noted that QF contracts provide customers with a long-term, fixed-price energy supply, which contributes stability to the utility's supply portfolio and provides a hedge against volatile wholesale market prices. These commenters also stated that QFs diversify resource ownership within the utility's supply portfolio and diversify risks to consumers since QFs are only paid

for energy actually delivered. The commenters contend the proposed rule would eliminate such resource attributes.

RESPONSE 10: The commission agrees that diversity with respect to resource ownership and duration is desirable. Existing commission rules pertaining to resource planning and procurement require utilities to assess portfolio diversity and rank resources to achieve optimal resource diversity. A number of QFs have chosen a variable standard rate, which is directly tied to volatile wholesale prices, and the practice of using solicitations to hedge against such volatility and diversify ownership is preferable. Setting a 3 MW standard rate eligibility threshold for QFs does not undermine established standards for achieving diversity and mitigating risk in electric supply portfolios.

COMMENT 11: A commenter stated that the proposed amendment will exclude public comment and review from the process of setting standard rates, foreclosing opportunities for input from interested parties in determining avoided costs.

RESPONSE 11: The proposed rule will not exclude public comment and review from utility planning dockets or standard rate proceedings. The commission determines a utility's avoided costs using information contained in the utility's resource plan. The process of reviewing and commenting on a utility's resource plan is very time-consuming. Because market conditions change rapidly, waiting until the entire planning process is complete to even propose updated standard rates ensures that they will be stale and not reflective of the utility's current avoided cost. The proposed rule reduces that delay by requiring utilities to propose updated QF rates following submission of its resource plan, rather than waiting until the review of the plan is complete. The proposed rule in no way prevents interested parties from participating in QF rate proceedings or commenting on a utility's resource plans.

COMMENT 12: A commenter questioned the fairness of exempting existing QF contracts that are extended or renewed from the new standard rate threshold. The commenter stated that the exemption would primarily benefit fossil fueled projects that are larger than the previous threshold and impose regulatory risks on utilities.

RESPONSE 12: The limited exemption in the proposed rule was intended to preserve the status quo for a small subset of QFs that were in contract negotiations with a utility during the rulemaking proceeding. The rule adopted in this notice narrows the scope of the exemption so that it only applies to QFs smaller than 10 MW.

COMMENT 13: A commenter stated that the rulemaking process was deficient and opaque because the commission did not provide adequate reasons for the proposed amendments.

RESPONSE 13: The commission believes it provided an adequate explanation for its proposal to amend the rule. The commission indicated that there are economic and public policy considerations associated with determining an appropriate size threshold that exceeds the federal minimum. Those economic and public policy considerations are addressed in the comments and responses above, and include the rigidity of administratively determined rates and the potential economic efficiency gains and associated consumer benefits from competitive bidding. The commission invited interested persons to submit their views and arguments as to the appropriate size threshold. As expected, interested persons proposed a range of size thresholds based on various economic and public policy justifications. Based on its consideration of all of the comments it received (see Comments 1 through 12 and Responses), the commission adopts a 3 MW size threshold.

4. Pursuant to 2-4-405, MCA, fifteen members of the Montana Legislature requested that the commission prepare a statement of the economic impacts of the proposed amendment. In response, the commission prepared an economic impact statement (EIS), which it submitted to the Energy and Telecommunications Interim Committee (ETIC) on August 22, 2013. On October 21, 2013 the ETIC determined that the EIS was sufficient.

The EIS discussed the potential economic impacts of the amendment on two primary affected classes of persons: QFs between 100 kW and 10 MW, and utility consumers. It attempted to quantify economic impacts where practicable. Based on an assumption that the regulatory framework in Montana is capable of promoting fair and effectively competitive bidding processes, the EIS found that the amendment would increase the use of competitive bidding to acquire QFs, which would benefit consumers and impose negligible incremental costs on QFs. It found that transactions cost could be burdensome for smaller QFs. It found the amendment superior to alternatives, including inaction. It found that the commission and other agencies would not incur material costs to implement the amendment and that the amendment represents an efficient allocation of public and private resources. A copy of the economic impact statement can be obtained from the Department of Public Service Regulation, 1701 Prospect Avenue, Helena, MT, 59620-2601, (406) 444-6199, and online at http://psc.mt.gov/.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ W.A. (BILL) GALLAGHER
W.A. (Bill) Gallagher
Chairman
Public Service Commission

Certified to the Secretary of State November 4, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to alternative office hours in county offices	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 20, 2013, the department published MAR Notice Number 42-2-894 regarding the proposed adoption of the above-stated rule at page 1055 of the 2013 Montana Administrative Register, Issue Number 12. The department also twice advertised the hearing information in each relevant county's general circulation newspaper publication.

2. Public hearings were offered between July 12 and July 19, 2013, in the local county seat of the 18 counties impacted by the rule, to consider the proposed adoption. Members of the public participated in Blaine, Broadwater, Daniels, Judith Basin, Meagher, Pondera, and Prairie Counties. No members of the public attended for the hearings offered in Carter, Garfield, Golden Valley, Granite, Liberty, McCone, Musselshell, Petroleum, Powder River, Treasure, or Wheatland counties.

The written and oral comments received are summarized below, along with the department's responses. Comments that were similar in nature across multiple counties are captured together and all other comments follow those.

COMMENT NO. 1: There was some general confusion and concern about the term "closed," as it was used in the proposed new rule. Some county officials, employees, or other members of the public who testified had interpreted this to mean that there would be a reduction in services in their county.

RESPONSE NO. 1: The department apologizes for the confusion. The department's employees are responsible for conducting both business office and field work. In many counties, with four or less staff, the same individual is often responsible for working in both places. The counties identified in the rule will be "closed" when department staff is working away from the office conducting field work, meeting with taxpayers, assisting other offices, or when they use their personal leave. The department does not anticipate a reduction in services to the county. The rule is intended to specify the staff's availability in the business offices. For clarity and to eliminate the confusion, the department is amending the rule to add in the term "business" ahead of office, where appropriate, and also to remove the office closure references in (3)(a) through (r). The remaining language in (1) and (2) of the rule provides the necessary explanation for business office closures.

COMMENT NO. 2: Several county officials or employees attending the hearings expressed concern that the proposed reduction in office hours might be because department management thought that a particular staff member was under-

performing and therefore sought to reduce that person's work hours. In each instance, the testimony included compliments and support for department staff.

RESPONSE NO. 2: The department appreciates the honesty and the county's praise of department staff. The department is proud of the customer service that the local staff provides and the good working relationships they have established with county employees over the years. The purpose of the new rule is not to address personnel concerns. The purpose is to allow department staff the ability to timely complete their field work and to provide department management with the flexibility they need to send staff into different counties and thereby effectively and efficiently cover fluctuating workloads.

COMMENT NO. 3: Another common concern was that the department is making cuts due to sequestration or for budgeting or financial reasons, and may be seeking to save money at the expense of the smaller county offices. The questions ranged from asking if the department suddenly lost its funding and wanting to know what the department's plans are for the money being saved, to what would happen to the full-time positions if employees are being laid off. A citizen asked what the bottom line is with this proposal.

RESPONSE NO. 3: The department understands the confusion. While the department must complete the work within the budgetary resources that the legislature allows, it is not laying off employees or reducing any employee hours. Rather, the new rule gives the department the flexibility to share existing staff between counties as needed to assist with fluctuating workloads and to more efficiently and effectively manage its resources. The prior law required the department to keep its offices open to the public Monday through Friday, from 8 a.m. to 5 p.m. Some smaller offices had difficultly complying with this law, especially one-person offices with a range of responsibilities that include conducting field work, valuing new construction, or verifying property sales, for the entire county. The change in the law and the new rule allow for the physical office to be closed while the staff is out conducting the required field work for the county.

COMMENT NO. 4: Although some who testified expressed an understanding for why it may not be possible, commenters at almost every hearing asked to go on the record on behalf of all citizens or with their own preference that their local county assessor's business office be open to the public Monday through Friday, 8 to 5; and by and large cited service to local citizens as their reason. One county official stated that it is always preferable for citizens and county staff who work with the assessors to be able to talk with someone in person rather than by telephone.

RESPONSE NO. 4: The department appreciates and understands the county's preferences and recognizes that staff availability is important to the county's work. While one aspect of the department's job is business office work and to interact with county employees and citizens, another is to conduct field work in a timely manner, valuing new construction, and verifying property sales, for the county. Counties with as few as one or two employees cannot effectively accomplish all of

the county's work and simultaneously staff the business office full-time. The department must work within the budget the legislature provides and find ways to efficiently and timely complete each county's work.

COMMENT NO. 5: A county official asked if a taxpayer should want to meet at a time other than the scheduled office hours, if it would be possible for department staff to meet that taxpayer at another time.

RESPONSE NO. 5: Yes, this is possible. Department staff will continue to schedule appointments and accommodate taxpayers' schedules as needed.

COMMENT NO. 6: While many county officials voiced appreciation for having the assessor's office so handy in their courthouses, they also expressed concern that when the assessor's office is closed during regular business hours it is their offices that feel the brunt of the public's frustration and anger over the situation. Several county officials explained that this occurs because the general public doesn't always differentiate between the state-run and the county offices and therefore expect county staff to answer for the closures and/or be able to respond to property assessment-related questions. County officials stated that this is an unfair burden placed on their county offices and added that it takes time away from their own work. One county commissioner commented that he had personally taken abuse when a citizen found the department's office closed.

RESPONSE NO. 6: The department can appreciate the counties' concerns with not having department staff available at all times. The department will provide contact information that includes the telephone numbers of available staff to help answer questions. The department highly encourages appointments so that its staff can work their schedules around the availability of citizens.

COMMENT NO. 7: Several county officials testified that they are concerned about the effect the reduced office hours will have on low-income citizens or elderly ranchers and farmers who lack computer skills and/or must travel great distances to get to the county office for assistance. One stated that it isn't always feasible for these people to arrange their schedules to accommodate weekday office closures. They come into town to conduct their business as time and road conditions permit.

RESPONSE NO. 7: The department strives to always provide excellent customer service. The department will include contact information on signs located in the local business offices, on its web site, and at any other location deemed appropriate, so that a department staff member will be available to answer questions and respond to requests promptly. The department's staff is also always willing to accommodate taxpayer schedules as needed. The county office staff typically lives in the community in which they work and are often very familiar with the citizens. Should a taxpayer require a meeting, the local staff will schedule a time when it is convenient for them to come into the business office, or to meet with them elsewhere.

COMMENT NO. 8: Several county officials asked if the department would make exceptions to the reduced office hours during certain weeks of the year, such as at property valuation or tax notice time, or during reappraisal years, by providing additional staff to work in the local offices in response to the increased number of taxpayer's questions that arise during those times.

RESPONSE NO. 8: The department understands there are busier times of the year, such as when assessment notices go out. The assessment notices inform the property taxpayer of their property classification, property value, and ownership information. The department agrees with the importance of having staff available as much as possible in the business offices during busier times of the year to assist citizens, and is always willing to adjust the staff's work priorities to accommodate citizens during these busier office times. The flexibility afforded by the new rule will help the department to redistribute resources for coverage in these situations.

The department also recognizes that it is typically busier in the business offices after the county treasurer mails out property tax bills. While the department staff would be able to answer any property valuation questions that might arise at that time, they wouldn't be able to assist citizens with their more common questions about their tax bills, special fees, or special assessment charges set by the county. County employees would be the citizen's best resource for this purpose.

COMMENT NO. 9: A Judith Basin County commissioner made a request regarding the type of signage placed in their courthouse. He stated that the proposed hours are fine, provided they are well posted. He explained that he would like to see a free-standing podium or easel placed outside of the assessor's office with an open or closed sign on it that the employee would physically set outside the door. He emphasized that he does not want something unattractive taped to the door, and asked that the department provide a professional looking sign that is permanent in nature, to lessen any confusion to citizens.

A Daniels County employee stated that while she understands that all employees are entitled to and need to take a lunch break during the day, that the department should keep in mind the public's need to be able to count on staff being available when it is advertised that they will be there. Accordingly, the employee asked that the posted hours for the office include a consistent lunch hour. The county employee further requested that when the department advertises its hours in the local newspapers that it include the department's web site address, because the people in their community use the Internet a lot and are sure to appreciate that information.

RESPONSE NO. 9: The department understands the importance of proper signage and notice to the public. The department is willing to accommodate the commissioner's request and will determine the appropriate signage needs for each county office on an individual basis. The department further recognizes the importance of staff being available at the designated hours. The department appreciates the suggestions and will include its web site address as part of the contact information placed in the newspaper advertisements.

COMMENT NO. 10: A Blaine County commissioner commented that they have actively worked with the department to keep the office fully staffed with two full-time employees. He stated that they had participated in a meeting about a year ago with the department's region and area managers and were left with the impression that the office would be fully staffed Monday through Friday.

RESPONSE NO. 10: The department's regional and area managers did meet with the commissioners regarding the department's staffing of the office and apologizes for any misunderstanding. The department adjusted the staffing levels to retain its well-qualified staff to conduct the county's field work in a timely manner for the purposes of reappraisal, newly taxable property, and other matters. Unfortunately, this can and does impact the hours that the trained appraisal staff are available for walk-in coverage in the business office. The purpose of the new rule is to establish set business office hours so citizens will know when to expect the office to be staffed, and to provide good contact information for those times when staff must be away from the business office to conduct their field work.

COMMENT NO. 11: Citizens who work for title companies also testified at the Blaine County hearing and commented that it is imperative that the office stay open Monday through Friday, 8-5, because they have an almost daily need to access the department's public records. They stated their opposition to further closures because it would impact sales and slow down commerce if they cannot efficiently obtain property information when needed to complete a transaction. One explained that it's about convenience and said office closures slow down not only their work but also that of the county's busy real-estate appraisers who are on a timeline. They additionally commented that because of the department's field work, the time of year, and for other reasons, the office is currently closed more than it is open.

RESPONSE NO. 11: The department appreciates the usefulness of the information it collects and is pleased to assist both citizens and businesses by making this public information available to them. Many people have commented that they rely upon and appreciate having this information so readily available. The department maintains a self-service cadastral web site that is available to the general public online, at any time, and the information on the site is updated approximately every 24 hours. The cadastral web site address is svc.mt.gov/msl/mtcadastral. There is also a link to the cadastral web site from the Property Owners section of the department's homepage at revenue.mt.gov.

COMMENT NO. 12: The Broadwater County treasurer asked if the office would be completely closed on Fridays and explained that he is asking because, although he feels the citizens in the county will respond as needed to the change, Fridays are usually busy in their county offices and it seems to him to be the day that people tend to take off from work to conduct their business.

RESPONSE NO. 12: The department recognizes the needs of the county citizens. Unfortunately, Friday is also the best weekday for the department staff to

meet with the public as part of its field work. Department staff will continue to be available by appointment and make accommodations for citizens, as requested.

COMMENT NO. 13: At the Daniels County hearing, the department's area manager testified that he would like to extend the previously proposed hours of 8 to noon on Mondays and Tuesdays to 8-5, to better serve the public. This change should not significantly impact the staff's ability to timely complete their field work in this county.

RESPONSE NO. 13: The rule is being amended to extend the business office hours in Daniels County as proposed.

COMMENT NO. 14: Officials in Prairie County stated that they would hate to see their county lose a full-time position, and that the county would be losing a very valuable asset if the current assessor is not there full-time.

RESPONSE NO. 14: The department appreciates and understands the county officials' concerns and recognizes that staff availability is important. While one aspect of the department's job is business office work, another is the timely completion of all field work. In offices with limited staff, it often is not possible to complete all of the county's field work and also staff the local business office full-time. It is a balancing act. The department must operate within the budget the legislature provides and find ways to efficiently and timely complete all of its work.

COMMENT NO. 15: A Meagher County commissioner testified that the courthouse building in their county closes daily at 4 p.m., and asked if the department would mind changing the hours being proposed from 8-5 to 8-4.

RESPONSE NO. 15: The department appreciates having this information and is amending the rule accordingly.

COMMENT NO. 16: A county official commented that it appears to them that the department is starting to centralize everything in Helena, which is a lot less responsive to, and creates animosity with, taxpayers. He stated as an example that it's like when things are dictated from Washington, D.C., to the state of Montana and the service to the actual person paying the taxes is lost. Another asked how the department sees this all working and if it means that staff will be shared with Broadwater County and/or Wheatland County.

RESPONSE NO. 16: The department appreciates these concerns. The personnel assigned to conduct the appraisal work and provide business office coverage and services to the citizens of Meagher County are from neighboring counties, primarily Broadwater, not from Helena. To clarify, the change in business office hours does not impact the work that the department provides for this county or any other county. The change in business office hours gives the department the flexibility to efficiently conduct all of the county's field and business office work, both of which benefit the counties.

COMMENT NO. 17: A treasurer/assessor asked if it would be possible for the department to provide them with access to personal property information in order to answer taxpayer's questions when they come in. She stated that, as it is, they have to respond that they don't have the information on their computers.

RESPONSE NO. 17: Yes. In addition to the cadastral web site referenced in an earlier response, the county treasurers have access to the department's property tax portal, known as Orion. Orion contains all non-confidential data housed within the department's computer system. The data is updated nightly and department staff is available to train the treasurers on how to use the portal, if needed.

COMMENT NO. 18: An official also mentioned timetables and asked if not having an employee located there meant they would receive their mill levy and other information later.

RESPONSE NO. 18: No. The alternative business office hours will not impact the department's statutory requirements to timely provide this information to the counties.

COMMENT NO. 19: A citizen in attendance at the Meagher County hearing asked why the department is looking at closing their office and what the rational is for having the office open only one day a week. She commented that this will create a hardship for residents who live at either end of the county and must travel great distances just to get to town and will now need to drive to wherever the department sends them.

A commissioner stated that it's bothersome to her that the rule is taking their office down to one day a week, and added that none of the other counties the department is looking at are reducing to a single day. She asked how many staff members are employed in Broadwater and Park Counties, and on receiving a response of two in Broadwater and six in Park, she stated that it disappoints her as a commissioner that the department is choosing to staff some counties to that level and not staff theirs at all. She added that while they would love to have a full-time office person, even a half-time person would be more in-line with the other counties.

County officials expressed concern and disappointment with the department's plan to use employees from other counties to service their office as opposed to filling a recently vacated position with someone living in their county, because it would mean the loss of a good job in their small community and that somebody local who knows the community would also better serve the local taxpayers. A commissioner commented that theirs is one of the counties that the department is looking at downsizing that may actually experience exponential growth in the near future due to a copper factory that is considering locating in the area. She stated that she hopes the department will consider any change in the county's workload should it increase.

A citizen at the hearing commented that their county has historically partnered with neighboring counties many times, in different situations, and always ended up on the short end of those deals. She added that this county becomes the step-child and its business is bumped to the bottom of the pile. She does not want to see the

county residents be in that situation and have to go through that again.

RESPONSE NO. 19: The department appreciates the concerns of the county officials and citizens. The department carefully considered and analyzed many factors including the number of parcels, instances of taxpayer assistance via telephone, walk-in traffic counts, property ownership changes, new construction valuation, and property sales verification. The department's analyses indicated that the appropriate level of staffing called for in Meagher County to be less than one-day of business office coverage.

Currently, incoming telephone calls are automatically rerouted to staff in nearby Broadwater County, who have a familiarity with the community and can provide prompt responses to taxpayer questions and information requests. Taxpayers will not be expected to travel to other counties for assistance. As stated in previous responses, the department is willing to accommodate taxpayer schedules and meet by appointment either in the business office or on site as requested.

The department will continue to monitor the workload in Meagher, and all other counties, and adjust staffing levels as needed. It remains a possibility that a citizen of the county could be employed to staff the office in the future should it become warranted. The department's responsibility to the counties is not changing. It is the department's intent to continue conducting all field and business office work in all counties in a timely manner. The alternative business office hours give the department the flexibility to best use its limited resources at any given time and in any location.

COMMENT NO. 20: An official in Meagher County asked how many days of the week someone would be in their county to conduct field work and stated that the former assessor was busy four days a week, spent a lot of time in the field trying to catch up, and that there is still a lot of unfinished field work in the county to be done.

RESPONSE NO. 20: The department understands how important it is to complete all field work and timely report data to county government officials. One of the benefits of the alternative business office hours is that it allows well-qualified staff to conduct both office work and field work, which provides for accuracy and efficiency. The department is unaware of any outstanding field work in Meagher County, but workload is continually monitored and as it increases, so will the level of staff assigned to conduct the county's work.

COMMENT NO. 21: Another question posed by a commissioner was whether or not the department had considered keeping a staff person in the smaller communities and using that person to handle overflow from the larger counties instead of the other way around.

RESPONSE NO. 21: Yes. The department carefully evaluates the workload in each county and determines how best to utilize its resources. There is some work that can be conducted in the business offices via the computer; however, the amount and type of work required in each county varies. The alternative business

office hours in certain counties will allow the department the flexibility to move staff around as necessary and make certain they are available to assist in counties lacking the resources to timely complete that county's property assessment work.

COMMENT NO. 22: The treasurer/assessor asked how people in the other counties who will be doing the work for Meagher County feel about taking on the additional workload, and if this makes them feel overtaxed.

RESPONSE NO. 22: Having staff from one county do work in another is not a new concept or practice. The temporary shuffling of qualified staff to assist in other counties has been occurring since the 1980s. The department staff has worked together, in most instances, for many years, and is always eager to help each other. The staff recognizes that there will be times when other counties must rely on them to help with a workload issue. Through close monitoring and careful time management, this rarely places any additional burden on the counties providing the assistance.

COMMENT NO. 23: The commissioners in Meagher County both made closing statements asking for the department's serious consideration of the comments made in the hearing. One stated that he hopes the department does not already have its mind made up and is not just checking the box for having conducted a public hearing. He added that they hope things are not set in stone and that the department is really hearing them.

The other commissioner asked to reiterate that she hopes their comments will give pause and cause the department to possibly change the office hours back to two days a week, and added how huge it would be for their county if it will do that.

RESPONSE NO. 23: The department assures the commissioners that it did not offer the public hearings as a matter of mere formality. The comments received during the hearing and comment period of a rulemaking process are always helpful and valuable to the department. The department appreciates the time that county officials, employees, and citizens took to participate in the hearings. As stated in the above responses, the department is amending the proposed rule to incorporate recommendations and comments from the public hearings.

As also provided in response number 19, the department carefully reviewed all available data when determining the staffing needs for Meagher and all of the county offices slated for alternative business office hours as part of the new rule. The department will continue to monitor workloads and adjust staffing levels as needed.

If any of the established alternative business office hours need to be adjusted in the future, the rule will be amended accordingly.

3. As a result of the comments received, the department adopts New Rule I (42.2.705) as follows, new matter underlined, deleted matter interlined:

NEW RULE I (42.2.705) ALTERNATIVE COUNTY BUSINESS OFFICE HOURS (1) Section 2-16-117, MCA, requires the department to adopt office hours

which are outside of the regular 8 a.m. to 5 p.m. business day and 40-hour business week, as necessary, in county offices where the business office is fully staffed with four or fewer employees, and is not available to conduct both business office and field work at the same time.

(2) The alternative hours may also include times when a department employee is out of the business office for the purposes of providing assistance in another similarly situated county ~~office~~. Should the business office need to temporarily close during the hours described in (3) for an emergency or personal employee leave, the department will provide advance notice to the public of such closures as appropriate.

(3) Counties that meet the conditions provided for in statute are listed below, along with their established alternative business office hours ~~of operation~~:

(a) Blaine County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Wednesday, and Thursday; 8 a.m. to 12 noon Friday; ~~closed Tuesday;~~

(b) Broadwater County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday through Thursday; ~~closed Friday;~~

(c) Carter County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday through Wednesday; ~~closed Thursday and Friday;~~

(d) Daniels County ~~Office, open~~ business office hours 8 a.m. to ~~noon~~ 5 p.m. Monday ~~through~~ and Tuesday; 8 a.m. to 12 noon Wednesday; ~~closed Thursday and Friday;~~

(e) Garfield County ~~Office, open~~ business office hours 8 a.m. to 5 p.m., Monday through Wednesday; ~~closed Thursday and Friday;~~

(f) Golden Valley County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Tuesday, and Friday; ~~closed Wednesday and Thursday;~~

(g) Granite County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Tuesday, and Thursday; ~~closed Wednesday and Friday;~~

(h) Judith Basin County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday and Wednesday; 8 a.m. to 12 noon Friday~~, closed Tuesday and Thursday~~;

(i) Liberty County ~~Office, open~~ business office hours 8 a.m. to 12 noon Monday through Friday;

(j) McCone County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday through Wednesday; ~~closed Thursday and Friday;~~

(k) Meagher County ~~Office, open~~ business office hours 8 a.m. to ~~5 p.m.~~ 4 p.m. Wednesday; ~~closed Monday, Tuesday, Thursday, and Friday;~~

(l) Musselshell County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday through Wednesday; ~~closed Thursday and Friday;~~

(m) Petroleum County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Thursday, and Friday; ~~closed Tuesday and Wednesday;~~

(n) Pondera County ~~Office, open~~ business office hours 8 a.m. to 12 noon Monday through Thursday; 8 a.m. to 5 p.m. Friday;

(o) Powder River County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Wednesday, and Thursday; ~~closed Tuesday and Friday;~~

(p) Prairie County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday through Wednesday; ~~closed Thursday and Friday;~~

(q) Treasure County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Wednesday, and Friday; ~~closed Tuesday and Thursday;~~ and

(r) Wheatland County ~~Office, open~~ business office hours 8 a.m. to 5 p.m. Monday, Tuesday, and Friday~~; closed Wednesday and Thursday~~.

(4) During the months of January and July of each year, the department will publish, in the local newspaper, the business office hours for each location stated in (3).

AUTH: 2-16-117, 15-1-201, MCA
IMP: 2-16-117, MCA

4. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. In the left hand column under Quick Links, select "Laws and Rules," then "Rules," and then "Adoption Notices." 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State November 4, 2013

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding the scheduled dates for the 2014 Montana Administrative Register	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 19, 2013, the Secretary of State published MAR Notice No. 44-2-192 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1683 of the 2013 Montana Administrative Register, Issue Number 18.

2. The Secretary of State has amended the above-stated rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) and (2) remain as proposed.

AUTH: ~~2-4-312,~~ 2-15-401, MCA
IMP: 2-4-312, MCA

3. The Secretary of State corrected the authority citation for the rule after receiving a comment from the staff attorney for the State Administration and Veterans' Affairs Interim Committee.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 4th day of November, 2013.

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

IN THE MATTER OF the Application of Devon Gas Corporation and Havre Pipeline Company, LLC for Declaratory Ruling or for Approval of the Proposed Sale of Ownership Interests	)))))	REGULATORY DIVISION DOCKET NO. D2013.7.57 ORDER NO. 7307a

ORDER ON PETITION FOR DECLARATORY RULING

1. On July 30, 2013, Devon Gas Corporation (Devon) filed an Application for Declaratory Ruling or for Approval of the Proposed Sale of Ownership Interests in Havre Pipeline Company, LLC (Application).

2. Montana Code Annotated § 2-4-501 states: "Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency." The Public Service Commission (Commission) has adopted Admin. R. Mont. 38.2.101, which adopts the Attorney General's Model Procedural Rules. Rules 1.3.226-1.3.229 of the Administrative Rules of Montana govern the Commission's consideration of and action on requests for declaratory rulings.

3. On August 6, 2013, the Commission issued a Notice of Application and Opportunity to Comment and Intervene. On August 19, 2013, NorthWestern Energy (NorthWestern) filed a Petition for Intervention. On August 20, 2013, the Montana Consumer Counsel (MCC) filed a Petition for Intervention. On August 21, 2013, the Commission issued a Notice of Staff Action Granting Intervention for both parties. On September 26, 2013, the MCC filed Comments on the Application for Declaratory Ruling and Motion to Accept Filing. The MCC moved the Commission to accept the filing stating MCC's opposition to the granting of the declaratory ruling that Devon and Havre Pipeline Company, LLC (Havre Pipeline) seek. The MCC asks that the Commission exert authority over utility sales and transfers and decline to issue the requested declaratory ruling. The administrative record in a declaratory ruling proceeding includes the petition and a statement of matters officially noticed. Admin. R. Mont. 1.3.227(4).

4. A petition for declaratory ruling must include the following, pursuant to Admin. R. Mont.1.3.227(2): (a) the name and address of the petitioner, (b) a detailed statement of the facts upon which petitioner requests the agency base its ruling, (c) sufficient facts to show that petition will be affected by the requested ruling, (d) the rule or statute for which petition seeks a declaratory ruling, (e) questions presented, (f) propositions of law asserted by the petitioner, (g) the specific relief requested, and (h) the name and address of any person known by petitioner to be interested in the requested declaratory ruling.

5. The Application includes: (a) the name and address of each Applicant, Pt.'s App.¶ 10 (July 30, 2013); (b) a detailed statement of facts upon which petitioner requests the agency base its ruling, Pt.'s App.¶¶ 1-8 (July 30, 2013); (c) sufficient facts to show that the Applicant will be affected by the requested ruling, Pt.'s App.¶¶ 1-8 (July 30, 2013); (f) propositions of law asserted by the petitioner, Pt.'s App.¶¶ 1-8 (July 30, 2013); and (g) the specific relief requested. Pt.'s App.¶¶ 8, 19 (July 30, 2013).

6. With regard to requirement (d), the rule or statute for which petitioner seeks a declaratory ruling, the Applicants solely mentioned Title 69 of the Montana Code Annotated, without reference to a specific section. For the purposes of this Order, the Commission assumes that Applicants seek a declaratory ruling regarding Mont. Code Ann. §§ 69-3-102, 69-3-110(1), 69-3-201.

7. Concerning requirement (e), questions presented, the Applicants did not clearly request that the Commission answer any questions.

8. With respect to (h), the name and address of any person known by the petitioner to be interested in the requested declaratory ruling, the Applicants failed to mention the MCC. The Commission finds that the Applicants could have anticipated that Devon's employees and customers would be interested as well.

9. The Commission restates the relevant purported facts as follows:

a. Havre Pipeline is a public utility regulated by this Commission. Havre Pipeline owns and operates a natural gas pipeline system traversing Hill, Blaine, and Choteau counties, Montana.

b. Havre Pipeline is managed by Devon Energy Production Company, L.P., an affiliate of Devon.

c. Devon owns an 82.2% membership interest in Havre Pipeline. Devon is not a public utility.

d. NorthWestern is a public utility regulated by this Commission. NorthWestern is the primary electric and natural gas utility in Montana.

e. On May 23, 2013, Devon and NorthWestern entered into an agreement whereby Devon will sell its 82.2% membership interest in Havre Pipeline to NorthWestern.

f. The Applicants state that the transaction will have no impact on Havre Pipeline's continued operations. Pt.'s App.¶ 6 (July 30, 2013).

g. Havre Pipeline will continue to provide the same services pursuant to the rules and regulations set by this Commission, and will continue to be a regulated utility. Pt.'s App.¶ 6 (July 30, 2013).

10. The Commission restates the Applicants relevant assertions of law as follows:

a. Title 69 does not address whether Commission approval is required for the transaction between Devon and NorthWestern, because

Devon is an unregulated entity and because Havre Pipeline is not selling any utility assets. Pt.'s App.¶ 7 (July 30, 2013).

b. The Commission has previously acknowledged that it does not have explicit statutory jurisdiction over the sales of public utilities. Pt.'s App.¶ 8 (July 30, 2013).

c. Neither the Montana Legislature nor any Montana Court has established that the Commission possesses the implicit authority over sales and transfers of utilities that it claims. Pt.'s App.¶ 8 (July 30, 2013).

d. The Commission has never been presented with facts similar to those in this docket, specifically, the transfer by an unregulated corporation of a partial ownership interest in a regulated public utility to another regulated public utility. Pt.'s App.¶ 8 (July 30, 2013).

e. The Applicants do not believe the Commission has jurisdiction over the sale of Havre Pipeline by Devon to NorthWestern. Pt.'s App.¶ 6 (July 30, 2013).

11. The Commission is not required to issue a declaratory ruling, but if it declines to do so it must provide a statement of reasons. Order No. 6017a at ¶ 15, *In the Matter of the Complaint by Colstrip Energy Limited Partnership against the Montana Power Co.*, Docket No. D97.7.127 (December 16, 1997), citing Mont. Code Ann. § 2-4-501 and Admin. R. Mont. 1.3.228(2). "The criteria for deciding whether to issue a declaratory ruling are not defined precisely in Montana law; but the Commission believes it has considerable flexibility, taking into account the underlying purpose for declaratory rulings and sound administrative practice, when deciding whether to issue a declaratory ruling." *Id*.

12. The Commission has been granted express authority to supervise, regulate, and control public utilities. Mont. Code Ann. § 69-3-102. Implicit in this grant of authority is the Commission's power to exercise authority over mergers, sales, and transfers of regulated utilities and utility property. The Commission has a long history of asserting this implied power. Because the Commission may "do all things necessary and convenient" in order to exercise the authority conferred by section 69-3-102, the Commission interprets the statute as bestowing implied authority to review and approve mergers, sales, and transfers of regulated utilities. Mont. Code Ann. § 69-3-103.

13. The Montana Supreme Court has stated that "an administrative agency's interpretation of a statute under its domain is presumed to be controlling," and "the construction of a statute by the agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong." *Christenot v. State*, 272 Mont. 396, 401, 901 P.2d 545 (September 7, 1995). Here the Commission's construction controls in the absence of compelling indications to the contrary. The Commission's longstanding past practices and specific power to "do all things necessary and convenient" support the Commission's interpretation that it has the implied ability to exercise authority of mergers, sales, and transfers.

14. The Commission has, in an abundance of previous dockets, exercised its authority over mergers, sales, and transfers of utilities and utility property. See Order No. 7149c at ¶ 19, *In the Matter of the Consolidated Petition by Mountain Water Company for Declaratory Rulings and Application for Approval of Sale and Transfer of Stock in Park Water Company*, Docket No. D2011.1.8 (September 14, 2011). The Montana Supreme Court has found that a utility may not abandon service without the Commission's consent. *Great Northern Ry. v. Board of R.R. Comm'rs*, 130 Mont. 250, 252, 298 P.2d 1093 (May 10, 1956). This Commission has asserted in the past, and reaffirms now, that the transfer of a utility's assets is a cessation or abandonment of service. Order No. 7149c at ¶ 20, *In the Matter of the Consolidated Petition by Mountain Water Company for Declaratory Rulings and Application for Approval of Sale and Transfer of Stock in Park Water Company*, Docket No. D2011.1.8 (September 14, 2011).

15. This Commission employs three standards when reviewing transfers and sales of public utilities. These standards include: the public interest standard, the no-harm to consumers standard, or the net-benefit to consumers standard. Order No. 6754e at ¶ 20, *In the Matter of the Joint Application of NorthWestern Corp. and Babcock & Brown Infrastructure Limited*, Docket No. D2006.6.82 (August 1, 2007).

16. The Applicants argued that the transaction between Devon and NorthWestern will have no impact on Havre Pipeline's continued operations. Pt.'s App.¶ 6 (July 30, 2013). The Applicants also stated that the Commission has never been presented with a similar transaction. Pt.'s App.¶ 8 (July 30, 2013). However, this Commission asserts that the above entitled docket is similar to the many dockets involving mergers, sales, and transfers that the Commission has reviewed.

17. In 2011, Mountain Water Company requested a declaratory ruling, arguing that because the transaction at hand involved the sale of the parent company's stock, as opposed to Mountain Water Company's stocks or assets, the Commission lacked jurisdiction. *In the Matter of the Consolidated Petition by Mountain Water Company for Declaratory Rulings and Application for Approval of Sale and Transfer of Stock in Park Water Company*, Docket No. D2011.1.8 (September 14, 2011). The Commission did not find this argument persuasive and asserted jurisdiction over the transaction.

18. The sale and transfer of ownership interest in Havre Pipeline from Devon to NorthWestern results in a change in control of Havre Pipeline, a regulated utility within the Commission's jurisdiction. Changes in Havre Pipeline operations will directly impact consumers, employees, and the community at large. Havre Pipeline could be significantly impacted by this transaction.

19. The Commission's authority over sale and transfers of assets or utilities can be inferred from the unique status of public utilities. Public utilities are subject to regulation because they have a duty to provide reasonably adequate service and facilities while charging just and reasonable rates. Mont. Code Ann. §

69-3-201. Regulation is necessary to ensure that this duty is carried out. The Montana Supreme Court made this clear in *Great Northern Utils. Co. v. Public Serv. Comm'n*, 88 Mont. 180, 205, 293 P.294 (May 9, 1930). The Montana Supreme Court's interpretation is in keeping with that of the United States Supreme Court, which has stated that "when the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use." *Munn v. Illinois*, 94 U.S. 113, 126 (1877). This Commission endeavors to follow this longstanding principle.

20. The Commission also derives authority over mergers, sales, and transfers from multiple sections of the Montana Code Annotated, which grant the Commission jurisdiction to receive a complaint or to initiate a complaint. Section 69-3-321 states:

> "The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made."

21. The Montana Code Annotated allows the Commission to receive a complaint, or initiate a complaint on its own motion, regarding the acts or practices of public utilities that affect utility service. Montana Code Annotated § 69-3-330(3) states that in order to respond to complaints the Commission may "substitute therefor other regulations, measurements, practices, services, or acts and make such order relating thereto as is just and reasonable." The sale or transfer of a utility or its assets is clearly an act or practice by a utility. The Commission has the ability to investigate, hold a hearing on, and respond to such acts, as implied from the statute.

22. "Pursuant to its authority, the Commission has jurisdiction over and must approve any sale or transfer of a public utility, its assets, or utility obligations in order to assure generally that utility customers will receive adequate service and facilities, that utility rates will not increase as a result of the sale or transfer, and that the acquiring entity is fit, willing, and able to assume the service responsibilities of a public utility." Order No. 6907b at ¶ 6, *In the Matter of the Joint Application of Energy West Incorporated and Cut Bank Gas Company*, Docket No. D2008.3.27 (November 2, 2009). The jurisdiction of the Commission over the sale and transfer of Devon's ownership interest in Havre Pipeline to NorthWestern is based on Havre Pipeline's status as a regulated utility.

23. The proper subject of a declaratory ruling is the applicability of any statutory provision, rule, or of any rule or order of the agency. Mont. Code Ann. § 2-4-501. An agency decision to not exercise jurisdiction is not within the statutory area for declaratory rulings.

Conclusions of Law

The Commission may deny a petition for a declaratory ruling. Mont. Code Ann. § 2-4-501, Admin. R. Mont. 1.3.228.

Order

For the reasons stated above, the Commission declines to issue a declaratory ruling as requested by Applicants Devon and Havre Pipeline.

DONE AND DATED this 29th day of October, 2013, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/W.A. (BILL) GALLAGHER
W.A. (BILL) GALLAGHER
Chairman

/s/BOB LAKE
BOB LAKE
Vice Chair

/s/ KIRK BUSHMAN
KIRK BUSHMAN
Commissioner

/s/TRAVIS KAVULLA
TRAVIS KAVULLA
Commissioner

/s/ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

NOTE: Petitioner has the right to appeal the decision of this agency by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to §16-4-411, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 4th day of November 2013, a true and correct copy of the foregoing has been serviced by placing the same in the United States Mail, postage prepaid, to the service list in the PSC's master file which can be viewed at 1701 Prospect Avenue, Helena, MT 59601.

/s/Aleisha Solem
PSC Paralegal-Commission Secretary

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 June 30, 2013. This table includes those rules adopted during the period July 1, 2013, through September 30, 2013, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2013, 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 2013 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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