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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.1612, 17.50.1617, 17.50.1618, 17.55.109, 17.56.507, and 17.56.608 pertaining to adoption by reference the most current version of the Montana Risk-Based Corrective Action (RBCA) guidance for Petroleum Releases	)	NOTICE OF PROPOSED AMENDMENT (WASTE MANAGEMENT) (REMEDIATION) (PETROLEUM TANKS) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 18, 2019, the Department of Environmental Quality (department) proposes to amend the above-stated rules.

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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.50.1612 ANALYTICAL METHODS (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) as the analytical methodology landfarms must utilize and Table 1 of the Montana Risk-based Corrective Action Guidance for Petroleum Release as the standards for compliance with remediation requirements outlined in ARM 17.50.1617. A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) may be obtained at http://deq.mt.gov/Land/lust or by contacting MDEQ at P.O. Box 200901, Helena, MT 59620-0901 or 1 (406) 444-6435.

(2) remains the same.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules.

17.50.1617 LANDFARM FACILITY REMEDIATION STANDARDS

(1) Contaminated soils are considered remediated when:

(a) contaminant concentrations listed in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~September 2016~~ May 2018) are permanently reduced to the residential RSBL concentrations.

(2) and (3) remain the same.

(4) The owner or operator of a landfarm facility may not supply or use soils for any purpose exceeding the contaminant concentrations specified in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~September 2016~~ May 2018).

(5) remains the same.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules.

17.50.1618 CLOSURE PLAN (1) For purposes of closure of a landfarm facility, the owner or operator of a landfarm facility shall submit a closure plan that documents the following:

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

(iii) all contaminated soils were remediated to Table 1 residential RSBL concentrations in the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~September 2016~~ May 2018) and are capable of supporting native vegetation;

(d) through (3) remain the same.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing to amend ARM 17.55.109, 17.56.507, and 17.56.608 to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. In the event these administrative rules are amended to adopt and incorporate by reference the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018), it is necessary to update the edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases cited elsewhere in the rules. See the reason statement for ARM 17.50.1612 above.

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain the same.

(c) Montana ~~Tier 1~~ Risk-based Corrective Action Guidance for Petroleum Releases (~~September 2009~~ May 2018);

(d) U.S. Environmental Protection Agency, Regional Screening Level~~s for Chemical Contaminants at Superfund Sites~~ (RSL) Tables (November ~~2013~~ 2018), except when:

(i) through (5) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: In (1)(c), the department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases. The department conducts periodic reviews of the Montana Risk-based Corrective Action Guidance for Petroleum Releases to determine if changes to methods and toxicity information warrant updating the guidance. In addition to editorial and other minor changes, the following updates were made in the May 2018 edition:

1. Updated toxicity values for benzo(a)pyrene and the other carcinogenic polycyclic aromatic hydrocarbons (PAHs) with toxicity relative to benzo(a) pyrene used to calculate direct contact risk-based screening levels (EPA 2017).
2. Updated groundwater risk-based screening levels to reflect updated Circular DEQ-7 human health standards (DEQ 2017).
3. Updated risk-based screening levels based on leaching to groundwater to protect 2017 DEQ-7 human health standards.
4. Clarifying language regarding Tier 2 procedures.
5. The 2018 Risk-based screening levels for soil and water were not updated to be protective of risks posed by a vapor intrusion (VI) pathway. In 2016, the department added some discussion related to vapor intrusion and included a description of its Air Phase Hydrocarbon (APH) Calculator. However, if volatile compounds are present in the vicinity of habitable structures, then the vapor intrusion pathway should be evaluated either qualitatively or quantitatively using the Montana Vapor Intrusion Guide (DEQ, 2011). In addition, the department completed a study and published a report called Typical Indoor Air Concentrations of Volatile Organic Compounds in Non-Smoking Montana Residences Not Impacted by VI

(DEQ, 2012). These vapor intrusion documents are guidance and are not considered regulation. The department has not adopted the EPA Petroleum Vapor Intrusion Guidance or the EPA Vapor Intrusion Screening Level Calculator.

A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018) may be obtained by contacting Aimee Reynolds at (406) 444-6435. A copy of the document also has been posted on the department's website at http://deq.mt.gov/Land/lust.

In addition, the department is proposing to amend (1)(c) to correct the title of the document being incorporated by reference. The term "Tier 1" was removed in the most recent update.

In (1)(d), the department is proposing to adopt and incorporate by reference the most recent edition of the Tables set forth in the U.S. Environmental Protection Agency, Regional Screening Levels (RSL) for Chemical Contaminants at Superfund Sites (November 2018) to provide the most current screening levels to protect human health and the environment. Superfund sites are addressed under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) OF 1980, which was amended by the 1986 Superfund Amendments and Reauthorization Act. RSLs provide a screening level calculation tool to assist risk assessors, remedial project managers, and others involved with risk assessment and decision-making at CERCLA sites in developing or refining screening levels.

A copy of the U.S. Environmental Protection Agency Regional Screening Level Tables for Chemical Contaminants at Superfund Sites (November 2018) may be obtained by contacting Aimee Reynolds at (406) 444-6435. A copy of the document has also been posted on EPA's website at https://www.epa.gov/risk/regional-screening-levels-rsls.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~September 2016~~ May 2018);

(c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Table~~s~~ (~~May 2016~~ November 2018); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, which was issued in May of 2018. The department is also proposing to adopt by reference the most recent edition of the Tables set forth in U.S. Environmental Protection Agency, Regional Screening Level (RSL), which was issued in November 2018. See the statement of reasonable necessity for ARM 17.55.109.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain the same.

(c) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~September 2016~~ May 2018); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to adopt and incorporate by reference the most recent edition of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, which was issued in May of 2018. See the statement of reasonable necessity for ARM 17.55.109.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., January 11, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed amendment 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 Sandy Scherer at the above address no later than 5:00 p.m., January 11, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. If the department 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 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 persons directly affected has been determined to be one based on no persons being affected by the proposed amendment.

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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems

regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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 impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: */s/ Shaun McGrath*
SHAUN McGRATH
Director

Certified to the Secretary of State, December 11, 2018.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.744 and adoption of New Rules I through IX implementing a registration system for certain facilities that currently require a Montana air quality permit	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. On January 23, 2019, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 45 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board of Environmental Review (board) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 16, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

<u>17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS</u>

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) through (l) remain the same.

(m) any facility that has been registered with the department in accordance with ARM Title 17, chapter 8, subchapter 17 <u>or 18</u>.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

<u>REASON:</u> The board is proposing to amend an existing rule and adopt new rules to implement a registration system for certain facilities that currently require a Montana air quality permit. The facilities proposed to be included in the new registration system include nonmetallic mineral processing plants (commonly known as crushing and screening operations), asphalt plants, and concrete batch plants. These sources are often considered portable based on their ability to move locations and will be referred to as "portable sources." Currently, with specified exemptions, the administrative rules adopted under the Clean Air Act of Montana require the owner or operator of a source of air pollution that meets certain criteria to obtain a

permit prior to construction or operation. Section 75-2-234, MCA, authorizes the board to adopt a registration system in lieu of permitting.

The proposed new rules would provide a system for the owner or operator of a portable source facility to register with the department in lieu of submitting a permit application and obtaining a permit. The owner or operator of a registered facility still would be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities would still be required to follow rules of operation that are similar to current permit conditions. These rules of operation would include emission limitations, air pollution control equipment installation and operation requirements, and requirements for testing, monitoring, and reporting. The proposed rules of operation are consistent with what is required at facilities across the state and, as such, are considered reasonable. Should more stringent, cost-effective technologies become widely available, the board could consider initiating a process to update the rules. The owner or operator of a registered facility still would be required to comply with any other applicable requirements.

Registration in lieu of permitting is appropriate for source categories in which there are a large number of homogeneous sources subject to identical requirements and for which there is no substantial benefit from individual permitting. For these homogeneous facilities, the permit conditions and environmental impacts vary little from facility to facility. The facilities proposed to be included in this registration system fit into this category of sources. Implementing a registration system would allow the department to use air program staff more efficiently and focus on major source permitting issues and compliance assistance in the field.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Asphalt plant" means a facility used to manufacture asphalt by heating and drying aggregate and mixing it with asphalt cement.

(2) "Concrete batch plant" means a facility that combines various ingredients, such as sand, water, aggregate, fly ash, potash, cement, and cement additives, to form concrete.

(3) "Deregister" means to revoke a registration.

(4) "Drop point" means a location at which air emissions are generated from the transfer of materials, such as loading raw materials into a hopper or transferring materials between conveyers.

(5) "Dust suppression control" means the use of water, water spray bars, chemical dust suppression, wind fences, enclosures, or other dust control techniques.

(6) "Facility" means any real or personal property that is either portable or stationary and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Nonmetallic mineral" has the meaning given in 40 CFR Part 60, subpart OOO.

(8) "Nonmetallic mineral processing plant" means a facility consisting of equipment that is used to crush, grind, or screen nonmetallic minerals and associated material-handling equipment and transfer points. The term does not include facilities in underground mines or at other stationary sources subject to Montana air quality permitting.

(9) "Permanent location" means a physical location at which a registered facility may remain or does remain for more than 12 months.

(10) "Registered facility" means a facility that has been registered in accordance with this subchapter.

(11) "Registration" means the submission to the department of the completed registration notification under [NEW RULE III].

(12) "Temporary location" means a physical location at which a registered facility remains for no more than 12 months.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule I is necessary to define terms that are used by the new rules and not defined elsewhere in ARM Title 17, chapter 8.

Section (3) defines "deregister" to provide that the process to remove authorization to operate as a registered facility is the same process used elsewhere to remove authorization to operate under an air quality permit. "Revoke" is used in statute to describe this process for permitted facilities and, for the purposes of this subchapter, "deregister" is defined as having the same meaning.

In (5), the term "dust suppression control" is defined to include a range of possible dust control methods, including the use of water applied by a spray bar or other application method, or chemical dust suppression if application of water is not feasible.

Section (6) carries forward the definition of "facility" that currently exists in ARM Title 17, chapter 8, subchapter 7. Because these new rules would replace the permitting requirements in subchapter 7 for specific sources of air pollution, it is reasonable to use the same word to describe the regulated unit, a "facility," as that is used in the rules for the existing permitting program.

Section (8) defines "nonmetallic mineral processing plant" to exclude from regulation under this subchapter facilities located at underground mines or other stationary sources subject to Montana air quality permitting. Those types of facilities are included in the permits for the stationary sources with which they are associated and should not be eligible for registration as separate sources.

Sections (9) and (12) define the terms "permanent location" and "temporary location" to distinguish between two types of locations at which a facility may operate. This is important for the specific types of facilities subject to these new rules because of their tendency to be portable and move around the state, as well as out of the state, from job site to job site. The key difference between a permanent and temporary location, as defined, is whether the facility remains, meaning equipment is present but not necessarily operating, at the location for more than 12

months. The reason the definition of "permanent location" is permissive is to allow an owner or operator to identify a location as being permanent, and comply with the requirements applicable at permanent locations, before the facility has actually remained at the location for more than 12 months. No facility may remain at a temporary location for longer than 12 months.

In (11), the term "registration" is defined to include the submission of required information to the department.

NEW RULE II APPLICABILITY (1) This subchapter applies to the following facilities:

(a) Nonmetallic mineral processing plants with annual production of less than 8,000,000 tons as a rolling 12-month total.

(b) Concrete batch plants with annual production of less than 1,000,000 cubic yards as a rolling 12-month total.

(c) Asphalt plants that:

(i) combust natural gas, propane, distillate fuel, waste oil, diesel, or biodiesel; and

(ii) have annual production of less than:

(A) 996,000 tons as a rolling 12-month total for drum mix plants; or

(B) 324,000 tons as a rolling 12-month total for batch mix plants.

(d) Engines, such as power generators and other internal combustion engines, associated with any facility described in (a) through (c).

(2) An owner or operator of a facility that is not listed in (1) shall comply with the applicable application and permitting requirements of this chapter.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule II is necessary to describe the facilities that are eligible for registration. The eligibility of the facilities described in (1)(a) through (c) is based on annual production levels. The annual production levels were calculated as surrogates for emission limits using federal emission factors for the specific types of processes included in each source category. The emission factors come from the U.S. Environmental Protection Agency's Compilation of Air Pollutant Emission Factors (AP-42). Using the appropriate emission factors, the production limits were set at levels that ensure that no major stationary source, as defined in ARM Title 17, chapter 8, subchapters 8, 9, or 10, would be eligible to register under this subchapter. For each type of facility, the production levels equate to maximum mass emissions below major source thresholds. The reason for limiting registration-eligible facilities to below major source thresholds is that the simplified analysis associated with registration is not appropriate for major sources, which may have emissions and environmental impacts that differ from facility to facility and which therefore require case-specific impact analysis.

For nonmetallic mineral processing plants, particulate matter with an aerodynamic diameter of 10 microns or less (PM-10) is the primary pollutant of concern. The annual production limit of 8,000,000 tons as a rolling 12-month total results in maximum mass emissions of PM-10 of less than 63 tons per year from any

single facility. A facility emitting 100 tons per year of PM-10 would trigger additional permitting requirements as a major stationary source.

For concrete batch plants, PM-10 is also the primary pollutant of concern. The annual production limit of 1,000,000 cubic yards as a rolling 12-month total results in maximum mass emissions of less than 12 tons of PM-10 per year from any single facility.

For asphalt plants, carbon monoxide (CO) is the primary pollutant of concern because the majority of emissions from this source category results from fuel combustion. CO emissions differ depending on the type of fuel that is burned. The annual production limits account for a variety of the most common fuel types, which are listed in (1)(c)(i). The asphalt plants using fuel types not listed in this rule would require case-by-case permitting and would not be eligible for registration. In Montana, most of the permitted asphalt plants are drum mix plants. However, because the CO emission factors differ greatly between drum mix plants and batch mix plants, it is necessary to include two production limits. Each annual production limit results in maximum mass emissions of about 66 tons of CO per year from any single facility. A facility emitting 100 tons per year of CO would trigger additional permitting requirements as a major stationary source. This limit is low enough to allow for additional combustion emissions from associated generator engines, which often locate with portable equipment, and still result in a facility not exceeding major source limits.

A generator engine or other nonroad internal combustion engine used in association with one of the other three eligible source categories would also be eligible for registration. The facilities subject to this subchapter often operate at locations without line power and must therefore sometimes be powered using generator engines or other similar engines that are designed to be moved from one location to another. The engines to which the new rules apply are those associated with a listed type of registration-eligible facility, and not engines used as part of any facility not covered by this subchapter. Engine operating limits are discussed in New Rule V.

Section (2) is necessary to emphasize that a facility exceeding the annual production described in (1) is not eligible for registration and would be required to follow the existing permitting process in ARM Title 17, chapter 8 for a Montana air quality permit. The additional scrutiny provided by existing case-by-case permitting is more appropriate than registration for major sources of emissions.

Preparation of an environmental assessment for registration of a facility is not necessary as long as the facility meets the applicability criteria. Facilities meeting the applicability criteria will not have a significant environmental impact. The department has made this determination through preparation of a programmatic environmental assessment. See paragraph 5 immediately following the statement of reasonable necessity for proposed New Rule IX.

NEW RULE III REGISTRATION PROCESS AND INFORMATION

(1) Except as provided in (3), the owner or operator of a facility that meets the applicability criteria of [NEW RULE II] and that commences operation after [the effective date of this rule] shall:

(a) register the facility with the department prior to beginning initial operations; or

(b) register the facility with the department and request revocation of the associated Montana air quality permit (MAQP), if the owner or operator holds a valid MAQP for the facility.

(2) Except as provided in (3), the owner or operator of a facility that meets the applicability criteria of [NEW RULE II] and that commenced operation prior to [the effective date of this rule] shall:

(a) register the facility with the department no later than December 31, 2019; and

(b) request revocation of the associated MAQP, if the owner or operator holds a valid MAQP for the facility.

(3) An engine that meets the applicability criteria of [NEW RULE II] is exempt from the registration requirement if the engine will be located at temporary locations only.

(4) To register, the owner or operator shall submit a complete registration notification to the department on the form provided by the department. The notification information must include the following:

(a) Company name and mailing address;

(b) Owner or operator's name, mailing address, telephone number, and email address;

(c) Contact person's name, mailing address, telephone number, and email address;

(d) Physical location(s) of known permanent location(s), initial temporary location(s) if no permanent location is proposed, or business location if no in-state location of operation has been identified (legal description to the nearest 1/4 section);

(e) Physical location(s) of each permanent or temporary location not included in (d) of an existing facility for which the owner or operator holds a valid MAQP;

(f) Equipment-specific information, as applicable, including:

(i) Unit type;

(ii) Manufacturer's name;

(iii) Date of manufacture; and

(iv) Horsepower.

(g) Acknowledgement of the owner or operator's duty to comply with this subchapter;

(h) Other information required by the department.

(5) A facility is considered registered upon the department's receipt of the notification required in (4).

(6) Within 15 calendar days after registration, the department shall publish acknowledgment of the registration on the department's website at http://deq.mt.gov/Air/PublicEngagement.

(7) An owner or operator of a registered facility may not operate for the first 15 calendar days following the date of registration, unless the owner or operator holds a valid MAQP for the facility at the time of registration. Registration does not supersede any other local, state, or federal requirements associated with the operation of registered facilities.

(8) An owner or operator of a registered facility shall provide notification to the department, in a manner prescribed by the department, of any change(s) to the equipment-specific information required in (4)(f) by March 15th of each calendar year.

(9) If the owner or operator of a registered facility changes, the new owner or operator shall, prior to operating the facility, register with the department by submitting the notification required in (4).

(10) An owner or operator of a registered facility shall update the registration information by submitting notification to the department, in a manner prescribed by the department, to identify a location as a permanent location in advance of remaining at the location for longer than 12 months.

(11) Registration under this subchapter is valid provided the registered facility continues to meet the applicability criteria in [NEW RULE II].

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule III is necessary to describe when and how an owner or operator must register with the department. Section (1) applies to any registration-eligible facility that begins operation after these rules become effective. Any registration-eligible facility that is not already permitted by the department must be registered prior to beginning initial operations. If the owner or operator has already obtained a Montana air quality permit for the facility and the facility is eligible to register under New Rule II, the owner or operator must register the facility and request revocation of the permit at the time of registration. The purpose of this provision is to ensure that all facilities meeting the applicability criteria in New Rule II register in lieu of permitting. Registration of eligible facilities is mandatory. Only facilities that are not registration-eligible would be allowed to obtain a Montana air quality permit. This is reasonably necessary to allow the department to appropriately streamline the registration of homogeneous types of facilities.

Section (2) establishes a deadline of December 31, 2019, for registration of facilities in operation prior to the effective date of these rules. It may not be feasible for the owners and operators of existing facilities to immediately register upon adoption of these rules. Existing facilities with valid Montana air quality permits that are registration-eligible must also request revocation of the permit by the same deadline. The reason is the same as for (1).

Section (3) provides an exception to the registration requirement for engines that are otherwise eligible for registration but that will not be located at a permanent location. Power generators and the other nonroad engines at facilities regulated under this subchapter are sources of emissions that are generally considered to be mobile because they can be transported from one location to another. Mobile emitting units, including the nonroad engines listed in New Rule II, are generally excluded from the permitting requirements of this chapter. See ARM 17.8.744(1)(b). Therefore, it is reasonable to exclude such engines from the requirement to register. However, under Title 40, C.F.R. 89.2, internal combustion engines that would otherwise be considered nonroad engines are no longer considered mobile when they remain at a location for longer than 12 consecutive months. Therefore, these

engines would no longer qualify for the mobile emitting unit exclusion from permitting requirements if they remain at a location for longer than 12 months. Similarly, it is reasonable to require that they be registered under the proposed new rules if they remain at a location for longer than 12 months. Owners and operators of engines eligible for registration are required to request revocation of any existing MAQPs. The reason is the same as for (1).

Section (4) is necessary to list the information an owner or operator is required to provide to register a facility. A registration notification that is missing any of the listed information would be considered incomplete.

Sections (5), (6), and (7) prohibit operation of a registered facility for 15 days following the date of registration. The purpose of this delay is to allow time for the department to publish notification of the registration on the department's website and to determine if the registration notification submitted by the owner or operator contains complete information.

Section (8) requires the owner or operator of a registered facility to submit any changes to the required equipment-specific registration information no later than March 15 of each calendar year. Possible changes to the equipment-specific information include the addition or removal of emitting units from the list of registered equipment. Although changes must be submitted at least once per year, there is no limit on the number of times an owner or operator may submit changes to the registration. The purpose of requiring submission of the changes is to keep equipment-specific registration information current.

Section (9) is necessary to keep information identifying the entity that owns or operates registered facilities current.

Section (10) is reasonably necessary to provide a process by which an owner or operator may add or remove permanent locations included in the registration information.

Section (11) is reasonably necessary because registered facilities might change production levels or equipment in such a manner that the facility would no longer be eligible to operate as a registered facility under this subchapter.

NEW RULE IV GENERAL OPERATING REQUIREMENTS (1) Registration of a facility under this subchapter does not relieve an owner or operator of the responsibility to comply with:

(a) applicable federal, state, or local statutes, rules, or orders; and

(b) control strategies contained in the Montana State Implementation Plan.

(2) The department may require an owner or operator to conduct a test, emission or ambient, under ARM 17.8.105. Emission source testing must comply with ARM 17.8.106.

(3) An owner or operator of a facility required to be registered under this subchapter:

(a) shall install, operate, and maintain all equipment to provide the maximum air pollution control for which it was designed;

(b) shall employ dust suppression control that is installed, maintained, and operated to ensure that the facility complies with this chapter. Dust suppression control for crushing, screening, and/or conveyor transfer points consisting of water spray bars and/or chemical dust suppression must be operating if any visible

emissions equal to or greater than 10 percent opacity averaged over six consecutive minutes are present;

(c) shall allow the department's representatives access to the operations at any facility at all reasonable times to inspect or conduct surveys, collect samples, obtain data, audit any monitoring equipment or observe any monitoring or testing, and otherwise conduct all necessary functions related to the administration of this chapter; and

(d) may not operate an engine that is subject to the requirements of this subchapter at any permanent location when the combined horsepower hours of those sources exceed the following limits:

(i) 6,000,000 horsepower-hours per rolling 12-month period; or

(ii) 3,500,000 horsepower-hours per rolling 12-month period, if an asphalt plant is also located at the permanent location.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule IV is necessary to provide general requirements for facilities that are eligible to be registered under this subchapter. Other federal, state, or local regulations and provisions of the Montana State Implementation Plan may be applicable to the registration-eligible facility. For example, subchapter 3 of this chapter contains opacity limitations and incorporates federal New Source Performance Standards, both of which will continue to apply to registration-eligible facilities. Section (1) is necessary to inform an owner or operator that registration of a facility under this subchapter does not affect the duty of that entity to comply with these other applicable requirements.

Section (2) is necessary to inform an owner or operator that facilities eligible to be registered under this subchapter are still subject to the testing requirements in ARM 17.8.105. The required testing may include source tests specifically required under a Federal New Source Performance Standard. Because some of the facilities that would be subject to this subchapter are required to conduct specific testing, the board believes it appropriate to include this reference even though ARM 17.8.105 and 17.8.106 apply to such sources regardless of whether those rules are incorporated here.

Subsection (3)(a) is necessary to ensure that the owner or operator installs, operates, and maintains all equipment to achieve the maximum pollution control for which the equipment was designed. The purpose of this rule is to require good operating and maintenance practices, which will result in decreased emissions.

Subsection (3)(b) is necessary to establish the required level of dust suppression for facilities required to register under this subchapter. Because different types of facilities are subject to different opacity limits, this rule requires that the owner or operator use a dust suppression technique that is sufficient to comply with the limits applicable to that facility.

For crushing, screening, and conveyor transfer points, (3)(b) requires the use of water spray bars and/or chemical dust suppression if visible emissions have an opacity of greater than 10 percent. It is necessary that owners and operators of these types of facilities not only have available but operate such dust suppression to

ensure that the facility complies with applicable opacity limits. Depending on the applicable limit, the facility may be allowed to have emissions with opacity greater than 10 percent, but the controls must be operating whenever opacity exceeds 10 percent.

Subsection (3)(c) requires that the owner or operator provide department representatives access to the plant site at reasonable times so the department can conduct necessary site inspections, monitoring, observations, and/or data collection. This will allow the department to perform its functions and subject an owner or operator that did not allow access to compliance or enforcement actions.

Subsection (3)(d) establishes limits on the operation of registration-eligible engines at permanent locations. These operating limits are necessary to limit the emissions from such engines at locations where they would be considered stationary sources. No limits would apply at temporary locations, where these sources would be considered mobile, because mobile sources are not subject to the permitting requirements of this chapter. The horsepower-hour limits ensure that the additional emissions produced by engines do not create a major source, as defined in ARM Title 17, chapter 8, subchapters 8, 9, or 10, when added to the emissions from other associated emitting units at the facility. The reason for this requirement is the same as for New Rules II and III(1).

NEW RULE V NOTICE OF LOCATION (1) Unless the owner or operator of a facility required to be registered under this subchapter has previously submitted the location of a facility under [NEW RULE III](4), the owner or operator shall submit to the department a notice of location for each facility, on a form provided by the department. The owner or operator shall submit the form at least 15 calendar days before commencing operation of the facility.

(2) If there is more than one type of facility listed in [NEW RULE II] at the same location, the owner or operator shall submit a notice of location for each facility type.

(3) Upon receipt of a complete notice of location, the department shall publish notification on the department's website at http://deq.mt.gov/Air/PublicEngagement.

(4) The owner or operator shall confirm the location, in a manner prescribed by the department, within 10 calendar days after commencing operation at the location.

(5) The owner or operator shall notify the department, in a manner prescribed by the department, within 10 calendar days after removing all equipment of a single type from the location. Following such notification, the owner or operator shall comply with (1) through (4) prior to operating equipment of that type at the location again.

(6) An owner or operator may transfer equipment between any locations that have been identified under (1) and (2), unless the owner or operator has notified the department under (5) that all equipment of the same type has been removed from the location.

(7) A registered facility may not remain at a temporary location for more than twelve months. Before twelve months have elapsed, the owner or operator of the registered facility shall either:

(a) remove all equipment from the temporary location, according to the applicable requirements in this rule; or

(b) register the location as a permanent location.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule V is necessary to describe the process an owner or operator or a registered facility must follow to provide notice of all locations of operation. This process is necessary because the facilities that are eligible to register under this subchapter are portable and may be relocated. It is the board's intent that the public and the department be informed, in advance, of all locations at which registered facilities may operate.

Section (1) requires that the owner or operator submit a notice of location to the department for each registered facility at least 15 days prior to operating that facility. This is necessary to ensure that the department has advance notice of each potential location of operation. The advance notice allows the department to notify interested parties and the public and raise any concerns that may exist regarding a specific location. Advance notice would be considered to have been given for locations the owner or operator provided to the department with the registration notification under New Rule III(4). Therefore, additional notice for such locations would not be required under this section.

Section (2) requires that the owner or operator of a registered facility notify the department of the locations where each type of registered facility may operate. This is necessary because the different types of registered facilities have different emission profiles and different operating requirements. The department must be able to keep accurate records of the locations of different types of emissions to ensure areas continue to meet the emission standards in the federal Clean Air Act and the Clean Air Act of Montana and implementing rules.

Section (3) requires the department to publish notification on its website of all complete notices of location. This is necessary to notify interested parties and the public of the possibility that sources of emissions may locate at a particular site. The website publication would also confirm to the owner or operator that the department had received the appropriate location notice.

Section (4) requires that the owner or operator of a registered facility provide confirmation of a location within ten days after beginning to operate at that location. This is necessary because the owners and operators of the facilities eligible to register under this subchapter may submit multiple potential locations to the department in advance of deciding where the equipment will actually be located. Section (5) requires the owner or operator to notify the department within ten days after removing all equipment of a single type from the location. The notices in (4) and (5) are necessary to ensure the department maintains an accurate record of the locations at which each type of registered facility is operating. Such a record is reasonably necessary for the department to efficiently perform required site visits and compliance checks, appropriately respond to complaints, and ensure compliance with emission standards.

Section (6) provides that an owner or operator may move equipment between locations if the owner or operator has identified the locations under (1) and (2). This clarification is necessary because the process in this subchapter differs from the process required under ARM Title 17, chapter 8, subchapter 7. For facilities registered under this subchapter, the owner or operator is not required to submit additional notification to move equipment between previously identified locations.

Section (7) prohibits a registered facility from remaining at a temporary location for longer than twelve months and establishes the options for an owner or operator if equipment has been at a temporary location for twelve months. It is necessary for the owner or operator to either remove equipment from a temporary location or identify the location as a permanent location before twelve months have elapsed because the requirements for registration-eligible engines differ depending on whether the engine is located at a permanent or temporary location.

NEW RULE VI DEREGISTRATION (1) The department may deregister a facility:

(a) on written request of the owner or operator, or

(b) for a violation of this chapter.

(2) To deregister a facility under (1)(b), the department shall notify the owner or operator in writing of its intent to deregister by certified mail, return receipt requested, to the owner or operator's last known address. The department shall advise the owner or operator of the right to request a hearing before the board under 75-2-211, MCA.

(3) If the department does not receive a return receipt for the notice of intent to deregister in (2), the department may give notice to the owner or operator by publishing the notice of intent to deregister. The publication must occur once each week for three consecutive weeks in a newspaper published in the county where the owner or operator's mailing address set forth in the registration is located. If no newspaper is published in that county, then the notice may be published in a newspaper having a general circulation in that county.

(4) When the department has published notice under (3), the owner or operator is deemed to have received the notice on the date the last notice was published.

(5) A hearing request must be in writing and must be filed with the board within 15 days after receipt of the department's notice of intent to deregister. Filing a hearing request postpones the effective date of the department's decision until issuance of a final decision by the board.

(6) If no hearing request is filed, the department's decision to deregister a facility is final when 15 days have elapsed from the date the owner or operator received notice.

(7) A hearing under this subchapter is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule VI is necessary to provide the department the authority to deregister a facility, either at the request of the registered entity or by the department based on an owner or operator's violation of the air quality rules in the operation of a registered facility. The new rule also necessarily provides for an appeal of the deregistration of a facility by the owner or operator to satisfy due process requirements. These provisions are nearly identical to those in ARM 17.8.763 for the revocation of a Montana air quality permit.

NEW RULE VII RECORDKEEPING AND REPORTING (1) An owner or operator of a facility required to be registered under this subchapter shall make records that include:

(a) the location at which the facility was operated;

(b) daily production rates and rolling 12-month total production in the units used in [NEW RULE II](1);

(c) daily pressure drop readings, including daily water input rate or pressure, if applicable;

(d) daily horsepower hours of engines and rolling 12-month total horsepower hours, if applicable; and

(e) a log of required facility inspections, repairs, and maintenance.

(2) The owner or operator shall maintain the records in (1) for at least five years following the date the record was created.

(3) The owner or operator shall maintain the records in (1) at the facility location or at another convenient location. The owner or operator shall make the records available to the department for inspection and submit the records to the department upon request.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule VII is necessary to provide the general recordkeeping and reporting requirements for facilities registered under this subchapter. Facilities would be required to maintain records of information necessary for the department to verify compliance with the requirements of this chapter. An owner or operator would be required to maintain these records for at least five years and must make them available for inspection upon request of the department. The recordkeeping and reporting requirements would be substantially the same under the registration process as under traditional permitting.

NEW RULE VIII REQUIREMENTS FOR CONCRETE BATCH PLANTS

(1) Except as provided in (2), an owner or operator of a concrete batch plant required to be registered under this subchapter shall control particulate emissions from the facility at all times during operation using:

(a) a fabric filter dust collector or equivalent on each cement silo, cement storage silo, or similarly enclosed storage bin or weigh hopper; and

(b) a particulate containment boot or equivalent on every product loadout opening.

(2) If a concrete batch plant required to register under this subchapter that commenced operation prior to [the effective date of this rule] does not have the control equipment in (1) installed at the time of registration, the owner or operator of the facility shall install the equipment no later than twelve months after registration.

(3) In addition to the general requirements in [NEW RULE VII], the owner or operator shall conduct a monthly inspection of each operating facility for fugitive dust. If visible emissions from the fabric filter are present, the inspection must include an inspection of the fabric filter for evidence of leaking, damaged, or missing filters. The owner or operator shall take appropriate corrective actions to restore the filter system to proper operation before resuming normal operations.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule VIII is necessary to provide performance standards for registration-eligible concrete batch plants. These source-specific air pollution control requirements are consistent with existing permit conditions and constitute Best Available Control Technology for this source category. Section (2) would provide a period of twelve months after registration for the owner or operator of an existing facility to install any required control equipment not present at the time of registration. This is necessary because it may not be feasible for an owner or operator to install the equipment immediately upon registration. The reason for the monthly inspection required in (3) is to determine whether the required control equipment is operating correctly and is achieving the expected level of emission control. If it is not, (3) requires the owner or operator to correct the issue, which is necessary to ensure appropriate emission control.

NEW RULE IX REQUIREMENTS FOR ASPHALT PLANTS (1) An owner or operator of an asphalt plant required to register under this subchapter:

(a) shall limit particulate matter emissions to no more than:

(i) 0.04 grains per dry standard cubic foot; or

(ii) 0.10 grains per dry standard cubic foot, for a facility that holds a valid MAQP containing this limit at the time of registration;

(b) shall control emissions from each dryer or mixer at all times during operation using control equipment capable of achieving the applicable emission limit;

(c) shall shut down an emitting unit using a baghouse control device needing a bag replacement until the replacement bag is installed;

(d) shall install and maintain a device to measure the pressure drop on the control device, such as a magnehelic gauge or manometer. The pressure drop must be measured in inches of water and recorded daily; and

(e) shall install and maintain temperature indicators at the control device inlet and outlet; and

(f) may not allow the asphalt production rate to exceed the average production rate during the last source test demonstrating compliance. The owner or operator may retest at a higher production rate at any time.

(2) Records made and maintained under [NEW RULE VII] must include daily pressure drop readings from the control device and the daily water input rate or the water input pressure, if applicable.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule IX is necessary to provide performance standards for registration-eligible asphalt plants. These source-specific air pollution control requirements are consistent with existing permit conditions and constitute Best Available Control Technology for this source category.

Under (1)(a), an existing facility that holds a valid MAQP would be allowed to continue to operate with the same particulate matter emission limit that is in the permit. This is because the limit included in the permit was determined to be appropriate based on a case-specific review that included consideration of the age of the facility. As of the effective date of this rule, any registration-eligible facility that does not hold a valid MAQP containing a different particulate matter limit would be required to meet the limit in (1)(a)(i). This is because the lower limit is representative of the standard achievable using available pollution control technology for new facilities.

5. Concerned persons may submit their data, views, or arguments in writing to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., January 25, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date. In addition, the department has prepared an environmental assessment demonstrating that the facilities eligible to register under proposed New Rule II do not have significant environmental impacts. That environmental assessment may be viewed on the department's web site at http://deq.mt.gov/public/publiccomment. An electronic or hard copy of that document may also be obtained from Sandy Scherer at the addresses listed above. Oral or written comments on the environmental assessment may also be submitted in the same manner as for the proposed rule amendments.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine

reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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 board has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes BY: */s/ Christine Deveny*
EDWARD HAYES CHRISTINE DEVENY
Rule Reviewer Chairman

Certified to the Secretary of State, December 11, 2018.

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 17.24.645, 17.24.646, 17.30.502, 17.30.619, 17.30.702, 17.30.1001, 17.36.345, 17.55.109, 17.56.507, and 17.56.608, pertaining to ground water standards incorporated by reference into Department Circular DEQ-7	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (RECLAMATION) (WATER QUALITY) (SUBDIVISIONS) (CECRA) (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On February 5, 2019, at 2:00 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.24.645 GROUND WATER MONITORING (1) through (5) remain the same.

(6) Methods of sample collection, preservation, and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2015) and the department's document titled "Department Circular DEQ-7, Montana Numeric Water Quality Standards," ~~May 2017~~ [effective month and year of this rule amendment] edition. Copies of Department Circular DEQ-7 are available at the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) and (8) remain the same.

AUTH: 82-4-204, MCA

IMP: 82-4-231, 82-4-232, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.24.646 SURFACE WATER MONITORING (1) through (5) remain the same.

(6) Methods of sample collection, preservation, and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2015) and Part 434 titled "Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards" (January 2002), and the ~~May 2017~~ [effective month and year of this rule amendment] edition of the department's document titled "Department Circular DEQ-7, Montana Numeric Water Quality Standards." Copies of 40 CFR Part 136, 40 CFR 434, and Department Circular DEQ-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) remains the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: The board and the department are proposing to revise Circular

DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.30.619 INCORPORATIONS BY REFERENCE (1) The board adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition), which establishes numeric water quality criteria for toxic, carcinogenic, bioconcentrating, radioactive, and harmful parameters and also establishes human health-based water quality criteria for the following specific nutrients with toxic effects:

(i) through (3) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, 75-5-313, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "base numeric nutrient standards," "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (26) remain the same.

(27) The board adopts and incorporates by reference:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, radioactive, and harmful parameters and also establishes human health-based water quality standards for the following specific nutrients with toxic effects:

(i) through (e) remain the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) remains the same.

(2) "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition), which establishes numeric water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (17) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain the same.

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition);

(f) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition);

(b) through (5) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The board and the department are proposing to revise Circular DEQ-7 to provide additional human health criteria as discussed in the statement of reason for the proposed amendment to ARM 17.56.608 set forth below. In the event that the revised circular is adopted, it is necessary to update the edition of Circular DEQ-7 being cited elsewhere in the rules.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~May 2017~~ [effective month and year of this rule amendment] edition);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The proposed revised Department Circular DEQ-7 can be viewed on the department's website at http://deq.mt.gov/water/drinkingwater/standards. A copy of the proposed revised circular also may be obtained by contacting Mike Suplee at (406) 444-0831. Modifications to the circular and the reasons for the modifications are as follows:

Addition of new human health criteria: The board and the department are proposing to revise Department Circular DEQ-7 to provide human health groundwater criteria for the following: diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA). The proposed criteria concentrations are as follows: diallate, 5.5 µg/L; dioxane, 1,4-, 3 µg/L; iron, 4,000 µg/L; manganese, 100 µg/L; PFOS, 0.07 µg/L, PFOA, 0.07 µg/L.

The diallate criterion will provide the department's Hazardous Materials Program of

the Waste Management and Remediation Division a clean-up standard for hazardous waste permitted facilities. Standards for dioxane, 1,4-, PFOS, PFOA, and iron are also considered important criteria to the Waste Management and Remediation Division as cleanup endpoints for remedial activities carried out by that division. Further, standards for Dioxane, 1,4-, PFOS, and PFOA are included in EPA Office of Water Health Advisories.

Scientific research has demonstrated that excessive manganese levels can have neurobehavioral and neurocognitive impacts on infants (0-6 months). The new proposed criterion was derived for this most-sensitive population. Manganese is considered an important criterion to the Waste Management and Remediation Division as a cleanup endpoint.

The human health groundwater criteria were derived using U.S. Environmental Protection Agency (EPA) equations for human health criteria (EPA, 2000) and there are different equations for toxins and carcinogens. The criteria were derived assuming that exposure is through drinking water only (no accounting for exposure through consumption of fish is made). For example:

Toxic Criterion (µg/L) = {[RfD (mg/kg-day) x RSC x average body weight (kg)]/drinking water intake (L/day)} x 1000 µg/mg

where the RfD is a value derived from the no effects or lowest observable effects concentration (NOAEL or LOAEL, respectively), and RSC is the relative source contribution to account for potential exposure from other environmental media. EPA generally recommends an RSC of 0.2 (i.e., 20 percent of a person's exposure is from drinking water). The default drinking water intake rate for adults is 2.4 L/day and the default body weight is 80 kg, both of which are in DEQ-7 (see page 5). For some criteria, sensitive sub-populations required different body weight and drinking assumptions than the defaults, and these are detailed below where appropriate.

Citations to several technical documents are made below; the list of these documents may be found at the end of this section.

The department derived the diallate criterion using a cancer slope factor of 0.061 mg/kg-day from the EPA Health Effects Assessment Summary Table (HEAST) database (https://epa-heast.ornl.gov/heast.php), default adult weight and drinking water intake rates, and Montana's cancer risk factor of $1x\ 10^{-5}$ (per 75-5-301, MCA). Dioxane, 1,4- was derived using the IRIS 2013 cancer slope factor (0.1 mg/kg-day), default adult weight and drinking water intake rates, and Montana's cancer risk factor of $1x\ 10^{-5}$. PFOS and PFOA criteria are from EPA (2016a; 2016b; 2018) and were derived for the most sensitive population, lactating women. For them, the 90th percentile for drinking water intake was 3.6 L/day and they have a lower assumed body weight (67 kg) than the overall population. The iron criterion was calculated using a RfD (0.592 mg/kg-day) derived from EPA (2006) and the default adult weight and drinking water intake rates.

For manganese (a toxin), the department used a RfD of 0.025 mg/kg-day. The RfD was derived using literature toxicology studies (Kern *et al*., 2010; Kern *et al*., 2011; Beaudin *et al*., 2013) and a 1000-fold uncertainty factor (UF_A = 10, UF_H = 10, UF_L = 10), where UF_A is uncertainty due to interspecies variability to account for extrapolating from laboratory animals to humans, UF_H is for intraspecies variability to account for variability in the responses within the human population because of intrinsic and extrinsic factors, and UF_L is applied because a LOAEL and not a NOAEL was used in the derivation (EPA, 1993). The average body weight of infants zero to <6 months old was used (6.47 kg; Table 8-1, EPA, 2011) and the 90th percentile drinking water ingestion for infants zero to <6 months was 0.966 L/day (Table 3-15, EPA, 2011). The RSC was calculated by subtracting the manganese infants receive from formula (21 CFR 107.100) from the LOAEL to give a RSC of 0.833 (rounded to 0.8 per EPA guidance). Accounting for significant figures (1 in this case), the department derived a water quality standard of 100 µg/L.

Criteria Stringency Compared to Federal Guidelines: Five of the proposed criteria (diallate; dioxane, 1,4-; iron; PFOS; and PFOA) are equivalent to comparable federally recommended guidelines (EPA, 2006; HEAST; EPA, 2018). The proposed manganese criterion is more stringent than comparable federal guidelines. EPA recommends a criterion of 300 µg/L (EPA, 2004; EPA, 2018) based on studies of dietary intake of manganese. But more recent peer-reviewed scientific studies (Kern *et al*., 2010; Kern *et al*., 2011; Beaudin *et al*., 2013), based on dose-response effects on new-born and adult rats, indicate that the criterion should be 100 µg/L (the value proposed by the board). Rat studies were reviewed in EPA (2004) but the quality of those studies was not considered adequate to derive a criterion. The more recent scientific works are considered high quality according to EPA Region VIII's drinking water toxicologist (Bob Benson, personal communication, 11/8/2018). As addressed above, the proposed manganese criterion is necessary to mitigate harm to the public health, specifically zero to <6 months old infants. Further, it is achievable under current technology. At the municipal scale, dissolved manganese can be removed by several technologies (e.g., oxidation/physical separation) which can achieve concentrations of 40 µg/L.

Footnote (40): The board proposes the addition of footnote (40) to DEQ-7, which references the Montana Administrative Register (MAR) for instances where the derivation of a DEQ-7 human-health criterion is documented in MAR Notice No. 17-403. Human health standards are normally flagged in DEQ-7 to indicate which information source they were derived from; for example, many are flagged "HA," meaning they were derived from nationally-recommended EPA Health Advisory documents. However, the iron and manganese criteria discussed above were derived by the department. If the proposed iron and manganese criteria are adopted as human health standards in DEQ-7, then footnote (40) would reference this MAR notice.

Footnote (41): The board proposes new footnote (41), which clarifies that the sum of PFOA and PFOS shall not exceed the individual standards for each.

References Cited: Technical documents cited above are provided here:

EPA. 1993. Reference Dose (RfD): Description and Use in Health Risk Assessments.
Background Document 1A. https://www.epa.gov/iris/reference-dose-rfd-description-and-use-health-risk-assessments.

EPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. Technical Support Document. Volume 1: Risk Assessment. Office of Water, Office of Science and Technology. EPA-822-B-00-005.

EPA. 2006. Provisional Peer Reviewed Toxicity Values and Iron and Compounds (CASRN 7439-89-6), Derivation of Subchronic and Chronic Oral RfDs. Superfund Health Risk Technical Support Center, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268.

EPA. 2011. Exposure Factors Handbook: 2011 Edition. Office of Research and Development. EPA/600/R-090/052F.

EPA. 2016a. Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS). Office of Water. EPA 822-R-16-004.

EPA. 2016b. Health Effects Support Document for Perfluorooctanoic Acid (PFOA). Office of Water. EPA 822-R-16-003.

EPA. 2018. 2018 Edition of the Drinking Water Standards and Health Advisories Tables. Office of Water. EPA 822-F-18-001.

Kern, C., G. Stanwood and D.R. Smith. 2010. Pre-weaning Manganese Exposure Causes Hyperactivity, Disinhibition, and Spatial Learning and Memory Deficits Associated with Altered Dopamine Receptor and Transporter Levels. *Synapse* 64: 363-378.

Kern, C. and D.R. Smith. 2011. Pre-weaning Mn Exposure Leads to Prolonged Astrocyte Activation and Lasting Effects on the Dopaminergic System in Adult Male Rats. *Synapse* 65: 532-544.

Beaudin, S. A., S. Nisam and D.R. Smith. 2013. Early Life Versus Lifelong Oral Manganese Exposure Differently Impairs Skilled Forelimb Performance in Adult Rats. *Neurotoxicology and Teratology* 38: 36-45.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to

(406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m. February 8, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

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

Reviewed by:

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BOARD OF ENVIRONMENTAL REVIEW

BY: */s/ Christine Deveny*
CHRISTINE DEVENY
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ Shaun McGrath*
SHAUN McGRATH
Director

Certified to the Secretary of State, December 11, 2018.

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 17.30.1001, 17.30.1334, 17.36.103, 17.36.345, 17.38.101, and 17.50.819, adoption of New Rule I pertaining to definitions, and the amendment of Department Circulars DEQ-1, DEQ-2, DEQ-3 regarding setbacks between water wells and sewage lagoons	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (SUBDIVISIONS) (PUBLIC WATER ENGINEERING) (WATER QUALITY) (SOLID WASTE)

TO: All Concerned Persons

1. On January 17, 2019, at 2:00 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 10, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. GENERAL REASON STATEMENT: Before 2017, 75-5-605(1)(c), MCA, prohibited any person from siting and constructing a sewage lagoon within 500 feet of an existing water well. In 2017, the Legislature passed House Bill 368 (HB 368), which removed the 500-foot setback and directed the Department of Environmental Quality to adopt rules establishing setback requirements between sewage lagoons and water wells to prevent water well contamination. The department now proposes to adopt New Rule I, which implements HB 368 by establishing setbacks between sewage lagoons and water wells to protect water wells from bacterial and viral pathogens that come from sewage lagoons.

The department administers multiple programs that will be affected by New Rule I, including the programs related to concentrated animal feeding operations, solid waste, public water supply engineering requirements, and subdivision review. The authority to adopt rules for those programs is shared by the department and the Board of Environmental Review. To ensure that New Rule I is applied consistently and predictably across those programs, the department proposes to amend the subdivision rules in ARM 17.36.103 and 17.36.345, and the solid waste rule in ARM 17.50.819. The board proposes to amend the water quality rules in ARM 17.30.1001 and 17.30.1334; the public water engineering rule in ARM 17.38.101;

and Circulars DEQ-1, DEQ-2, and DEQ-3. The specifics of each of these proposed amendments is discussed in more detail below.

The amendments to ARM 17.30.1001, 17.36.345, 17.38.101, and 17.50.819 would adopt and incorporate by reference the 2018 revisions to Circulars DEQ-1, DEQ-2 and DEQ-3, which are contained in this notice. Additionally, the amendments to ARM 17.38.101 would adopt and incorporate by reference the 2018 revisions to the New Community Water Supply Well Expedited Review Checklist and the New Non-Community Water Supply Well Expedited Review Checklist, which are contained in this notice. Under 2-4-307(2), MCA, an agency proposing to adopt material by reference is required to state where a copy of the omitted material may be obtained. In addition, the material must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page during the time that the rule adopting the material is itself subject to public comment. In this instance, the revisions to Circulars DEQ-1, DEQ-2, and DEQ-3, and the New Community and New Non-Community Water Supply Well Expedited Review Checklists that are being adopted by reference are set forth below. Thus, a statement of where a copy may be obtained and the publishing of the proposed rule on the department's website is not necessary.

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

17.30.1001 DEFINITIONS (1) The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (~~2016~~ 2018 edition).

(a) The board adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (~~2016~~ 2018 edition). Copies are available from the Department of Environmental Quality, ~~Technical and Financial Assistance~~ Engineering Bureau, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

REASON: As discussed in Section 6 of this Notice, the board is proposing to make changes to Circular DEQ-2 to make that circular consistent with the requirements of New Rule I. The board proposes to amend ARM 17.30.1001 to update the reference to this new edition of the circular to ensure that programs across the department are using the same and most recent edition of the circular. The board also proposes to make a housekeeping change to update the name of the engineering bureau to reflect current department organization.

17.30.1334 TECHNICAL STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (1) through (12) remain the same.

(13) CAFO sewage lagoons must meet the setbacks established in [NEW RULE I].

AUTH: 75-5-401, 75-5-802, MCA
IMP: 75-5-401, 75-5-802, MCA

REASON: The board is proposing to include New Rule I into the requirements for concentrated animal feeding operations (CAFOs) because the sewage contained in those lagoons can have similar or higher concentrations of pathogens than a sewage lagoon with human-derived sewage. Therefore, water wells near CAFO sewage lagoons need protection similar to water wells near sewage lagoons containing human-derived sewage.

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

(a) through (f) remain the same.

(g) if ground water is proposed as a water source, the applicant shall submit the following information:

(i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet, ~~and~~ any known mixing zone as defined in ARM 17.30.502 within 500 feet, and any sewage lagoon within 1,000 feet. If the reviewing authority identifies a potential problem, it may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and

(ii) through (t) remain the same.

(u) if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document; ~~and~~

(v) the information required in [NEW RULE I] regarding setbacks between sewage lagoons and wells; and

~~(v)~~(w) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the proposed subdivision.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department is proposing to amend ARM 17.36.103 to require subdivision applications to identify any sewage lagoon within 1,000 feet of a proposed ground water source and to include in the application any information required by New Rule I. This is reasonably necessary to ensure that subdivision applications are reviewed and approved in accordance with New Rule I. This extends the protections of wells in New Rule I to subdivisions and provides consistency across programs administered by the department. The proposed

changes also would clarify that applicants need only identify those known mixing zones that are within 500 feet of a proposed ground water source, which eliminates any existing confusion about what the rule requires.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, "Standards for Water Works," ~~2014~~ 2018 edition;

(b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," ~~2016~~ 2018 edition;

(c) Department Circular DEQ-3, "Standards for Small Water Systems," ~~2014~~ 2018 edition;

(d) through (k) remain the same.

(l) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition; ~~and~~

(m) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils~~.~~ ; and

(n) [NEW RULE I] regarding setbacks between sewage lagoons and wells.

(2) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: As discussed in Section 6 of this notice, the board is proposing to make changes to Department Circulars DEQ-1, DEQ-2, and DEQ-3 to make those circulars consistent with the requirements of New Rule I. All of these circulars are adopted by reference by the department in the subdivision rules. The department is proposing to amend ARM 17.36.345 to adopt those most recent versions of each circular and to adopt by reference New Rule I. Because New Rule I is designed to protect water wells from contamination from sewage lagoons, the protections in New Rule I should apply to subdivision applications that are reviewed by the department. This change is also reasonably necessary to promote consistency across programs administered by the department.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (19) remain the same.

(20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, ~~2014~~ 2018 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems;

(b) Department ~~of Environmental Quality~~ Circular DEQ-2, ~~2016~~ 2018 edition, which sets forth the requirements for the design and preparation of plans and

specifications for sewage works;

(c) Department Circular DEQ-3, ~~2014~~ 2018 edition, which sets forth minimum design standards for small water systems;

(d) through (f) remain the same.

(g) Department Community Water Supply Well Expedited Review Checklist, ~~2014~~ 2018 edition, which sets forth minimum criteria and design standards for new community water supply wells;

(h) Department Non-community Water Supply Well Expedited Review Checklist, ~~2014~~ 2018 edition, which sets forth minimum criteria and design standards for new non-community water supply wells;

(i) through (21) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The board is proposing to amend ARM 17.38.101 to adopt the most recent version of Circulars DEQ-1, DEQ-2, DEQ-3, the Department Community Water Supply Well Expedited Review Checklist and the Department Non-community Water Supply Well Expedited Review Checklist. Doing so will incorporate New Rule I into the rules providing the engineering requirements for public water supply and public sewage systems.

These changes are reasonably necessary to ensure that new public water supply wells are not contaminated by sewage lagoons and that public sewage lagoons do not contaminate public or nonpublic water wells. These changes are also necessary to provide consistency across the programs administered by the department that deal with sewage lagoons and wells, or that adopt by reference the department circulars.

17.50.819 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department adopts and incorporates by reference:

(a) Department Circular DEQ-2, Design Standards for Public Sewage Systems (~~2016~~ 2018 edition), which sets forth design standards for public sewage systems;

(b) through (3) remain the same.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

REASON: The department proposes to amend ARM 17.50.819 to adopt the most recent version of Circular DEQ-2 so that all programs that adopt the circular use the same version, thus providing consistency and predictability across the programs administered by the department.

5. The proposed new rule for a subchapter provides as follows:

NEW RULE I SETBACKS BETWEEN SEWAGE LAGOONS AND WATER WELLS (1) For purposes of this rule, the following definitions apply:

(a) "Lagoon area" means the surface area of the lagoon within the design of the high-water mark.

(b) "Maximum day well demand" means the highest volume of water discharged from a water well on any day in a year.

(c) "Sewage lagoon" means any holding or detention pond that is used for treatment or storage of water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present. For purposes of this rule, the term includes concentrated animal feeding operations but does not include storm water facilities or subsurface wastewater treatment systems.

(d) "Water well" has the same meaning as 75-5-103, MCA.

(2) All new water wells and new sewage lagoons must meet the setbacks in (3), unless the applicant demonstrates that a shorter setback is allowed under (4) or (6). Water wells and sewage lagoons that existed or were approved by the department before the effective date of this rule must meet the setbacks under either of the following circumstances:

(a) if the lagoon area is proposed to be increased; or

(b) if the maximum daily pumping rate of a water well is proposed to be increased.

(3) The following setbacks apply, unless the applicant demonstrates that a lesser setback is allowed under (4) or (6):

(a) 1,000 feet between a water well and the design high-water mark of a sewage lagoon;

(b) 200 feet between a well for a public water supply system with continuous disinfection that meets the 4-log virus inactivation and the design high-water mark of a sewage lagoon;

(c) 200 feet between a water well and the design high-water mark of a sewage lagoon if the geometric mean number of *E. coli* bacteria in the influent flow to the sewage lagoon does not exceed 126 colony forming units per 100 milliliters and 10 percent of the total samples do not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(d) 100 feet between a water well and the design high-water mark of a sewage lagoon if the applicant demonstrates there is no hydraulic connection between the sewage lagoon and the water well as demonstrated by groundwater gradients under the maximum day pumping rate or by confined conditions that prevent lagoon discharges from impacting the water well.

(4) A setback less than the setbacks in (3)(a) through (c) may be used if the applicant demonstrates that the distance needed to achieve 4-log pathogen reduction of effluent migration from the sewage lagoon to the water well is less than the setback distance in (3)(a) through (c). In no instance, however, may the setback be less than 100 feet.

(5) To make the demonstration in (4), the pathogen reduction between the sewage lagoon and the water well must be calculated according to one of the following methods:

(a) METHOD 1 – Travel Time Method - The vertical travel time in the vadose zone for the wastewater to reach groundwater is calculated using the following equation:

$$t1 = (d)*(\theta) \div (\alpha) \div 365$$

Where:

t1 = vertical travel time (days)
α is total effluent recharge – the maximum allowable leakage rate or actual measured leakage rate if the measured rate is available (in/yr)
θ is volumetric soil moisture (percent)
d is the depth to groundwater (in)

The horizontal travel time in the saturated zone for the wastewater to reach the water well is calculated using the following equations:

$$t2 = (x) \div [(K)*(i) \div (ne)]$$

Where:

t2 = horizontal travel time (days)
K is hydraulic conductivity of the saturated aquifer (feet/day)
i is hydraulic gradient (feet/feet)
ne is effective porosity (dimensionless)
x is the horizontal distance from the sewage lagoon to the water well (feet)

The total log pathogen reduction from the bottom of the sewage lagoon to the water well is calculated using the following equation:

$$Pt = (t1 + t2)*0.02$$

Where:

Pt = Log reduction of pathogens during vertical and horizontal travel
0.02 = log 10 pathogen removal/day

(b) METHOD 2 – Travel time and VIRULO - The horizontal travel time (t2) is calculated the same as for Method 1. The horizontal log reduction is calculated using the following equation:

$$Ph = (t2)*0.02$$

Where:

Ph = Log reduction of pathogens during horizontal travel

The pathogen reduction during vertical movement in the vadose zone is calculated using VIRULO. The value of Ph is added to VIRULO results to provide the total pathogen reduction from the bottom of the sewage lagoon to the water well.

(c) Other methods approved by the department.

(6) In calculating 4-log pathogen reduction under (4), the following requirements apply:

(a) Hydraulic conductivity must be based on the aquifer material most likely to transmit lagoon discharges to the water well and be determined by one of the following methods:

(i) The maximum hydraulic conductivity value of the aquifer material shown in Table 1. The hydraulic conductivity for aquifer materials not included in Table 1 may be calculated by the applicant using other methods acceptable to the department. The aquifer material must be the most permeable soil layer that is at least six inches thick and is below the bottom of the sewage lagoon infiltrative surface, as identified in any test pit or borehole. This method may only be used for facilities that are not requesting a source-specific ground-water mixing zone, as defined in ARM 17.30.518.

TABLE 1

MATERIAL	HYDRAULIC CONDUCTIVITY (ft/d)
Basalt (permeable/vesicular)	5,100
Clay	0.025
Clay (unweathered, marine)	0.00054
Coarse sand	94,500
Fine sand	51
Glacial Till	0.72
Glacial Till (fractured)	29.5
Gravel	201,600
Gravelly sand	1,020
Igneous/metamorphic rock (fractured)	76.5
Igneous/metamorphic rock (unfractured)	0.000054
Karst limestone	18,000
Limestone	1.5
Limestone (unjointed, crystalline)	0.30
Loess	0.27
Medium sand	569
Sandstone	1.5
Sandstone (friable)	3.0
Sandstone (well cemented, unfractured)	0.0036
Sandy clay loam	1.4
Sandy silt	0.27

Shale	0.00054
Silt	0.27
Siltstone	0.0036
Silty clay	0.013
Silty sand	45
Tuff	7.2
Very fine sand	21.4

(ii) A pumping test at least 8 hours long, representative of the hydraulic conductivity of the aquifer material, and conducted on a well(s) with complete lithology and construction details. Results for pumping tests must be submitted electronically on DNRC Form 633. Pumping tests must be conducted in accordance with the requirements in ARM 36.12.121(2)(a) through (f), (3)(a), (3)(c), (3)(g), (3)(i), (3)(j), and (3)(k).

(b) Hydraulic gradient must be based on the aquifer material most likely to transmit lagoon discharges to the water well and must be determined by one of the following methods:

(i) The regional topographic slope in an area that includes the water well and the sewage lagoon. The minimum hydraulic gradient that may be used with this method is 0.005 feet/feet, and the maximum gradient that may be used is 0.05 feet/feet. This method may not be used for facilities requesting a source-specific ground-water mixing zone as defined in ARM 17.30.518.

(ii) Groundwater potentiometric maps of the aquifer that accurately represent the local hydraulic gradient in the area of the water well and sewage lagoon.

(iii) Surveyed static water elevations in at least three wells that draw water from the aquifer, accurately represent the local hydraulic gradient in the area of the water well and sewage lagoon, and are measured on the same date to the nearest 0.01 foot.

(c) Soil type must be determined by test pits or boreholes. The following requirements apply:

(i) Test pits or boreholes must be completed to a minimum depth of 10 feet below the bottom of the sewage lagoon infiltrative surface or until an impervious layer, as defined in Circular DEQ-4, is encountered.

(ii) A minimum of two test pits or boreholes must be completed for the first 0.5 acre of lagoon area that is within 1,000 feet of a water well. A maximum of one additional test pit or borehole for each additional acre of lagoon area within 1,000 feet of a water well may be required if the department determines that additional test pits or boreholes are necessary to adequately characterize the soils between the sewage lagoon and the water well. The test pits or boreholes must be located to provide representative information on the soils beneath the sewage lagoon that affect the vertical and horizontal migration of pathogens from the sewage lagoon to the affected water well.

(iii) If the test pit or borehole locations are not within 50 feet of the toe of the sewage lagoon embankment, then the locations must be approved by the department before they are completed. The borehole method must provide a continuous soil sample that is representative of the soil and lithology profile.

(iv) Soils must be described according to the Unified Soil Classification System. The soil description must include information regarding the presence or absence of seasonal saturated conditions. If there is no evidence of saturated conditions from the test pit, borehole, or other evidence, then the depth to groundwater must be estimated as the bottom of the test pit or borehole.

(d) Soils with greater than 35 percent retained on the No. 10 sieve and geologic materials with fractures do not receive credit for virus reduction in the vadose zone.

(e) The well discharge rate used in calculations must be based on the maximum day well demand, which must be determined by using historic discharge rate records or other methods as approved by the department.

(7) The department may determine the setback calculated in accordance with this rule should be decreased—but in no instance shorter than 100 feet—if the applicant demonstrates equivalent protection of the water source that supplies the water well.

AUTH: 75-5-411, MCA
IMP: 75-5-411, MCA

REASON: The department proposes to adopt New Rule I, which establishes setbacks between sewage lagoons and water wells to protect water wells from bacterial and viral pathogens that come from sewage lagoons. Unlike the previous setback of 500 feet that was removed by the Legislature in HB 368, New Rule I uses scientifically based methods to calculate setbacks based on the distance needed between the lagoon and well to provide 4-log pathogen reduction, meaning a 99.99 percent reduction of those bacteria and viruses that may impact water wells.

In developing this rule, the department considered using a matrix of different setbacks for different types of water wells (e.g., domestic, stock, irrigation, incorrect construction) and different types of sewage lagoons (e.g., municipal wastewater, concentrated animal feeding operations, animal feeding operations). The department rejected this approach for three reasons:

(1) water wells often have their use changed over time (water well construction rules are the same for domestic, stock, and irrigation uses) without any regulatory requirement to report that change;

(2) there are insufficient scientific studies regarding the virulence of different types of stock or human wastewater sources; and

(3) a 4-log reduction criterion is consistent with existing regulations that define adequate disinfection to protect water wells from pathogens. Those regulations include, for example, Circular DEQ-1 and EPA's *Ground Water Source Assessment Guidance Manual*, EPA 815-R-07-023.

New Rule I provides two methods for determining the appropriate setback between a sewage lagoon and a water well. The first is in (3), which provides four default setbacks, depending on whether the water well or sewage is disinfected and whether the water well and sewage lagoon are hydraulically connected. The second is in (4), which provides applicants a process to use a lesser setback if the applicant can demonstrate that the lesser setback is sufficient to provide 4-log pathogen reduction. Applicants therefore have the choice to use the easy-to-apply default

distances or use a lesser setback if they can demonstrate that the lesser distance will not contaminate the water well. The specifics of each section for the rule are discussed below.

Section (1) defines words used in the rule, which is necessary to provide clarity, consistency, and predictability in the interpretation and administration of the rule.

Section (1)(a) defines the phrase "lagoon area" as the maximum area of the lagoon designed to contain wastewater. This definition was chosen to provide a meaningful distance between water wells and lagoons in the rule with respect to susceptibility of pathogen migration. The department considered but rejected defining lagoon area in relation to the area occupied by the embankment toe. That definition would be dependent on the depth of the lagoon and land slope and would therefore not be a good metric for determining distances and risks to water wells.

Section (1)(b) defines the phrase "maximum day well demand." This definition is designed to provide the most applicable discharge rate from a water well to use in assessing the potential for pathogens discharged from a sewage lagoon to reach the water well.

Section (1)(c) defines the phrase "sewage lagoon." The definition is designed to specifically eliminate sewage lagoon sources and other lagoon facilities that do not provide a significant source of pathogens to water wells (e.g., storm water lagoons) or have existing setback requirements in other regulations (e.g., septic systems and rapid infiltration systems). The definition does specifically include concentrated animal feeding operations sewage lagoons to eliminate any potential uncertainty for those systems.

Section (1)(d) defines the phrase "water well" as currently defined in the Water Quality Act (75-5-103, MCA) which is inclusive of all wells used to measure or produce groundwater.

Section (2)(a) requires existing sewage lagoons that are increasing the design high water mark area to comply with the rule. The rationale for this section is that sewage lagoons that expand the area occupied by wastewater have the potential to decrease the distance to nearby wells and therefore increase the risk of pathogen impacts to water wells. Increasing the lagoon size is typically also associated with increasing the amount of sewage stored in the lagoon, which creates more potential pathogen impacts to water wells.

Section (2)(b) requires existing water wells that are expanding their rate of water withdrawal to comply with the rule. The rationale for this section is that water wells that increase their withdrawal rates have an increased potential to draw wastewater from sewage lagoon discharges and therefore increase the risk of pathogen impacts to the water well.

Section (3) establishes four setback distances based on pathogen treatment and hydraulic separation between sewage lagoons and water wells. This section provides applicants with default distances instead of the potentially more difficult process of determining the distance needed to achieve 4-log pathogen reduction that is provided in (5).

The first default distance is provided in (3)(a), which establishes a distance of 1,000 feet between nondisinfected wells and lagoons. This 1,000-foot distance was chosen as the general default setback based on an analysis of common

hydrogeological conditions and parameters (hydraulic conductivity, hydraulic gradient, and effective porosity) that showed that 4-log pathogen reduction is generally achieved by a 1,000-foot separation between a sewage lagoon and water well. A review of several other western and midwestern states showed a variety of setbacks, but 1,000 feet is not out of the ordinary, with Nebraska and Indiana both using a 1,000-foot setback under specific conditions.

Section (3)(b) reduces the 1,000-foot setback to 200 feet between a public water supply well with continuous disinfection that meets 4-log pathogen inactivation and the design high-water mark of a sewage lagoon. The setback is reduced to 200 feet because 4-log pathogen reduction is achieved by treatment of the water. Even though the well is continuously disinfected, the setback is set at 200 feet (instead of 100 feet) to provide additional protection to the well, which is reasonably necessary due to the typically higher pumping rates from public wells (which create a shorter travel time for water between the sewage lagoon and water well), and the potential for an inadequate or failing disinfection system that would only need to be faulty for a short time to allow distribution of contaminated water to multiple persons. Non-public water supply wells are excluded from this section because there is no reliable mechanism to ensure proper installation, operation, and monitoring of a disinfection system.

Section (3)(c) reduces the 1,000-foot setback to 200 feet between a water well and the design high-water mark of a sewage lagoon that has been disinfected to levels required for surface water. The setback is reduced to 200 feet because the sewage entering the lagoon has the number of *E. coli* bacteria reduced via disinfection to the lowest number required in surface water classified as B-1 (ARM 17.30.623(2)(i)). The typical minimum setback between non-public water wells and surface water is 100 feet (ARM 17.36.323). Although the sewage lagoon *E. coli* numbers are reduced to surface water limits, the setback for this rule is increased to 200 feet to provide additional protection to the well, which is reasonably necessary due to the potential for an inadequate or failing disinfection system in the lagoon, the lack of monitoring in non-public wells, and the risk of natural bacterial sources such as wildlife waste that could increase the number of *E. coli* in the sewage lagoon.

Section (3)(d) proposes a setback distance of 100 feet between a water well and the design high-water mark of a sewage lagoon if there is no hydraulic connection between the sewage lagoon and the water well, meaning the wastewater leakage from the sewage lagoon cannot migrate into the water well either because of the direction of groundwater flow under maximum day pumping rates, or because an impervious geologic layer (e.g., thick clay or till layer) prevents wastewater leakage from entering the aquifer supplying water to the water well. In such cases, the lack of hydraulic connection means that the wastewater cannot physically enter the water well and provides adequate protection to reduce the setback to the minimum distance of 100 feet.

Section (4) allows applicants to use a lesser setback than those established in (3) if the applicant demonstrates that a shorter setback can provide 4-log pathogen reduction. This section provides a science-based method for siting lagoons and wells that protects public health and safety while giving applicants the flexibility to site wells or lagoons in locations that otherwise would not be allowed under the default setback distances in (3). This section requires a minimum setback

of 100 feet under all circumstances, which is an accepted and longstanding standard both in and outside of Montana and is consistent with numerous state rules and circulars that use 100 feet as a minimum separation between various wastewater sources and water wells (e.g., ARM 17.36.323, ARM 36.21.638, and Circular DEQ-1 section 3.2.3.1). Additionally, it is a prudent public protection policy to maintain a minimum setback between water wells and sources of contamination to guard against unforeseen circumstances and emergencies.

Section (5) provides two methods to determine the amount of pathogen reduction: the travel time method and the VIRULO method. This is reasonably necessary to provide applicants with accepted methods of calculating 4-log reduction, which provides consistency and predictability in the application of the rule. These two methods were chosen because they are common and accepted methods within the department and the engineering community. The first method is based on travel time calculations in both the unsaturated zone (where the wastewater moves vertically) and groundwater (where wastewater moves primarily horizontally) using common equations that are provided in this section. The travel time formulas in this section are based on Appendix B to 020-011-23 of the Code of Wyoming Rules, available at http://wwcb.state.wy.us/PDF/RulesAndRegulations/DEQ%20Chapter%2023.pdf. The calculated travel time is then combined with a default pathogen reduction rate of 0.02 log10 removal/day (as described in Appendix C of the EPA *Ground Water Rule Source Assessment Guidance Manual*, available at https://www.epa.gov/dwreginfo/ground-water-rule-compliance-help-primacy-agencies) to provide the log removal of pathogens.

Regarding (5)(b), the second method combines the travel time method in the groundwater and a model, VIRULO, for the unsaturated zone. VIRULO is an EPA-supported model that is commonly used in the department and the engineering community. Information about the model is available from the EPA at https://www.epa.gov/water-research/virus-fate-and-transport-virulo-model. Finally, the rule allows other methods to be used if approved by the department. This is reasonably necessary because the two listed methods, while common, are not the only methods that can be used to calculate 4-log pathogen reduction, and the rule gives applicants the flexibility to use those other methods.

Section (6) provides acceptable methods and technical requirements for determining hydraulic conductivity, hydraulic gradient, and soil types, which are site-specific parameters needed to demonstrate the 4-log pathogen reduction in (5). Specifically, those three parameters are needed for calculating travel time of the wastewater in the unsaturated zone and the groundwater. Travel time is needed for calculating the amount of pathogen reduction as the wastewater migrates towards the water well. Specific methods for determining those parameters are provided to promote consistency in applying the rule and to provide applicants with the expected level of detail.

Section (6)(a) provides methods and requirements for calculating hydraulic conductivity, which are necessary because hydraulic conductivity is one of the parameters needed to calculate travel time in groundwater. This section provides two different methods to calculate hydraulic conductivity. First, hydraulic conductivity may be calculated using the values in Table 1. This is a simple and

inexpensive method to estimate hydraulic conductivity that requires only information from the test pits or boreholes required in (6)(c) and the corresponding value in Table 1. Table 1 is proposed as part of this section to promote consistency in applying the rule and to provide applicants with a simple and quick method to determine hydraulic conductivity. The values in Table 1 were derived from reviewing existing published values of hydraulic conductivity and using 90 percent of the highest published value for each of the soil and rock types listed in Table 1. This higher value was used because it provides a faster travel time calculation and is thus more protective of water wells to account for uncertainty in estimating the true hydraulic conductivity of the aquifer materials. The sources considered in developing Table 1 were Patrick A. Domenico and Franklin W. Schwartz, *Physical and Chemical Hydrogeology* (1990); R. Allan Freeze and John A. Cherry, *Groundwater* (1979); Fletcher G. Driscoll, *Groundwater and Wells* (2d ed. 1987); C.W. Fetter, *Applied Hydrogeology* (1994); Mary P. Anderson and William W. Woessner, *Applied Groundwater Modeling* (1992); and Geotechdata.info, *Soil void ratio*, http://geotechdata.info/parameter/permeability.html (October 7, 2013). Finally, because Table 1 does not include all types of aquifer materials, New Rule I allows applicants to calculate the hydraulic conductivity for aquifer materials not included in the table by methods found acceptable to the department.

While the values in Table 1 are reasonably necessary to provide applicants with an easy and inexpensive method of calculating hydraulic conductivity, the resulting values are inherently conservative because the table used the larger values of the range of published values for hydraulic conductivity. Because of that, (6)(a)(ii) provides a more accurate but more expensive method to calculate hydraulic conductivity by allowing a pumping test in the aquifer that is most likely transmitting wastewater to the water well. The rule provides requirements on the methods and data needed to conduct an acceptable pumping test to promote consistency in applying the rule and to provide applicants with the expected level of detail.

Section (6)(b) provides requirements for calculating hydraulic gradient, which is necessary because hydraulic gradient is one of the parameters needed to calculate travel time in groundwater. This section provides three different methods for calculating hydraulic gradient, which vary from inexpensive but conservative to more expensive but more precise. These methods are necessary to provide consistency in applying the rule while giving applicants the flexibility to tailor calculations to their needs.

The first method is provided in (6)(b)(i), which provides a simple and inexpensive method to estimate hydraulic gradient using the topographic slope of the regional land surface that can be measured on a United States Geological Survey (USGS) topographic map or other topographic map. Using topography to estimate hydraulic gradient is conservative because it estimates a relatively larger hydraulic gradient; a larger hydraulic gradient value results in a faster travel time to the water well, less pathogen reduction, and a larger setback distance.

The second method is provided in (6)(b)(ii), which allows hydraulic gradient to be determined by using a groundwater potentiometric map that is representative of the hydraulic gradient of the aquifer that is most likely to transmit water between the water well and sewage lagoon. This method is simple and inexpensive but is more precise than the topographical maps allowed in (6)(b)(i). Section (6)(b)(iii) provides

the third and typically the most accurate and expensive method, which is to measure the local hydraulic gradient in the aquifer supplying water to the water well using water elevation measurements in at least three nearby wells.

Section (6)(c) provides location, number, and depth requirements for installing test pits or boreholes, as well as requirements for collection and description of the soils. This section is reasonably necessary because soil type is one of the parameters needed to calculate wastewater travel time in the unsaturated zone and the groundwater. This section allows both test pits and boreholes because each has advantages and disadvantages for evaluating soils. A test pit is typically dug with a backhoe and allows a large area of the soil column to be viewed, but test pits are limited in depth by the size of the backhoe and the wall strength. A borehole is typically dug with well drilling rig and provides only one narrow cross section of the soils, but the depth of the borehole is typically not limited.

Section (6)(c)(i) defines the minimum depth for the test pit or borehole as 10 feet below the bottom of the lagoon. This depth is necessary to determine the type of soil or rock that the wastewater will flow through after discharging from the lagoon and is consistent with requirements by the Natural Resources Conservation Service (NRCS) and accepted practices in the engineering community. If there is an impervious layer such as unfractured bedrock or a thick clay layer encountered before the 10-foot depth, the boring or test pit can be ended at that depth because the wastewater will not migrate below the impervious layer; the soil information above the impervious layer will be used for the pathogen reduction calculations.

Section (6)(c)(ii) provides the requirements for the number of test pits or boreholes based on the lagoon area. Two test pits or boreholes are required for lagoons with an area of less than 0.5 acres that is within 1,000 feet of a water well. Two boreholes are adequate to characterize the soils near a small lagoon, and the requirement is consistent with NRCS requirements for animal feeding operation lagoons. As the lagoon size increases, additional test pits or boreholes may be required to provide adequate information to characterize the soils near the sewage lagoon.

Section (6)(c)(iii) requires department approval for test pits and boreholes that are not within 50 feet of the lagoon embankment. Test pits and boreholes should be as close to the lagoon as possible to provide the best available information on the soils and rock beneath the lagoon. In some cases, however, an alternative location must be chosen, such as when an applicant does not have access to the land near the sewage lagoon. In those cases, the department needs to be involved with selecting the locations so that representative locations are chosen. This section also requires collection of a continuous soil sample if a borehole is used instead of a test pit. A continuous sample is important to define the correct soil/lithology to use in calculating the travel times in the unsaturated zone and groundwater. Boreholes are required to have continuous and representative samples because some borehole drilling methods do not provide detailed soil layer information that is needed for determining the correct soil properties. The rule allows the applicant to use any borehole method if it provides a representative and continuous soil sample.

Section (6)(c)(iv) requires that the commonly used Unified Soil Classification System (USCS) be used in describing soils. A common classification system was chosen to minimize confusion and interpretation errors when using New Rule I. This

section also requires that the portions of the test pit or borehole that are not below the water table be examined for indications of past saturated conditions. Current or past levels of saturated conditions are important in determining the appropriate vertical and horizontal travel times of wastewater leakage from a sewage lagoon. When there is no evidence of existing or past saturated conditions or impervious layers, using the bottom of the test pit as the level of groundwater is a conservative estimate for use in determining pathogen removal. The 10-foot minimum depth allows the applicant flexibility in ending the borehole or test pit at 10 feet if that depth is sufficient for determining an acceptable setback.

Section (6)(d) provides a maximum amount of coarse material allowed in a soil type to be eligible for virus reduction as it moves vertically in the unsaturated zone. The No. 10 sieve is sized to retain coarse sand and larger sized grains. According to the EPA VIRULO documentation, soils with 35 percent or more of coarse sand or larger grains do not provide any pathogen treatment because the wastewater migration is too rapid. Geologic materials with fractures (including but not limited to sandstone, limestone, shale, basalt, and granite) also do not provide any pathogen treatment for the same reason. This restriction only applies to the unsaturated portion of the travel time calculations; coarse soils and fractured materials do receive credit for pathogen reduction during the horizontal movement of wastewater in the saturated groundwater aquifer.

Section (6)(e) provides requirements for the maximum day well demand to determine wastewater travel time and hydraulic separation between sewage lagoons and water wells. The maximum day well demand is the most applicable well discharge rate to determine travel rates in groundwater and be protective of water wells; other rates such as instantaneous maximum or pump capacity are too high to provide a reasonable value for the travel time calculations, while lower rates such as annual average are too low for this purpose. Because the maximum day well demand is a new metric that has not been defined for water wells in the past, this section provides applicants the flexibility to show maximum day well demand by using historic discharge rate records, or by using other methods as approved by the department when measured discharge rates for the water well are not available or are insufficient to accurately determine the maximum day well demand.

Section (7) provides the applicant flexibility to use other means to determine a setback that is shorter (but no shorter than 100 feet) than what is calculated using the requirements in (3) through (6). This section is included because this rule does not address all potential valid methods and data requirements for determining pathogen reduction, and allows for other methods to be used when appropriate.

6. The proposed changes in Circulars are as follows:

<u>Circular DEQ-1:</u>

1.2.2 Detailed plans, including, where pertinent:

a. through f. remain the same.

g. location of all existing and potential sources of pollution, <u>including all sewage lagoons with the design high-water mark within 1,000 feet of the well site</u>

and all easements, ~~including easements,~~ which may affect the water source or underground treated water storage facilities;

h. through q. remain the same.

REASON: The board is proposing to amend Standard 1.2.2, which address the minimum requirements of what must be shown on the plans for a new public water supply well. The amendment would require that the location of any sewage lagoon within 1,000 feet of the well site must be identified in the plans, which is necessary so that the department can determine early in the review process if further evaluation is needed to ensure all water wells comply with New Rule I, and so that applicants are aware of its requirements early in the process and accordingly have a better basis for their decision making.

3.2.3.1 Well location

MDEQ must be consulted prior to design and construction regarding a proposed well location as it relates to required separation between existing and potential sources of contamination and ground water development. Wells must be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm, or sanitary waste; and from state or federal highway rights-of-way. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I]. Well location(s) must be based on a source water delineation and assessment conducted in accordance with Section 1.1.7.2 of this circular.

REASON: The board is proposing to amend Standard 3.2.3.1, which provides siting requirements for proposed public water supply well locations to ensure that they are constructed at the correct distances from potential sources of contaminants, to require that wells must meet the setback distances in New Rule I. Because New Rule I is designed to protect water wells from contamination from sewage lagoons, the protections in New Rule I should apply to public wells reviewed under the public water supply laws and DEQ-1. This change is also reasonably necessary to promote consistency across programs administered by the department.

Circular DEQ-2:

11.29 Detailed Alternative Evaluation

The following must be included for the alternatives to be evaluated in detail.

a. through c.7. remain the same.

8. Protection of groundwater including public and private wells is of utmost importance. Demonstration that protection will be provided must be included. The Department must be contacted for required separation. Protection for water wells within 1,000 feet of the design high water mark of any sewage ponds must be in accordance with [New Rule I].

9. through 18. remain the same.

REASON: The board is proposing to amend Standard 11.29, which contains the site evaluation requirements for plans submitted under DEQ-2. The amendment would include a reference to New Rule I to alert applicants to its requirements, thus enabling the department to better assess and understand early in the project if a well will be impacted by the project and providing the applicant with a better basis for design and better information for decision making.

20.42 General Layout

Layouts of the proposed wastewater treatment plant must be submitted, showing:

a. through f. remain the same.

g. All wells located within 1,000 feet of the design high water mark of the sewage pond(s). Wells must meet the setback distance to sewage ponds as established in [New Rule I].

REASON: The board is proposing to amend Standard 20.42, which contains requirements for what must be shown on the plans for a new wastewater treatment facility. The board is proposing to amend this section to require that the location of any water well(s) in relation to sewage ponds comply with New Rule I. This amendment is necessary so that the department can determine if a further evaluation is needed to ensure all water wells are in compliance with New Rule I.

89.22 Location

Sludge ponds must be located as far as practicable from inhabited areas or areas likely to be inhabited during the lifetime of the structures. The distance between the design high water mark of the sludge pond and any water well must meet the setback distance as established in [New Rule I]. ~~Siting of sludge ponds must comply with the requirements of the Department. In accordance with MCA 75-5-605, a minimum separation of 500 feet (152.4 m) between the outer toe of the sewage pond embankments and any existing water well must be maintained.~~

REASON: The board is proposing to amend Standard 89.22, which currently cites 75-5-605, MCA to establish a 500-foot setback for sludge ponds (the terms "pond" and "lagoon" are used interchangeably in DEQ-2) and existing water wells. It is necessary to delete this reference in the circular after the Legislature deleted the 500-foot requirement in HB 368 and required the department to adopt new setbacks, which the department is doing in this Notice. Sludge ponds are typically used as part of the solids holding process in mechanical wastewater treatment plants and pose the same risks of well contamination that sewage lagoons do, so it is necessary that the requirements of New Rule I apply to protect water wells near sludge ponds.

93.26 Water Well Separation

~~In accordance with MCA 75-5-605, a minimum separation of 500 feet (152.4 m) between the outer toe of the sewage pond embankments and any existing water well must be maintained.~~

~~Separation requirements for storage ponds are discussed in Section 121.115 (Storage Analysis) and Section B.6 (Setbacks, Separation and Buffer Distances for Reclaimed Wastewater Use).~~ The distance between the design high water mark of the sewage pond (including those used for the storage of effluent) and any water well must meet the setback distance as established in [New Rule I].

REASON: The board is proposing to amend Standard 93.26, which currently cites 75-5-605, MCA to establish a 500-foot setback for sewage ponds and existing water wells. It is necessary to delete this reference in the circular after the Legislature deleted the 500-foot requirement in HB 368 and required the department to adopt new setbacks, which the department is doing in this Notice. In place of the previous 500-foot setback, the board is proposing to adopt New Rule I, thus protecting wells from contamination from sewage lagoons reviewed under DEQ-2. The board is also proposing to delete the cross-reference to Standards 121.115 and Appendix B.6, which provide separation requirements for storage ponds. As discussed in the statement of reasonable necessity for those standards, the board is proposing to remove those requirements to consolidate all the requirements in New Rule I.

121.115 Storage Analysis

Adequate storage during inoperable periods must be provided. Justification and calculations associated with storage volume requirements must be provided including a month by month water balance based on maximum design conditions.

Design precipitation must be based on a 10-year precipitation return period as described in Section 121.103.11 b (Precipitation). Storage requirements for wastewater treatment ponds are located in Section 93.36 (Pond Design Criteria, Tables 93-1 and 93-2).

Evaporation (E) rates must be based on estimated lake evaporation in the local area, if available. Where monthly evaporation data is unavailable, average annual evaporation may be distributed based on the ratio of average monthly ETc to average annual ETc.

Average annual evaporation and monthly precipitation values for Montana communities can be found at the Western Regional Climate Center website.

~~Storage ponds are exempt from the requirements of Section 93.26 (Water Well Separation) provided the content has been treated to the levels established in Table 121-1 (Reclaimed Wastewater Classifications and Associated Treatment Requirements) and has been adequately disinfected. Wastewater is considered adequately disinfected if the geometric mean number of *E. coli* in the influent flow to~~

~~the storage pond does not exceed 630 colony forming units per 100 milliliters and 10 percent of the total samples does not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.~~

APPENDIX B.6 Setbacks, Separation and Buffer Distances for Reclaimed Wastewater Use

The required distance of the approved use area from surface water and any well will be determined by the Department case-by-case based on the quality of effluent and the level of disinfection. In no case can reclaimed wastewater be discharged or applied directly to surface water unless an MPDES discharge permit is obtained from the Department.

~~Storage ponds are exempt from the requirements of Section 93.26 (Water Well Separation) provided the content has been treated to the levels established in Table B-1 (Reclaimed Wastewater Classifications and Associated Treatment Requirements) and has been adequately disinfected. Wastewater is considered adequately disinfected if the geometric mean number of *E. coli* in the influent flow to the storage pond does not exceed 630 colony forming units per 100 milliliters and 10 percent of the total samples does not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.~~

The Department will establish buffer zones on a case by case basis as necessary to protect public health.

REASON: The board is proposing to amend Standards 121.115 and Appendix B.6, both of which provide exemptions from the setback requirements in Standard 93.26 for storage ponds that meet certain disinfection standards. Because the board is proposing to amend Standard 93.26 to include the requirements of New Rule I, the board is also proposing to remove the exemptions in Standards 121.115 and Appendix B.6 to consolidate the requirements in a single place, New Rule I, thus making it easier to understand and apply the setback requirements. In doing so, the board is also proposing to modify the existing requirements in these standards. The first change included in New Rule I is to not exempt storage ponds with adequate disinfection from a setback but rather reduce the setback from 1,000 feet to 200 feet. The second modification is to increase the required amount of disinfection that meets the following requirements: the geometric mean number of *E. coli* bacteria in the influent flow to the sewage lagoon does not exceed 126 colony forming units per 100 milliliters and 10 percent of the total samples do not exceed 252 colony forming units per 100 milliliters during any 30-day period. The rationale for those changes are provided in the statement of reasonable necessity for (3)(c) of New Rule I.

Circular DEQ-3:

1.2.2 Detailed plans, including:

a. and b. remain the same.

c. location of all existing and potential sources of pollution~~, which~~ that may affect the water source or underground treated water storage facilities, including all sewage lagoons with the design high-water mark within 1,000 feet of the well site;

d. through h. remain the same.

REASON: The board is proposing to amend Standard 1.2.2, which address the minimum requirements of what must be shown on the plans for new water wells serving small water systems. The amendment would require that the location of any sewage lagoon within 1,000 feet of the well site must be identified in the plans, which is necessary so that the department can determine early in the review process if further evaluation is needed to ensure all water wells reviewed under DEQ-3 comply with New Rule I, and so that applicants are aware of its requirements early in the process and accordingly have a better basis for their decision making.

3.2.3.1 Well location

Regarding a proposed well location, MDEQ must be consulted prior to design and construction as the location relates to required separation between existing and potential sources of contamination and ground water development. Wells must be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any other structures used to convey or retain industrial, storm, or sanitary waste and state or federal highway rights-of-way. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I]. Well location(s) must be based on a source water delineation and assessment conducted in accordance with Section 1.1.6 of this circular.

REASON: The board is proposing to amend Standard 3.2.3.1, which provides siting requirements for proposed small water system well locations to ensure they are constructed at the correct distances from potential sources of contaminants, to require that wells must meet the setback distances in New Rule I. Because New Rule I is designed to protect water wells from contamination from sewage lagoons, the protections in New Rule I should apply to small water system wells reviewed under Circular DEQ-3. This change is also reasonably necessary to promote consistency across programs administered by the department.

New Community Water Supply Well Expedited Review Checklist

ENGINEERING REPORT:

3.2.3.1 Well location

Wells must be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm or sanitary waste, and state or federal highway rights-of-way. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I].

PLANS:

1.2.2. Detailed plans, including where pertinent:

c. through f. remain the same.

g. location of all existing and potential sources of pollution, including easements, which may affect the water source or underground treated water storage facilities, including all sewage lagoons with the design high-water mark within 1,000 feet of the well site;

i. remains the same.

3.2.3.1 and 3.2.3.2. Well location and continued protection zone.

Plans must identify the well isolation zone and all sewer lines, septic tanks, holding tanks, groundwater mixing zones and any structure used to convey or retain industrial, storm or sanitary waste and state or federal highway rights-of-way located within 100 feet of the proposed well. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I].

REASON: The board is proposing to amend the New Community Water Supply Well Expedited Review Checklist, which contains the same requirements as in Circular DEQ-1, to require that wells must meet the setback distances in New Rule I and that all sewage lagoons within 1,000 feet of the well site be identified in the plans. These changes are necessary to ensure that the checklist matches the revisions in DEQ-1, to provide the protection of New Rule I to those wells, and to allow the department to determine early in the review process if further evaluation is needed.

New Non-Community Water Supply Well Expedited Review Checklist

ENGINEERING REPORT:

3.2.3.1 Well location

Wells must be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm or sanitary waste, and state or federal highway rights-of-way. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I].

PLANS:

1.2.2. Detailed plans, including where pertinent:

a. and b. remain the same.

c. location of all existing and potential sources of pollution, including all sewage lagoons with the design high-water mark within 1,000 feet of the well site, which may affect the water source or underground treated water storage facilities;

d. remains the same.

3.2.3.1 and 3.2.3.2. Well location and continued protection zone

Plans must identify the well isolation zone and all sewer lines, septic tanks, holding tanks, groundwater mixing zones and any structure used to convey or retain industrial, storm or sanitary waste and state or federal highway rights-of-way located within 100 feet of the proposed well. Wells must meet the setback distance to sewage lagoons established in [NEW RULE I].

REASON: The board is proposing to amend the New Non-Community Water Supply Well Expedited Review Checklist, which contains the same requirements as Circular DEQ-3, to require that wells must meet the setback distances in New Rule I and that all sewage lagoons within 1,000 feet of the well site be identified in the plans. These changes are necessary to ensure that the checklist matches the revisions in DEQ-3, to provide the protection of New Rule I to those wells, and to allow the department to determine early in the review process if further evaluation is needed.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., January 28, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

9. Sarah Clerget, attorney for the board, has been designated to preside over and conduct the hearing.

10. The bill sponsor contact requirements of 2-4-302, MCA, do apply. The department notified the bill sponsor at his telephone number on February 15, 2018.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: */s/ Christine Deveny*
CHRISTINE DEVENY
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ Shaun McGrath*
SHAUN McGRATH
Director

Certified to the Secretary of State, December 11, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.1301 pertaining to motor carrier services electronic weigh station bypass systems	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 21, 2019, the Department of Transportation proposes to amend the above-stated rule.

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 the Department of Transportation no later than 5:00 p.m. on January 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Russ Christoferson, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-6136; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail rchristoferson@mt.gov.

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

18.8.1301 COMPLIANCE WITH WEIGHING LOCATION SIGNS - JURISDICTIONAL BYPASS RESTRICTIONS (1) and (2) remain the same.

(3) ~~Under jurisdictional bypass restrictions, a driver receiving a green light in-cab signal must stop at the weighing location regardless of the signal~~ Jurisdictional bypass restrictions require that regardless of receiving a bypass signal, a driver must enter an open weighing location when any of the following conditions apply:

(a) overweight (including permitted loads);

(b) overwide ~~(~~greater than ~~nine~~ ten feet~~)~~ (including permitted loads);

(c) overheight ~~(~~greater than ~~14~~ 15 feet 6 inches~~).~~ (including permitted loads);

(d) overlength greater than 110 feet (including permitted loads);

(e) oversize in excess of legal dimensions as outlined in 61-10-102, 61-10-103, and 61-10-104, MCA, without a valid permit.

(4) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-141, MCA

REASON: The proposed amendment is necessary to provide clarification as to which vehicles, already compliant with Montana credentials and safety requirements, may bypass an open weigh station using weigh station bypass systems, and which

vehicles by size and weight are required to enter an open weigh station, even if the electronic bypass system provides a bypass signal. The proposed amendment will improve weigh station operations by focusing on those vehicles which are not prescreened, and much more likely to be non-compliant with credential and safety requirements, and therefore pose a safety risk.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Russ Christoferson, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-6136; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail rchristoferson@mt.gov, and must be received no later than 5:00 p.m., January 18, 2019.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Russ Christoferson at the above address no later than 5:00 p.m., January 18, 2019.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 33 persons based upon the 337 currently registered electronic weigh station bypass motor carriers in Montana.

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

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

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.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rule will not have direct tribal implications.

/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 December 11, 2018.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, II, III, and IV pertaining to authorization and regulation of 50/50 raffles and 50/50 raffle electronic processing systems, the amendment of ARM 23.16.101, 23.16.107, 23.16.125, 23.16.202, 23.16.203, 23.16.401, 23.16.402, 23.16.403, 23.16.406, 23.16.407, 23.16.1822, 23.16.2602, and 23.16.3501 pertaining to definitions, grounds for denial of a license, cross-references to alcoholic beverages licenses, credit play, administrative procedure, card dealer licensure, and raffles, and the repeal of ARM 23.16.410 and 23.16.411 pertaining to card dealer licensure	))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On January 24, 2019, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, no later than 5:00 p.m. on January 18, 2019, to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail jsaye@mt.gov.

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

NEW RULE I DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "50/50 raffle" means a raffle sponsored by a nonprofit organization in which the winner is awarded a monetary prize calculated by a predetermined

percentage of the gross raffle ticket sales proceeds (example: 50% to the player and 50% to the raffle sponsor).

(2) "50/50 raffle electronic processing system" means products and support services supplied to a 50/50 raffle sponsor.

(3) "Nonprofit organization" means a nonprofit organization as defined in 23-5-112, MCA.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA
IMP: 23-5-413, MCA

NEW RULE II AUTHORITY TO OFFER 50/50 RAFFLES, 50/50 RAFFLE PROCESSING SYSTEM RESTRICTIONS (1) Only a nonprofit organization, a college, a university, a public school district, or a nonpublic school may sponsor and offer a 50/50 raffle.

(2) All 50/50 raffles are subject to the following restrictions:

(a) the sponsor is responsible for compliance with Montana statutes and regulations, including ARM 23.16.2602, as well as all other applicable state and federal statutes and regulations;

(b) credit gambling is prohibited and 50/50 raffle sales may not be made by credit card;

(c) the drawing must occur and the winner must be identified on the date advertised to the public and established in the sponsor's rules; and

(d) proceeds from the raffle must be divided between the winner and the sponsor and may not include a percentage of ticket sales for administrative expenses or other fees payable to any third party.

(3) A nonprofit organization may purchase or contract for a 50/50 raffle electronic processing system subject to these restrictions:

(a) the nonprofit organization must register with the department for exemption from the general internet gambling prohibition as provided in ARM 23.16.2602;

(b) the sponsor may only use an approved 50/50 raffle electronic processing system;

(c) 50/50 raffle tickets may be sold only on the day of the drawing; and

(d) the department may conduct on-site inspections and tests of the 50/50 raffle electronic processing system to assure proper functioning and compliance.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA
IMP: 23-5-413, MCA

NEW RULE III REQUIREMENTS OF ASSOCIATED GAMBLING BUSINESSES SUPPLYING 50/50 RAFFLE ELECTRONIC PROCESSING SYSTEMS (1) Before contracting with a nonprofit organization to supply a 50/50 raffle electronic processing system, an associated gambling business must:

(a) be licensed under 23-5-178, MCA, and ARM 23.16.110; and

(b) submit to the department for testing and approval all hardware and software offered to a 50/50 raffle sponsor.

(2) A 50/50 raffle electronic processing system may include:

(a) payment processing software which distinguishes and prohibits credit card transactions;

(b) promotional advertising;

(c) secure raffle sales data compilation, tabulation, transmission, and storage;

(d) secure wired or wireless data transmission;

(e) duplicate raffle ticket or receipt printing;

(f) on-site or off-site computer processing and data storage;

(g) selection of the raffle winner using a secure random number generator; and

(h) related services approved by the department.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA
IMP: 23-5-413, MCA

NEW RULE IV TESTING AND TESTING FEES (1) Each associated gambling business submitting a 50/50 raffle electronic processing system to the department for testing must deposit the sum of $1,000 to begin testing. This fund is applied toward the department's actual testing cost and is managed as follows:

(a) the department's technical services section will bill at the rate of $130 per hour; and

(b) the department will provide an accounting to the licensee for charges assessed and will refund any overpayment. The department will notify the submitting person of any underpayment and collect that money prior to notice of its intended action.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA
IMP: 23-5-413, MCA

REASON: These new rules establish a regulatory system for 50/50 raffles authorized by 23-5-413, MCA. The Legislature has amended the raffle statute a number of times, and developing technology is poised to change how some raffles are conducted. Fifty-fifty raffles, conducted with paired, duplicate paper raffle tickets, have been lawful in their current form since 2009. New electronic processing systems are ready to assume a share of the raffles offered in Montana. These changes require rulemaking to regulate both traditional paper 50/50 raffles and the new raffles conducted electronically.

Montana law on raffles has changed greatly over the years. In the 1980s, raffles were regulated by county commissioners and raffle prizes could not exceed $1,000 in value. Certain nonprofits were exempt from that prize limit, but the prize could not be awarded in cash. Mont. Code Ann. § 23-5-413 (1987). By 1993, the prize value had been raised to $5,000 and, again, nonprofits were exempt from that prize limit. However, nonprofits were permitted to award cash prizes only up to $1,000. Fifty-fifty raffles were then possible because nonprofits and religious corporations could offer a cash prize and they were not required to

own the prize prior to ticket sales. Mont. Code Ann. § 23-5-413 (1993). The statute was amended into its current form in 2009 when regulation of raffles shifted from county commissioners to the Gambling Control Division, which was granted rulemaking authority. The 2009 code maintained the general $5,000 prize value and required most raffle sponsors to own the prize before selling tickets. The list of exempt organizations was amended to include nonprofit organizations, colleges and universities and schools. Those exempt organizations could then offer 50/50 raffles with unlimited cash prizes. Fifty-fifty raffles have become commonplace at activities such as sporting events, which regularly produce cash prizes of thousands of dollars.

Traditional 50/50 raffles have evolved over the years, but electronic processing systems, with rapid debit card transactions and real time stadium promotions, may produce ever more 50/50 raffles with larger cash prizes. Manufacturers of electronic 50/50 raffle processing systems wish to enter the Montana market. Rather than cash sales of traditional paired, duplicate paper raffle tickets, these systems apply new technology. The systems feature mobile handheld devices capable of making a debit card sale, recording and wirelessly transmitting the sale data, and printing a receipt/ticket for the player. The systems can automate recordkeeping and randomly select a winner. The Gambling Control Division has received inquiries from Montana nonprofit organizations about the permissibility of such systems. Presently one such firm has gained Montana licensure as an associated gambling business to serve as "a party in processing gambling transactions." The Division expects that firm and others will market their electronic processing systems to eligible Montana nonprofits and schools offering 50/50 raffles.

With the anticipated continued growth of 50/50 raffles, administrative rules are needed to regulate both traditional paper ticket raffles and electronic 50/50 raffles. The electronic systems are a new technology and have not previously been delivered through an associated gambling business licensee. The Division proposes these regulations to specifically allow these systems, to provide for testing and approval of the systems, and to place restrictions on the nonprofit organizations who offer 50/50 raffles and the licensed associated gambling business who supply the systems. Regulations are necessary to fulfill the Division's charge to protect the public as set forth in 23-5-110, MCA, which declares the State's public policy on gambling.

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

23.16.101 DEFINITIONS As used throughout this ~~subchapter~~ chapter, the following definitions apply:

(1) through (21) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-112, 23-5-115, 23-5-118, 23-5-176 23-5-629, 23-5-637, MCA

REASON: The Gambling Control Division's rules are divided into subchapters, many of which open with a rule that defines terms specifically applicable to that subchapter. The terms defined in this rule are used frequently in Chapter 16, subchapter 1, ARM, but are also commonly used in other subchapters as well. For instance, the term "ownership interest" has the same definition for purposes of subchapter 1 as it does in subchapter 5. *See, e.g.,* ARM 23.16.502, pertaining to applications for a transfer of an ownership interest. Both the Division and the public have traditionally looked to ARM 23.16.101 for generally applicable definitions. However, the Division only recently observed the language of the rule reads as though its definitions are applicable only to subchapter 1. This amendment is meant to clarify that definitions found in ARM 23.16.101 are applicable to all of ARM Title 23, chapter 16.

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT, OR AUTHORIZATION (1) through (1)(g) remain the same.

(h) failed within a reasonable time to supply records within the applicant's or licensee's control requested by the department in any license or permit application or renewal application, or in any financial audit initiated by the department or ordered through administrative or court action;

(h) through (k) remain the same, but are renumbered (i) through (l).

(2) remains the same.

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-176, MCA

REASON: The Gambling Control Division's experience demonstrates that some applicants or licensees withhold or delay records production because there has been little or no consequence for failure to cooperate. The Division's inability to timely collect records increases personnel expenses. Additionally, delays caused by uncooperative applicants and licensees slow processing time for all others with matters pending before the Division. This rule will promote timely responses to Division requests for information or documentation or, alternatively, supply the Division with a tool to dispose of cases marked by unreasonable delays.

23.16.125 CHANGE OF ~~LIQUOR~~ ALCOHOLIC BEVERAGE LICENSE TYPE (1) through (3) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-119, MCA

REASON: The Department of Revenue Liquor Control Division formally changed its name and license references to the Department of Revenue Alcoholic Beverage Control Division to more accurately reflect the scope of its work. The Department of Justice is responding by amending its rules to reflect the new name.

23.16.202 CREDIT PLAY PROHIBITED (1) through (3) remain the same.

(4) All checks issued to a gambling operator for cash to participate in a gambling activity must be fully completed by the drafter (owner of the account). A completed check must include the name of the gambling licensee to whom it is payable, the amount of the check, the date upon which it was written, and the signature of the drafter. Evidence of a gambling licensee's routine pattern or practice of accepting checks omitting one or more of these elements raises a disputable presumption under ARM 23.16.3001 of illegal credit gambling.

(4) through (8) remain the same, but are renumbered (5) through (9).

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-157, MCA

REASON: A recent credit gambling criminal investigation and prosecution exposed a gambler and gambling licensee who exploited a weakness in the rule as written. The statute implemented, 23-5-157, MCA, prohibits "hold checks." This rule echoes that prohibition but permits a gambler to "repurchase" a check with cash if the check is exchanged for cash by noon the day after the check was written. If there is no date on the check there is no way to assure the check was not offered as a hold check or that the check was exchanged for cash by noon the day after it was issued. Actual experience has shown a gambler and gambling licensee successfully evading the bar on hold checks by routinely leaving the date blank on the check. This amendment will block that tactic.

23.16.203 ADMINISTRATIVE PROCEDURE (1) The department is authorized to investigate gambling activities, alleged violations of Title 23, chapter 5, MCA, and these rules, and all applications for licenses, permits, authorizations, and registrations. The department may inspect records and audit financial activities bearing on holders of, or applicants for, any gambling license, permit, authorization, or registration. Upon completion by the department of its investigation of any matter within its jurisdiction, the department shall notify the person involved of its intended action. ~~If the person involved then desires a hearing, he~~ A person desiring a hearing to challenge the intended action must submit a written request to the department within 20 days as provided in ARM 23.16.108.

(2) If the subject of an investigation fails within a reasonable time to supply the department with records specifically requested by the department and within the subject's control, the department may complete its investigation by:

(a) denying the license, permit, authorization, or registration that is the subject of the investigation; and/or

(b) taking any action authorized in 23-5-136, MCA.

(2) through (4) remain the same, but are renumbered (3) through (5).

AUTH: 23-5-115, MCA
IMP: 23-5-113, 23-5-115, 23-5-136, 23-5-628, MCA

REASON: The Gambling Control Division's experience demonstrates that some applicants or licensees withhold or delay records production because there has been little or no consequence for failure to cooperate. The Division's inability to timely collect records increases personnel expenses. Additionally, delays caused by uncooperative applicants and licensees slow processing time for all others with matters pending before the Division. This rule will promote timely responses to Division requests for information or documentation or, alternatively, supply the Division with a tool to dispose of cases marked by unreasonable delays.

23.16.401 APPLICATION FOR CARD DEALER LICENSE

(1) Applications for card dealer licenses (Form 4) are available on the department's website (www.dojmt.gov/gaming), from a local ~~g~~Gambling ~~c~~Control Division office, or from a local Motor Vehicle Division office~~, or other public location designated by the department~~.

(2) An applicant for a card dealer license must first appear in person and present ~~photographic verifications of his identity~~ government-issued identification to an authorized representative of the Motor Vehicle Division. Upon confirmation of the applicant's identity, ~~T~~the authorized representative of the Motor Vehicle Division must~~:~~

~~(a)~~ obtain a photograph and signature of the applicant.~~; and~~

~~(b) provide a card dealer application packet which shall include:~~

(3) An applicant for a card dealer license must next submit a completed application to the Department of Justice, Gambling Control Division. The application is not complete unless it contains:

~~(i)~~(a) ~~Form 4, Montana~~ a card dealer application~~;~~ (Form 4) with all required information, signed and dated by the applicant;

~~(ii)~~(b) ~~duplicate Forms FD-258 for~~ two original sets of fingerprints to be obtained from and certified by a local law enforcement agency; ~~and~~

~~(iii)~~(c) ~~Form 10 for~~ a completed personal history statement~~s.~~ (Form 10); and

(d) the license fee and fingerprint processing fee.

~~(2) The first year license fee required by Title 23, chapter 5, MCA, and a fingerprint processing fee must accompany each application.~~

~~(3) The application for a dealer license, Forms 4 and FD-258, are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site www.dojmt.gov/gaming.~~

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-308, MCA

23.16.402 CARD DEALER LICENSE (1) A card dealer license issued by the department ~~must be in the form of a laminated identification card and must~~ will contain the licensee's ~~following information~~:

~~(a) on the front of the license:~~

~~(i)~~(a) ~~a~~ photograph ~~of the person to whom the license is issued~~;

~~(ii)~~(b) ~~the~~ first name, middle initial, and last name ~~of the person to whom the license is issued~~; and

~~(iii)~~(c) ~~the~~ assigned license number and expiration date. ~~specific to the person to whom the license is issued.~~

(2) ~~Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance.~~ Card dealer licenses expire according to the following schedule:

(a) card dealers holding valid licenses on [the effective date of this rule], retain their expiration; and

(b) card dealer licenses issued or renewed after [the effective date of this rule], will expire on June 30 of each year.

(3) A card dealer on duty in a licensed gambling premises:

(a) must wear and display in a prominent manner a valid card dealer license issued to the card dealer; and

(b) must comply with any player's or law enforcement officer's request to inspect the dealer's license.

(4) A card dealer's license is nontransferable and may not be worn or displayed by any person other than the named licensee. In the case of a violation of this rule:

(a) a federal, state, or local law enforcement officer charged with the responsibility of investigating gambling activities may seize an expired license or a license displayed by anyone other than the named licensee;

(b) any confiscated card dealer license must be sent to the department along with a report detailing the circumstances of the seizure; and

(c) upon receipt of a confiscated card dealer license and the accompanying report, the department must immediately begin an investigation into the circumstances for the purposes of determining whether a violation of Title 23, chapter 5, MCA, or these rules occurred.

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

23.16.403 PROCESSING OF CARD DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) remains the same.

(2) ~~An application to renew a dealer license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the dealer license.~~ A card dealer license will expire if the department does not receive the application to renew by the expiration date.

(3) If the holder of an expired license submits an application and supporting documents to renew ~~his~~ the license within 30 days after the expiration date, ~~he~~ the applicant may renew the license at the renewal license rate. If the renewal application ~~is~~ and supporting documents are not received within 30 days, the holder shall reapply for a new original license in the manner required by these rules.

(4) Replacement of a card dealer license is accomplished by ~~following the new license procedure~~ submitting a request to the department and including a $10 fee.

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

23.16.406 TEMPORARY CARD DEALER LICENSE (1) ~~A temporary dealer license application packet may be obtained by an applicant from a local gambling control office, local Motor Vehicle Division office, or other public location designated by the department.~~ An applicant for a card dealer license may request a temporary card dealer license while the application is being processed.

(2) An applicant for a temporary card dealer license must first appear in person and present government issued identification to ~~before~~ an authorized representative of the Motor Vehicle Division ~~and present photographic verification of applicant's identity~~. Upon confirmation of the applicant's identity, ~~T~~the authorized representative of the Motor Vehicle Division must obtain a photograph and signature of the applicant.

(3) The applicant must then appear in person and submit to an investigator for the department:

(a) ~~a completed application~~ Form 4 with all required information, signed and dated by the applicant;

~~(b) payment of a first year license fee and fingerprint processing fees;~~

~~(c) valid photo identification and social security card or birth certificate;~~

~~(d)~~(b) two ~~complete~~ original sets of fingerprints to be obtained from and certified by a local law enforcement agency~~.~~; ~~the department, or a private security company approved by the department; and~~

~~(e)~~(c) verifiable evidence that the applicant has an offer of employment as a card dealer, or a reasonable prospect for employment as a card dealer, and that such employment is expected to commence within 14 days of making application~~.~~; and

(d) the license fee and fingerprint processing fee.

(4) remains the same.

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

23.16.407 CONFISCATION OF TEMPORARY CARD DEALER LICENSE

(1) The department may ~~immediately~~ confiscate a temporary card dealer license by issuing a temporary cease and desist order based on a finding of any of the following conditions:

(a) and (b) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-308, MCA

REASON: These rule amendments are part of an update of the entire subchapter of the rules pertaining to card dealers. This rewrite was undertaken to change card dealer license expirations to bring them in line with other license types regulated by the Gambling Control Division. Currently all other licenses expire on June 30, the end of the State's fiscal year. Card dealer licenses, however, expire on the individual licensee's birthday. That peculiar aspect of card dealer license regulation creates inefficiencies for Division staff and could also be troublesome to licensees trying to assure continuous licensure by their card dealers. That amendment affords an opportunity to improve other aspects of the subchapter including: condensing the rules, which permits the repeal of two rules; achieving procedural consistency between card dealer licenses and temporary card dealer licenses; establishing a requirement to wear one's own license while on duty; and improving clarity and readability.

23.16.1822 PERMIT NOT TRANSFERABLE (1) through (7)(b) remain the same.

(c) the ~~liquor~~ alcoholic beverage license associated with a licensed location/operator is placed on non-use status and machines are taken out of play for 30 days or more; or

(d) through (9) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-603, 23-5-611, 23-5-612, 23-5-621, MCA

REASON: As indicated in ARM 23.16.125 above.

23.16.2602 RAFFLE GENERAL REQUIREMENTS, AUTHORIZED RANDOM SELECTION PROCESSES, AND RECORD KEEPING REQUIREMENTS (1) remains the same.

(2) The following random selection processes are authorized for use in determining a winner of a raffle as defined in 23-5-112, MCA:

(a) a drawing from a drum or other receptacle containing raffle ticket stubs or other suitable indicators of the ticket purchaser's identity that have been thoroughly mixed before the drawing; ~~and~~

(b) an approved 50/50 raffle electronic processing system containing a random number generator; and

~~(b)~~(c) selection by any other process if:

(i) through (7) remain the same.

AUTH: 23-5-115, 23-5-413, MCA
IMP: 23-5-112, 23-5-413, MCA

REASON: As stated in the reasonable necessity statement for New Rule I. Fifty-fifty raffle processing systems may contain a random number generator which has not been specifically designated an approved random selection process. This rule amendment is necessary to authorize the new process.

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) through (2)(a) remain the same.

(b) Payouts for bona fide promotional games of chance, offered by a gambling licensee and/or an on-premises consumption ~~liquor~~ alcoholic beverage licensee, are subject to the maximum payout limitation for any single element of the authorized gambling enterprise simulated. Payouts for bona fide promotional games of chance offered by any person or entity that are not a gambling or ~~liquor~~ alcoholic beverage licensee, are not limited by the payout limits for the authorized gambling enterprise simulated.

(3) through (12) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-112, 23-5-115, 23-5-152, MCA

REASON: As indicated in ARM 23.16.125 above.

5. The department proposes to repeal the following rules:

23.16.410 POSSESSION OF DEALER LICENSE

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

23.16.411 DEALER LICENSE SPECIFIC TO THE PERSON NAMED THEREON

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

REASON: As indicated in ARM 23.16.407 above.

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: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail j.saye@mt.gov and must be received no later than 5:00 p.m., February 5, 2019.

7. Michael L. Fanning, Department of Justice, 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 paragraph 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

11. Pursuant to 2-4-302, MCA, the department advises the adoption of testing and approval fees for 50/50 raffle electronic processing systems will require licensed associated gambling businesses to pay a monetary amount for the department's actual testing costs. Testing fees are estimated to cost $2,000 per system. The cumulative amount for all persons of the new fee is predicted to average $2,000 annually, since the department does not expect to average more than one application per year or to maintain more than four to five licensees at a given time.

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State December 11, 2018.

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.21.634 and 36.21.638 regarding the Location of Wells	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On January 18, 2019, at 10:00 a.m., the Board of Water Well Contractors will hold a public hearing in the Fred Buck Conference Room (ground floor), Water Resources Building, 1424 Ninth Avenue, Helena, MT, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Art Robinson, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-6643; fax (406) 444-0533; or e-mail arobinson@mt.gov.

3. The department proposes to amend the following rules, stricken matter interlined, new matter underlined:

36.21.634 DEFINITIONS For purposes of this chapter, the following terms shall apply.

(1) through (34) remain the same.

(35) "Sewage lagoon" means any holding or detention pond that is used for treatment or storage of water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present. For purposes of this rule, the term includes concentrated animal feeding operations but does not include storm water facilities or subsurface wastewater treatment systems.

(35) through (41) remain the same but are renumbered (36) through (42).

AUTH: 37-43-202~~(3)~~, MCA
IMP: 37-43-202~~(3)~~, MCA

36.21.638 LOCATION OF WELLS (1) remains the same.

(a) 50 feet of septic tanks, and underground storage tanks and associated lines; ~~or~~

(b) 100 feet of drainfields, seepage pits or cesspools, or other site treatment systems; or

(c) 1,000 feet of sewer lagoons; wells less than 1,000 feet setback must be in compliance with the Department of Environmental Quality under [New Rule I from MAR Notice No. 17-404].

(2) and (3) remain the same.

AUTH: 37-43-202~~(3)~~, MCA
IMP: 37-43-202~~(3)~~, MCA

REASONABLE NECESSITY: The board proposes to amend these rules to ensure consistency with the rules proposed by the Department of Environmental Quality (DEQ) in MAR Notice No. 17-404.

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 in writing to Art Robinson, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail arobinson@mt.gov and must be received no later than 5:00 p.m. on January 18, 2019.

5. Art Robinson, Department of Natural Resources and Conservation, 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 Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by telephone on February 15, 2018.

8. 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 E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Danna R. Jackson
DANNA R. JACKSON
Rule Reviewer

Certified to the Secretary of State December 11, 2018.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to depository procedures for state publications	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 2, 2018, the Montana State Library published MAR Notice No. 10-102-1801 pertaining to the proposed adoption of the above-stated rules at page 2157 of the 2018 Montana Administrative Register, Issue Number 21.

2. The department has adopted the following rules as proposed: New Rules I (10.102.8103), and II (10.102.8104).

3. The department has adopted the following rule with the following changes from the original proposal, new matter underlined:

NEW RULE III (10.102.8105) RULES FOR STATE AGENCIES (1) State agencies shall post state publications to their publicly accessible websites. State publications should remain posted for a minimum of 90 days.

(2) remains as proposed.

4. No comments or testimony were received. The Montana State Library Commission had requested that those two words be added to New Rule III but they were inadvertently omitted in the proposed adoption notice. The corrected wording does not provide any substantive change in meaning.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Aaron LaFromboise
Aaron LaFromboise
Chairman
Montana State Library

Certified to the Secretary of State December 11, 2018.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem and the transfer of ARM 12.9.103	))))))	NOTICE OF ADOPTION AND TRANSFER

TO: All Concerned Persons

1. On August 24, 2018, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-505 pertaining to the public hearings on the proposed adoption and transfer of the above-stated rules at page 1641 of the 2018 Montana Administrative Register, Issue Number 16.

2. The commission has transferred the above-stated rule as proposed.

3. The commission has adopted the above-stated rule as proposed: New Rule I (12.9.1403).

4. The commission appreciates all the comments it received on this rulemaking and has thoroughly considered the comments and testimony. In the responses below, it is frequently noted that a comment is outside the scope of this rulemaking. That means that the comment is not directly related to this proposed rule or any of its elements. However, as is evident from both the number and content of the comments, the commission is aware that grizzly bear management in general is a matter of high importance to the people of Montana. The commission appreciates the passion shown through the public's participation in this process and will keep all comments in mind as it proceeds with this and other grizzly bear management decisions. The following acronyms are used frequently in these responses:

ARM: Administrative Rules of Montana
DMA: Demographic Monitoring Area
ESA: Endangered Species Act
FWP: Montana Department of Fish, Wildlife and Parks
GYE: Greater Yellowstone Ecosystem
NCDE: Northern Continental Divide Ecosystem

A summary of the comments received and responses are as follows:

Comment #1: The commission received comments both in support of, and in opposition to, hunting grizzly bears in Montana.

Response #1: These comments are outside the scope of this rulemaking. The commission is not proposing a hunting season for grizzly bears at this time, as the grizzly bear is not delisted from the Endangered Species Act. If the grizzly is delisted, and the commission then proposes a hunting season, a separate process and opportunity for public comment will be held. Additionally, if the commission were to establish a grizzly bear hunting season per 87-5-302, MCA, when special grizzly bear licenses are to be issued pursuant to 87-2-701, MCA, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels.

Comment #2: The commission received comments both in support of, and in opposition to, delisting the grizzly bear from the Endangered Species Act.

Response #2: These comments are outside the scope of this rulemaking. The commission does not have the authority to delist a species from the Endangered Species list; only the United States Fish and Wildlife Service can delist a species from the Endangered Species Act.

Comment #3: The commission received comments requesting that public comment be opened up on the entire Conservation Strategy, not just Chapter 2.

Response #3: The commission has proposed a specific administrative rule that would adopt demographic objectives that are described in the Conservation Strategy (2018). The public comment on the rule follows specific administrative requirements associated with rule adoption. The Conservation Strategy is an interagency document that involves components outside of the authority of the commission and scope of the administrative rule. Therefore, public comment on the Conservation Strategy is outside the scope of this rulemaking.

Comment #4: The commission received comments suggesting that a statewide management plan be put into place that would establish a framework for such things as carcass removal, future hunting, conflict management, road density management, and funding.

Response #4: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. There are already management plans in place that do address conflict management, tolerance, distribution, etc. These issues are also addressed in the Conservation Strategies for the GYE and NCDE. FWP is considering development of a statewide plan that would incorporate and distill portions of all these existing plans as well as address issues such as connectivity. However, that will be a lengthy endeavor and should not change the demographic objectives for the NCDE DMA outlined in the proposed rule.

Comment #5: The commission received comments regarding funding. Some comments suggested license dollars for a grizzly hunt would provide necessary

funding. Conversely, comments also asserted that license dollars would not be enough for funding.

Response #5: FWP currently spends approximately $1 million/year on grizzly bear management across the state. Hunting license revenue is not a driver of current or future grizzly bear management. If the commission decided to proceed with a hunting season, it would be very conservative and limited by the demographic objectives described in the proposed rule. As such, based on license prices in statute ($150/resident license and $1,000/nonresident license), grizzly bear hunting license revenue would likely be insignificant.

Comment #6: The commission received comments in support of connectivity and linkage between the GYE, NCDE, Selway-Bitterroot, Selkirk, and Cabinet-Yaak. Some comments suggested that this connectivity is crucial and necessary to establish sufficient recovery and genetic diversity.

Response #6: FWP supports genetic and/or demographic connectivity between the grizzly bear populations in Montana and the Bitterroot Recovery Zone, as described in the Conservation Strategy (2018) and the two state Grizzly Bear Management Plans. The methods described in the proposed rule provide for maintaining a population level within the DMA which will offer dispersal opportunities.

Comment #7: The commission received comments in opposition to the proposed rule stating that maintaining the population at 800 grizzlies in the NCDE is not sufficient or adequate to establish a recovered population or connectivity and genetic diversity. The commission received a varied amount of suggested viable population numbers for the NCDE, from 1000 up to 9000.

Response #7: Our population objective calls for maintaining a 90% probability that the population will remain above 800 bears. Because our population monitoring currently does, and always will include a significant margin of error, it means that an estimated population size of roughly 1000 bears or more will be maintained indefinitely. To put this number in context, 1000 bears within the ~42,600 km^2 DMA represents an overall population density of about 24 bears/1000 km^2. This overall population density for the DMA is comparable to or exceeds reported densities of many interior populations in northern Alberta (18 bears/1000 km^2), northern British Columbia (23–33 bears/1000 km^2), Yukon Territories (28–37 bears/1000 km^2), Northwest Territories (4-12 bears/1000 km^2), and Alaska (4–15 bears/1000 km^2), many of which are more remote than the NCDE (McLellan 1994, Mowat et al. 2005). Although direct comparisons should be viewed with some caution, due to variations in methods and the fact that many study areas were likely placed in higher quality habitats than surrounding areas (Mowat et al. 2005), we believe that this indicates the proposed population objective is consistent with a healthy, self-sustaining population size. The genetic diversity of the NCDE population is relatively high (Proctor et al. 2012); therefore there are no concerns about the long-term genetic health of the NCDE population. Whereas population viability modeling typically evaluates the probability of extinction of a population, our objective calls for

population modeling that will continually evaluate the probability that the population is above 800 bears – a much higher bar.

The objectives in the proposed rule will result in conditions conducive to continuing dispersal of subadult bears out of the DMA, providing for potential emigration into other populations or recovery zones. Natal dispersal is the movement of subadult animals away from the home range they shared with their mother. In grizzly bears, natal dispersal is generally male-biased. Females often set up home ranges overlapping or adjacent to their mother, but males generally move longer distances away, likely to reduce the probability of inbreeding. Additionally, evidence indicates that dispersal of both males and females is inversely density-dependent (Stoen et al. 2006). Subadult bears are more likely to disperse and generally move longer distances from their natal areas when bear density around them is lower. This is likely because at lower densities, dispersing individuals experience less intraspecific competition and are more apt to locate areas where they will have more exclusive access to resources. Consequently, in geographically distinct but expanding populations, we generally observe higher densities and smaller dispersal rates and distances in the "core" and lower densities and larger dispersal rates and distances near the periphery (Swenson et al. 1998, Kojola and Laitala 2000, Jerina et al.2008). Interestingly, although male-biased dispersal rates typically result in male-dominated sex ratios near the periphery (Swenson et al. 1998, Kojola and Laitala 2000, Jerina et al.2008), some evidence suggests that peripheral females and males dispersed similar distances from the core (Swenson et al. 1998, Kojola and Laitala 2000) and all studies documented at least some long-distance female dispersal (Swenson et al. 1998, Jerina et al. 2008). These studies all support what has been observed in the spatially expanding NCDE grizzly bear population. Kendall et al. (2009) documented a core-to-periphery density gradient centered in Glacier National Park. Most outlier verified observations have been males (when sex was determined); however, females appear to be equally present within certain areas of newly occupied range, such as the East Front, the Salish Range, and the Flathead Valley. With overall density of 24 bears/1000 km^2 within the DMA, we expect that the density within the DMA will continue to be higher than in surrounding areas for the foreseeable future. Thus, there will continue to be a density-dependent effect leading to dispersal outside of the DMA by some subadult individuals. If these individuals are successful in staying out of conflict and surviving in the more human-populated areas between ecosystems, they may succeed in moving between the NCDE and other populations. In areas which do not provide connectivity to other ecosystems, this dispersal outside of the DMA may be regarded as socially unacceptable, which will require additional decision-making by FWP and the commission involving additional public input.

Finally, net emigration will be incorporated into population modeling, as described in Appendix 3 of the Conservation Strategy (2018): "Given that the NCDE grizzly bear population has expanded and now some proportion of the population resides outside of the DMA, we are currently developing and evaluating additional inputs to the model to explicitly estimate this proportion and exclude those individuals from the population estimate as well as the probability that the population is above 800 bears

within the DMA." Thus, thresholds will be set relative to a population estimate that has already been adjusted to account for dispersing subadults.

Comment #8: The commission received comments in support of the proposed rule stating that the proposal was sufficient for grizzly bear recovery.

Response #8: The NCDE grizzly bear population has met and surpassed the recovery criteria as described in the Recovery Plan (1993), including the occupancy of reproductive females, the estimated population size, and the mortality limits, and is considered recovered by FWP. The demographic objectives in the proposed rule will ensure that the population continues to be healthy and viable.

Comment #9: The commission received comments suggesting that 800-1000 as a population size was too high. The comments referenced bears' impact on elk and moose populations, and that they are being pushed out to areas that are not suitable habitat, such as farmlands, ranches, and towns. Some comments suggested that the current population is out of control and that grizzlies no longer fear humans. One of the comments suggested the proposed population number be reduced from 800 to 500.

Response #9: The criteria for occupancy of Bear Management Units within the Recovery Zone by reproductive females as described in the Recovery Plan (1993) was met at about the same time that the probability that the population was above 800 exceed 90%, which supports the population objective in the proposed rule. When the population was closer to 500 bears (likely in the 1980s or 1990s), the recovery criteria were not yet met. FWP recognizes the potential adverse impacts of grizzly bears on other species and humans and will strive to be responsive to them.

Comment #10: The commission received comments on elements of the Conservation Strategy that were not proposed in this rule, including comments asking that Montana not sign the Conservation Strategy.

Response #10: These comments are outside the scope of this rulemaking. The Conservation Strategy (2018) simply outlines how bears will be managed if delisted and documents the commitments of the management agencies to maintain a recovered population of grizzly bears. FWP played an integral part in development of the Conservation Strategy and supports its content.

Comment #11: The commission received a comment regarding Yellowstone grizzlies and hunting in the park.

Response #11: This comment is outside the scope of this rulemaking. This rulemaking focuses on the NCDE only. Hunting is not allowed in Yellowstone or Glacier National Parks.

Comment #12: The commission received comments in opposition to hunting in or around Glacier National Park.

Response #12: These comments are outside the scope of this rulemaking. Hunting is not being proposed by the commission at this time as grizzly bears are still listed on the Endangered Species list. If the commission were to consider hunting of NCDE bears after they are delisted, that would be done through a separate commission rule making process. Hunting in Glacier National Park is not allowed, and is beyond the authority of the commission.

Comment #13: The commission received a comment requesting reopening roads that have been closed for grizzly habitat to provide for increased recreational forest access.

Response #13: These comments are outside the scope of this rulemaking. Whether roads remain open or closed is up to the landowner/land management agency and is outside the scope of authority of the commission.

Comment #14: The commission received a comment questioning why a public hearing was not held in Choteau, MT, as well as a few comments both in criticism and in appreciation of the format of the public hearings.

Response #14: The commission held four public meetings spread out geographically to encompass most of the NCDE (Great Falls, Conrad, Missoula, and Kalispell), as well as had a 60-day public comment period. While the commission appreciates the interest of the public for more meetings in more places, there are limits and we are hopeful that between the public meeting locations and the opportunity to submit written comment, everyone had an opportunity to provide input.

Comment #15: The commission received comments concerning personal safety and livestock loss due to the increasing numbers of grizzly bears, particularly along the Rocky Mountain Front.

Response #15: While listed under the ESA, the U.S. Fish and Wildlife Service retains primary authority for grizzly bears. Upon delisting, the State of Montana will assume that authority. Per 87-5-301, MCA, it is the policy of the state to: (a) manage the grizzly bear as a species in need of management to avoid conflicts with humans and livestock; and (b) use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures. The commission recognizes the controversial nature and potential danger of grizzly bears and is committed to addressing and minimizing those threats through active management, as described in Commission Policy (ARM 12.9.103).

Comment #16: The commission received comments suggesting that the range of grizzly bears should be broadened to closer to their historic range, as they currently only occupy 2% of their historic range.

Response #16: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of

the NCDE grizzly bear population upon delisting. Recovery planning and criteria are established by the U.S. Fish and Wildlife Service. The approved recovery plan for grizzly bears calls for recovering grizzly bears in six recovery zones, and delisting those that meet recovery criteria.

Comment #17: The commission received comments stating that grizzly bears that die outside of the DMA are not accounted for in the proposed rule.

Response #17: The population estimate and the resulting thresholds are specific to the DMA. The proposed rule focuses on this area because it represents the core of the NCDE population, it was the focus of recovery efforts, and the preponderance of protected public land in this area will provide habitat for grizzly bears well into the future. The proposed rule does not codify management outside of the DMA, because it is valuable for FWP and the commission to have discretion in making decisions about grizzly bears in the more human-dominated landscapes outside of the DMA.

Comment #18: The commission received comments calling for protection of suitable grizzly habitat, such as forests and wildernesses.

Response #18: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Habitat protection measures are contained within agency land use plans and summarized in the Conservation Strategy (2018).

Comment #19: The commission received a comment suggesting that any problem female bears should be removed.

Response #19: Decisions to remove grizzly bears because of conflict are generally made on a case-by-case basis. Both female and male bears have been and will continue to be removed when conflicts are serious enough and/or bears are unlikely to discontinue their conflict behavior.

Comment #20: The commission received a few comments referencing the decision of *Crow Indian Tribe v. United States* and the impacts of the decision on the rulemaking proposal. Specifically, commenters noted their belief that under the *Crow* decision, FWS cannot move ahead with a proposal to delist the NCDE grizzly population without evaluating the impact that delisting the NCDE would have on other grizzly populations.

Response #20: The proposed rule would bind FWP to a set of demographic objectives for management of the NCDE grizzly bear population upon delisting. In *Crow Indian Tribe v. United States,* the U.S. District Court invalidated the rule under which the Fish and Wildlife Service (FWS) removed the Yellowstone population of grizzly bears from the list of threatened species. Clearly, FWS must be cognizant of the *Crow* decision if it proceeds to delist the NCDE population of grizzly bears.

While the *Crow* decision complicates the delisting process for NCDE, it is not clear from the decision that delisting of NCDE would not be lawful under any circumstance. As implied by the comments themselves, the *Crow* decision can be read to mean that the NCDE population cannot be delisted without the proper analysis of the impacts of delisting to other grizzly populations. It follows that if the proper analysis is performed, delisting the NCDE population is at least possible. Therefore, the proposed rule could be in effect. Additionally, unlike the current population estimation method in the GYE, the method for estimating the population size in the NCDE is unbiased, therefore we anticipate no need for recalibration – an issue cited in the *Crow* decision. In the event that the NCDE population is delisted, the commission feels that it is important to have population standards in place.

Comment #21: The commission received comments suggesting that it be a requirement for hunters to carry bear spray.

Response #21: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. FWP encourages not just hunters, but anyone who works or recreates outdoors in grizzly bear habitat to carry and know how to use bear spray.

Comment #22: The commission received a comment suggesting that FWP look at other ways of managing the population other than killing, such as neutering and birth control.

Response #22: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Bears that are removed through killing/euthanasia typically have a history and behavior that precludes releasing them back into the wild. Neutering and birth control would not address that behavior.

Comment #23: The commission received several comments in support of general protection of grizzly bears.

Response #23: The commission feels that the demographic objectives in the proposed rule will maintain a recovered population in the NCDE and facilitate connectivity.

Comment #24: The commission received several general comments that there are too many bears.

Response #24: The demographic objectives in the proposed rule will maintain a recovered population in the NCDE and facilitate connectivity with other populations or Recovery Zones. The criteria for occupancy of Bear Management Units within the Recovery Zone by reproductive females as described in the Recovery Plan (1993) was met at about the same time that the probability that the population was above 800 exceed 90%, which supports the population objective in the ARM.

Comment #25: The commission received a comment suggesting that all FWP properties in the NCDE require food storage rules.

Response #25: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Food storage regulations have been adopted on all wildlife management areas, fishing access sites, and state parks.

Comment #26: The commission received comments calling for non-lethal conflict management.

Response #26: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. The FWP bear conflict specialists have many non-lethal approaches to conflict management. Lethal action is only taken when there is a human safety risk, there is nowhere to relocate the bear, or the bear causing the conflict has been a repeat offender.

Comment #27: The commission received a few comments calling for FWP to work and collaborate with the Department of Transportation (MDT) for safe passages for bears on highways.

Response #27: FWP is working with MDT in identifying passage barriers for bears due to highway infrastructure. Efforts are underway for continued and better communication on this topic, and earlier inclusion of FWP in MDT planning processes. FWP has also collaborated with other scientists to model likely connectivity paths and will use this information when working with MDT on wildlife crossings.

Comment #28: The commission received comments suggesting that the population number for the NCDE should be whatever the population size is at delisting.

Response #28: Setting a population objective based on an unknown date is arbitrary. The proposed rule ensures the population will be at or above 800 bears within the DMA post delisting, which is double what the recovery plan calls for to be recovered under the ESA. To meet the population objective in the proposed rule, there needs to be around 1,000 bears, which is close to the current population.

Comment #29: The commission received comments suggesting that management should focus on more than just population numbers, such as habitat and connectivity.

Response #29: This proposed rule is focused solely on the demographic objectives outlined in Chapter 2 of the Conservation Strategy (2018), but FWP and other agencies have committed to management of habitat for grizzly bears as described in

Chapter 3. FWP has issued food storage orders for all wildlife management areas, fishing access sites, and state parks in the NCDE and works to protect key parcels of grizzly bear habitat through our lands program.

Comment #30: The commission received comments suggesting that FWP needs to work on educating landowners on bear attractants and that a conflict reduction strategy should be put into place.

Response #30: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. A majority of the conflict specialist time is spent educating landowners, but there are many challenges including the turnover in property owners, the number of new residents, and an expanding grizzly bear population. FWP does have a Grizzly Bear Management Plan for Western Montana and it includes conflict management and an education and outreach section.

Comment #31: The commission received a comment questioning the effectiveness of the Conservation Strategy due to agency statements that it is not regulatory. The commenter suggests that the rule language be amended so that the rules go into effect when endangered species protections in the NCDE are lifted, rather than being operative when the Conservation Strategy is in effect.

Response #31: The commission appreciates this comment. The Conservation Strategy (2018) will be effective upon delisting. Therefore, the rule, if adopted, will be effective upon delisting. While the Conservation Strategy is not itself regulatory it is, at least in part, a compilation of rules and guidelines that are binding on individual signatories. The point of this rule making is to bind FWP through rule to its commitment to the Conservation Strategy. The commenter's suggestion has merit. However, because the rule directly reflects the language and standards of a portion of the Conservation Strategy, the commission feels it is appropriate to retain the language indicating that the rule operates when the Conservation Strategy is in effect.

Comment #32: The commission received a comment concerned with the 6-year running average. The commission also received a comment specifically supporting the 6-year running average.

Response #32: The 6-year running averages are meant to smooth annual estimates, so that time trends can be more readily observed. Annual differences in rates or numbers might reflect true annual differences and/or they might reflect the random quality of our sample of the population. The 6-year time frame is meant to represent 2 reproductive cycles for a female bear. Given the health of the population and the long-lived characteristic of this species, 6 years is a good intermediate time frame, allowing us to smooth out annual variation, but still respond to potential changes in rates or numbers in a timely manner.

Comment #33: The commission received a comment that the statement that the rule purports to not "significantly affect" the operation of small businesses either failed to account for livestock mortality due to grizzly bears, or it does not consider ranches as small businesses.

Response #33: The statute 2-4-111, MCA, requires an agency that proposes a rule to determine if the rule will significantly and directly impact small businesses. The proposed rule notice states that the commission has determined that the adoption of the rule will not significantly and directly impact small businesses. While many ranches and farms qualify as a small business the proposed rule is not expected to significantly and directly impact those businesses. Some of these businesses do suffer livestock loss from grizzly bears, but it is not expected that passage of the proposed rule will result in a significant increase in loss. The scope of the rule's commitment to a minimum population is limited to the demographic monitoring area. While FWP acknowledges that grizzly populations outside the demographic monitoring area are increasing, and the rule calls for monitoring demographic and genetic connectivity among populations, the rule itself does not call for an increase in population outside the demographic monitoring area. Monitoring contemplated by the rule will help FWP understand future populations and lead to better long-term management. Moreover, the minimum population inside the demographic monitoring area called for by the rule is already present; therefore the rule does not promote a population increase in the demographic monitoring area. In conclusion, the impact of the rule on small business through livestock depredation is not expected to be significant.

Comment #34: The commission received a comment suggesting that no apex predators should ever be reintroduced.

Response #34: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting.

Comment #35: The commission received a comment concerned that non-consumptive users have no say in conservation.

Response #35: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. FWP does not differentiate whether comments are from consumptive or non-consumptive users. All have the same amount of say, for all FWP proposals for which public comment is being accepted.

Comment #36: The commission received a comment opposed to setting any threshold limit at all and that conflicts should be dealt with case-by-case.

Response #36: Conflicts are currently dealt with on a case-by-case basis and that will continue in the future. The thresholds take into account all causes of mortality

and therefore are not specific to management removals. Mortality thresholds will not be considered if a management removal is deemed necessary to protect human safety. Mortality thresholds will be considered when deciding about other removals; however, management removals will be prioritized over other discretionary mortality (i.e., hunting). Conflict response is described in more detail in the Conservation Strategy (2018).

Comment #37: The commission received comments calling for science-based management, and that feelings and emotions should not be a part of the management decisions. Conversely, comments were also received asking that spiritual and cultural significance of the grizzly bear be considered.

Response #37: FWP is utilizing science-based management, which includes an inter-agency population monitoring program and a system for setting occupancy, survival, and mortality thresholds to maintaining a healthy, viable population within the DMA. The objectives in the Conservation Strategy (2018) and the proposed rule will result in conditions conducive to continuing dispersal of subadult bears out of the DMA, providing for potential emigration into other populations or recovery zones. FWP regards grizzly bears as an integral part of the natural heritage of Montana and therefore recognizes their cultural and spiritual significance to the various peoples of Montana.

Comment #38: The commission received comments that the proposed rule is premature as it is based on the Conservation Strategy which is not yet finalized.

Response #38: The proposed rule addresses population objectives for grizzly bears post-delisting. The Conservation Strategy was approved by the NCDE Sub-Committee at its Spring 2018 meeting, and the commission does not expect the objectives will change before final approval by the Interagency Grizzly Bear Committee (IGBC).

Comment #39: The commission received a few comments on the content of ARM 12.9.103, in particular the reference to sport hunting as the desired management tool.

Response #39: The proposed rule would renumber current ARM 12.9.103 for the purpose of better organizing the administrative rules. The proposal does not contain any amendments to the content of ARM 12.9.103.

Comment #40: The commission received a comment concerned that the rule didn't address what would happen should the population number drop below 800.

Response #40: The Conservation Strategy (2018) describes the following actions if the thresholds are not met: "A management review will be conducted if this distribution standard [i.e., NEW RULE I(3)(a)] is not met, for example if only 20 of the 23 BMUs have documentation of females with offspring in the last six years…Discretionary mortality within the DMA will be curtailed until a management

review is conducted if the six-year-average survival rate for independent females is below the six-year-average assigned threshold; or the six-year average number of TRUM for independent females or males is above the six-year average assigned threshold [i.e., NEW RULE I(3)(b)(i) through (iii)]…If there are deviations from any of the population or habitat objectives stipulated in this Conservation Strategy, a Management Review will be completed by a team of scientists appointed by the members of the [NCDE] Coordinating Committee…A Management Review examines management of habitat, populations, or efforts of participating agencies and Tribes to complete their required monitoring. The purposes of a Management Review are: to identify the reasons why particular demographic, habitat, or funding objectives were not achieved; to assess whether a deviation from demographic, habitat, or funding objectives constituted a biological concern to the grizzly bear population in the NCDE; to provide management recommendations to correct deviations from habitat or population objectives, or to offset funding shortfalls; to consider departures by one or more agencies or Tribes from the monitoring effort required under this Conservation Strategy and to develop plans to ensure that monitoring efforts be maintained as per the standards in this document; and/or to consider and establish a scientific basis for changes/adaptations in management due to changed conditions in the ecosystem." The thresholds are designed to maintain a population well above the number 800; therefore if the thresholds are not met, the results of the management review should provide guidance for reversing any negative trend to keep the population from dipping below 800.

Comment #41: The commission received a few comments concerned that the proposed population number of 800 would become a target and that FWP would reduce the population to 800 and keep it at 800.

Response #41: The number 800 is not a target population size. All estimates have uncertainty and 800 is the designated lower bound of the estimated range of error. By specifically requiring a 90% probability that the population remains above 800 bears, the proposed rule effectively prevents FWP from maintaining the population at only 800 bears.

Comment #42: The commission received a comment suggesting that FWP explore the possibility of posting the movements of collared bears and their locations online so that they could be looked up and avoided by people.

Response #42: In a given year, FWP's monitoring program radio-marks approximately 40 to 70 bears, in other words less than 10% of the population. FWP does not provide detailed information about this small fraction of the bear population because: (a) it would give the false impression that other locations are not currently occupied by bears, (b) it contradicts our message to the public to be prepared for potential encounters with bears within much of western Montana, and (c) it might compromise the security of the bears themselves.

Comment #43: The commission received a comment suggesting that language be added to New Rule I about hunting upon delisting as a management tool.

Response #43: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. ARM 12.9.103 already identifies hunting as a preferred population management tool. Additionally, if the grizzly is delisted, and the commission then proposes a hunting season, a separate process and opportunity for public comment will be held. Additionally, if the commission were to establish a grizzly bear hunting season, per 87-5-302, MCA, when special grizzly bear licenses are to be issued pursuant to 87-2-701, MCA, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels.

Comment #44: The commission received a comment that the number of independent males in (3)(b)(iii) of NEW RULE I be increased from the proposed 15% to 20%.

Response #44: Modeling suggests that although an estimated independent male mortality rate of only 20% is sustainable when female mortality is maintained at our current rate of 5%, lower male rates are necessary for maintaining long-term sustainability if female survival rates are higher. Additionally, modeling indicates that when male mortality is around 20%, mean age of males is quite low and female:male sex ratio is high. Therefore, the 15% mortality rate for males is meant to keep the population sex-age structure more natural. Additionally, because both females and males are involved in conflicts, the proposed objectives resulting in more even sex ratios and more equal numbers of allowed mortalities will maximize our ability to deal with conflict bears while maintaining the population objective.

Comment #45: The commission received a comment suggesting that language be added to New Rule I that grizzly bear management actions are not dependent on population modeling.

Response #45: Decisions about management removals are generally made on a case-by-case basis. Both female and male bears have been and will continue to be removed when conflicts are serious enough and/or bears are unlikely to discontinue their conflict behavior. Mortality thresholds will not be considered if a management removal is deemed necessary to protect human safety. Mortality thresholds will be considered when deciding about other removals; however, management removals will be will be prioritized over other discretionary mortality (i.e., hunting). Conflict response is described in more detail in the Conservation Strategy (2018).

Comment #46: The commission received a comment suggesting that over-abundant bears could be trapped and relocated to other states that historically had grizzlies.

Response #46: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Montana could consider providing bears to other states for recovery purposes, but that request would need to come

from the receiving state and be part of approved recovery/conservation efforts. Trapping and movement of bears outside of the ecosystem will count as a mortality against the mortality thresholds described in the proposed rule.

Comment #47: The commission received a comment suggesting that Zone 3 be expanded to the Montana state line in case grizzly bears continue to expand further east.

Response #47: The final determination of the Zone 3 boundary will be contingent upon the final federal delisting rule and will follow the DPS boundary designation determined by the U.S. Fish and Wildlife Service.

Comment #48: The commission received comments urging FWP to work with other state and federal land management agencies to secure strong habitat protections throughout the ecosystem.

Response #48: FWP has been working closely with land management agencies for several decades to ensure adequate habitat protections are in place to ensure recovery of grizzly bears. The commitment of the land management agencies to continue to protect important habitat is described in land use plans (e.g., Forest Plans) and in the Conservation Strategy (2018).

Comment #49: The commission received comments regarding the economic value of grizzly bears to remain alive and protected, stating that grizzlies are worth more to Montana alive, due to the many tourists who visit Montana to view them. Many also expressed a strong opposition to "trophy hunting."

Response #49: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. With delisting and adoption of the proposed rule, there will remain a robust, recovered, and likely expanding population of grizzly bears that can potentially be viewable to the public. If the grizzly is delisted, and the commission then proposes a hunting season, a separate process and opportunity for public comment will be held. Additionally, if the commission were to establish a grizzly bear hunting season, per 87-5-302, MCA, when special grizzly bear licenses are to be issued pursuant to 87-2-701, MCA, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels.

Comment #50: The commission received comments that problems with grizzly bears are caused by people by not securing garbage properly and encroaching on their habitat, some commenting that FWP needs to educate the public to reduce our impact on grizzly bears.

Response #50: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. FWP has employed grizzly bear

conflict specialists for decades and they spend a majority of their time educating the public in an effort to reduce conflicts with bears. This will be an ongoing challenge as we have an expanding human population and expanding grizzly bear population. In the NCDE where humans recreate on public lands we do have food storage orders in place to reduce the chances of a bear getting into conflict with humans.

Comment #51: The commission received comments that declining insect populations and wild bee populations will have an adverse impact on grizzlies, as they pollinate food sources that the bears depend on.

Response #51: Our current and proposed monitoring program will continually document survival and reproductive rates. If there are environmental impacts on foods that adversely impact these rates, we will be able to detect them and account for them in our population modeling. To counteract any potential population decline due to lower reproductive rates, survival thresholds can be set to higher rates and mortality thresholds can be set to lower numbers to facilitate population growth.

Comment #52: The commission received comments suggesting that the male reproductive organs of grizzlies be examined for congenital malformations, if accidentally or intentionally killed, to determine the ability of Montana's grizzly to sustain the population.

Response #52: FWP has no information to suggest that congenital malformations are an issue with the NCDE grizzly bear population or are limiting the population.

Comment #53: The commission received comments in support of the proposed rule with further assessment on the southern portion of Zone 3 and the potential connectivity between the GYE and NCDE.

Response #53: Although the Little Belt, Castle, and Crazy Mountains have not been identified as the most predicted routes for movement between the NCDE and GYE (Peck et al. 2016), FWP recognizes that they still represent a possible connectivity corridor. As described in the Conservation Strategy (2018), "In Zone 3, grizzly bear occupancy will not be actively discouraged. Grizzly bears will not be captured and removed just because they occur in Zone 3, nor will they be captured and removed from Zone 3 unless there are conflicts that can only be resolved by capture and relocation or removal of the offending bear. Grizzly bears will be managed primarily through conflict response." The proposed rule calls for the continued monitoring of bear distribution, including outlier observations. As more bears move outside of the DMA and provide real information about corridors, FWP will respond with increased education and conflict response in those areas.

Comment #54: The commission received comments stating that we need a connect-and-recover strategy instead of a divide-and-conquer strategy.

Response #54: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of

the NCDE grizzly bear population upon delisting. FWP feels that the demographic objectives in the proposed rule will maintain a recovered population in the NCDE and facilitate connectivity.

Comment #55: The commission received comments requesting that we do everything possible to give potential corridors the highest level of security for bears.

Response #55: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. FWP does not have management authority over most of the known and potential corridors, but does support ensuring those remain secure for transit by grizzly bears and other wildlife. Security of corridors for grizzly bears also requires tolerance by landowners and land users, which generally results from quick and professional responses to conflicts.

Comment #56: The commission received comments supporting allowing the grizzly bears to expand into the Missouri Breaks and CM Russell National Wildlife Refuge.

Response #56: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. As stated in FWP management plans, grizzly bears will be allowed to occur where there is suitable habitat and they are socially tolerated. Tolerance generally is reflected through minimization of conflict. Because grizzly bears would not stay exclusively in the CMR National Wildlife Refuge, for them to persist there, there must be social tolerance.

Comment #57: The commission received comments questioning the reliability of the methods used to provide population estimates and believe the science needs to be better to understand what the ecosystem can truly hold.

Response #57: The methods used to monitor the vital rates and model population trajectory are standard, scientifically valid procedures and have been through scientific peer review (Mace et al. 2012). The proposed population objective, translated as a density within the DMA, is comparable to or exceeds reported densities of many interior populations in northern Canada and Alaska, many of which are more remote than the NCDE.

Comment #58: The commission received comments that there needs to be a reduction of livestock allotments within the Recovery Zone in order for grizzly bears to reach the connectivity they once had.

Response #58: We appreciate the feedback but note that this comment is not directly related to the proposed rule. Although there are a number of livestock allotments within the Recovery Zone, we have not experienced much conflict associated with them recently. Most livestock conflicts occur on private lands.

Comment #59: The commission received comments about how climate change and wildfires will impact grizzly bear habitat and food sources.

Response #59: Climate change may alter the grizzly bear habitat and food resources over time within the NCDE. It is unknown if the changes might be beneficial or detrimental to grizzly bears. Nonetheless, climate-driven changes are unlikely to make the habitat unsuitable for grizzly bears, because they are generalists and successfully reside in a wide variety of regions worldwide, including forested, desert, and tundra habitats. Ransom et al. (2018) evaluated potential changes to grizzly bear habitat in the North Cascades Ecosystem and found changes that were both potentially positive and potentially negative. They concluded that "The complex relationship between changes in climate, natural processes, and natural and anthropogenic features will expose grizzly bears to a range of changing resource conditions, but the species low sensitivity to changing climate and high adaptive capacity portends positive long term outcomes if a successful founding population can be re-established." The NCDE population has met and surpassed recovery goals and our current and proposed monitoring program will continually document survival and reproductive rates. If there are environmental impacts, which adversely impact these rates, we will be able to detect them and account for them in our population modeling and threshold setting. To counteract any potential population decline due to lower reproductive rates, survival thresholds can be set to higher rates and mortality thresholds can be set to lower numbers to facilitate population growth.

Comment #60: The commission received comments about grizzly bears having one of the slowest reproductive rates among terrestrial mammals in North America.

Response #60: The population monitoring program and the modeling structure explicitly account for the observed reproductive rate of grizzly bears in the NCDE and will continue to account for any changes over time.

Comment #61: The commission received comments concerning people who break the rules, and how hunters feel enabled due to insufficient penalties, also suggesting that predators must be managed differently than non-predators.

Response #61: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Penalties for wildlife crimes are determined by the Legislature and imposed by judges.

Comment #62: The commission received comments from some who are concerned that grizzly bears are losing their fear of humans and that mutual fear and respect would benefit both humans and bears.

Response #62: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting. Grizzly bears are part of the

western Montana landscape which requires outdoor recreationists to be cognizant of the potential for and prepared for encountering a grizzly bear. For example, recreationists should carry and know how to use bear spray. Delisting and return of management to the State of Montana may provide some additional management flexibility versus present day, but it is unlikely that overall numbers will change much in areas where they are established.

Comment #63: The commission received comments in favor of the state of Montana managing the grizzly bear population, some stating that the recovery of the grizzly bear has been successful.

Response #63: The commission concurs and is committed to ensuring grizzly bears remain recovered.

Comment #64: The commission received comments favoring grizzly bears over ranchers and subdivisions and boycotting any product of Montana.

Response #64: The commission acknowledges the right of all people to act based on their own personal convictions. The mission of FWP is to provide "for the stewardship of the fish, wildlife, parks and recreational resources of Montana, while contributing to the quality of life for present and future generations." As such, with responsibility to our natural resources and the people of Montana, FWP must ensure the long-term conservation of the grizzly bear populations in Montana, while maximizing human safety and minimizing property losses. The commission believes the best way to maintain a healthy NCDE population and realize connectivity among the grizzly bear populations of Montana is to engender acceptance of the presence of grizzly bears on some private lands, including ranches and rural residences. Experience has already shown us that this can be achieved by recognizing the value of working landscapes for providing habitat for grizzly bears and other species, and by offering expertise and recommendations to land planners to reduce the negative impacts of development on our natural resources.

Comment #65: The commission received comments stating that FWP has no ethical or moral foundation to any of its programs, being committed to the murder of wildlife and fish and managing the species based on what they are worth monetarily, suggesting that FWP encourages violence.

Response #65: These comments are outside the scope of this rulemaking. The purpose of the proposed rule is to set demographic objectives for management of the NCDE grizzly bear population upon delisting.

Comment #66: The commission received comments suggesting that there also be an upper limit on the grizzly bear population based on the carrying capacity.

Response #66: There was a direct need for establishing some procedures to support the long-term persistence of the NCDE grizzly bear population and the population objective in the proposed rule fulfills that need. We anticipate that the

upper limit of the population size within the DMA will be at least partially regulated by competition among the bears themselves, through density-dependent mechanisms. We will be able to monitor these mechanisms through our monitoring of survival and reproductive rates. Additionally, an upper limit might also be informed by human attitudes and public input, which might vary over time; thus the proposed rule does not constrain any future decisions about the upper limit of the DMA population size.

Comment #67: The commission received comments expressing concern that predators (bears, wolves, lions, coyotes) are overwhelming prey populations with high predation, and feel that proper management will save more grizzlies' lives in the long term.

Response #67: Management of grizzly bears following the objectives in the proposed rule will ensure a recovered population of grizzly bears while providing management flexibility.

Comment #68: The commission received comments expressing concern that grizzly bears relate human activity or gun shots with food, and that they have no natural predator, some stating that they are unable to hunt in the areas they usually go because there are too many bears.

Response #68: Grizzly bears are part of the western Montana landscape which requires outdoor recreationists to be cognizant of the potential for encountering a grizzly bear and to be prepared for if they do such as carrying and knowing how to use bear spray. Delisting and return of management to the State of Montana may provide some additional management flexibility versus present day, but it is unlikely that overall numbers will change much in areas where they are established.

/s/ William Schenk
William Schenk
Rule Reviewer

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

Certified to the Secretary of State December 11, 2018.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.103, 17.30.106, 17.30.108, and 17.30.109 regarding 401 Certification	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On August 24, 2018, the Board of Environmental Review published MAR Notice No. 17-399, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1645 of the 2018 Montana Administrative Register, Issue No. 16.

2. The board has amended the rules exactly as proposed.

3. No comments were received from the public, in writing or orally at the hearing. The Department of Environmental Quality submitted testimony in support of the proposed amendments at the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes BY: */s/ Christine Deveny*
EDWARD HAYES CHRISTINE DEVENY
Rule Reviewer Chairman

Certified to the Secretary of State, December 11, 2018.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.13.102, 23.13.201, 23.13.203 through 23.13.210, 23.13.212, 23.13.215, 23.13.217, 23.13.301, 23.13.601, 23.13.702, 23.13.703, 23.13.704, and 23.13.714; and the repeal of ARM 23.13.211 pertaining to the certification of public safety officers	))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 20, 2018, the Public Safety Officers Standards and Training (POST) Council published MAR Notice No. 23-13-254 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1342 of the 2018 Montana Administrative Register, Issue Number 14. The Council held a public hearing on the proposed rules on August 15, 2018.

2. The POST Council has amended ARM 23.13.102, 23.13.201, 23.13.203, 23.13.204, 23.13.206, 23.13.212, 23.13.215, 23.13.601, 23.13.702, 23.13.703, and 23.13.704, and repealed ARM 23.13.211 as proposed.

3. The POST Council has amended ARM 23.13.205, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.217, 23.13.301, and 23.13.714 as proposed, but with the following changes from the original proposal, new matter underlined and deleted matter interlined:

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) through (6)(a) remain as proposed.

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies will be determined by the council, and requires an application for credit.

(7) No more than 15% of the required training hours will be allowed from in-service training. An officer who wishes to use in-service training hours when applying for intermediate, advanced, supervisory, command, and other certificates must submit documentation of in-service training hours with the officer's certificate application.

(a) The POST Council is not responsible for maintaining records of the course content supporting regional, online, or in-service training hours acquired to satisfy the requirements of this rule. The employing agency or the individual officer must maintain records of the course content supporting regional, online, or in-service training hours acquired to satisfy this rule ~~and provide those records with the application for intermediate, advanced, supervisory, command, and other~~

~~certificates~~.

(8) remains as proposed.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (2)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 200 combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) an 80-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 120 additional training hours consisting of a maximum of 30 hours of in-service training and any combination of online or regional training.~~

(3) through (3)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 144 combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) a 24-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 120 additional training hours consisting of a maximum of 40 hours of in-service training and any combination of online or regional training.~~

(4) through (4)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 84 combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) a 24-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 60 additional training hours consisting of any combination of in-service, online, or regional training.~~

(5) Officers who believe they are eligible for an intermediate certificate must submit a completed application~~, a certificate of completion for each regional training and a transcript of online and in-service training,~~ with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) and (b) remain as proposed.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (2)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 400 combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~

~~(ii) an 80-hour intermediate course as approved by the council;~~

~~(iii) a minimum of 280 additional training hours consisting of a maximum of 60 hours of in-service training and any combination of online or regional training.~~

(3) and (3)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 304 combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~

~~(ii) a 24-hour intermediate course as approved by the council;~~

~~(iii) a minimum of 240 additional training hours consisting of a maximum of 80 hours of in-service training and any combination of online or regional training.~~

(4) and (4)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 184

combined job-related training hours as ~~follows:~~ provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~

~~(ii) a 24-hour intermediate course as approved by the council;~~

~~(iii) a minimum of 120 additional training hours consisting of any combination of in-service, online, or regional training.~~

(5) Officers who believe they are eligible for an advanced certificate must submit a completed application~~, a certificate of completion for each regional training and a transcript of online and in-service training,~~ with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) and (b) remain as proposed.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (2)(a) remain as proposed.

(b) must have successfully completed a ~~40~~ 32-hour POST-approved management course; and

(c) through (4) remain as proposed.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (2)(a) remain as proposed.

(b) must have completed a minimum of ~~a 160-hour command course approved by the council~~ 160 hours or more of a POST-approved professional development course or courses on a supervisory, management, or leadership topic; and

(c) and (3) remain as proposed.

23.13.217 REQUIREMENTS FOR SWAT PRIMARY COURSE CREDIT

(1) remains as proposed.

(2) The director or the director's designee will review applications and approve or deny POST credit pursuant to these rules, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(3) Upon approval by the director or the director's designee, the course will be reflected on the attending officers' POST training transcripts unless the council takes further action.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) The director or the director's designee may approve any request for POST training credit. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.

(1) through (1)(e) remain as proposed but are renumbered (2) through (2)(e).

(f) contain course content that has been reviewed and approved ~~is retained~~ by the agency hosting the training, or the employing authority of the officer receiving credit for the training, either before or after the training occurs, through the procedures set forth in ~~(2)~~ (3).

~~(2)~~ (3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not suspended or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) through (c) remain as proposed.

~~(3)~~ (4) To receive POST training credit, an agency hosting a training by any other person or entity for a public safety officer or officers must submit an application for accreditation to the director and retain documentation of:

(a) through (c) remain as proposed.

~~(4)~~ (5) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. ~~Agency~~ Records maintained under this rule are subject to audit by the executive director or the director's designee during normal business hours upon reasonable notice to the agency.

23.13.714 CONTESTED CASE HEARING (1) through (8) remain as proposed.

(a) POST has the burden of proving by a preponderance of the evidence that there was ~~a basis~~ good cause for the denial, sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action;

(b) and (c) remain as proposed.

4. The POST Council has thoroughly considered the comments and testimony received. Copies of the written comments were provided to the Council and will be provided to the public on request. A summary of the comments received and the department's responses are as follows:

COMMENTS 1 AND 2: Fergus County Sheriff, Troy Eades, testified in support of POST's proposal. Powder River County Sheriff, Allen Drane, Jr., provided a written comment in support of POST's proposal. Sheriff Eades testified that having individual agencies maintain records for their individual officers would make it easier for the agencies to track and access the training of their own officers.

RESPONSE TO COMMENTS 1 AND 2: POST agrees that the agencies should have more immediate access to the content of officers' training. The Council also recognizes the benefits to maintaining a central record of training hours which meet POST's training requirements. In an effort to provide both local and centralized access to such records, POST will continue to track training hours for every officer on a transcript, but will no longer require that course content be sent to POST.

COMMENT 3: Lieutenant Jeff Rodrick of the Missoula County Detention Facility opposes the proposed changes to ARM 23.13.209. Lt. Rodrick commented that the 40-hour management course is not defined in the Council's proposal. He stated that the proposal for the Supervisory Certificate in this rule appears to make the Advanced Certificate (ARM 23.13.208) redundant.

RESPONSE TO COMMENT 3: The POST Council agrees that the management course proposed in ARM 23.13.209 should be more defined prior to POST adopting the requirement. POST has amended its proposal to provide for the 32-hour management course which it has required in the past.

COMMENTS 3-11: Lieutenant Jeff Rodrick of the Missoula County Detention Facility, Chief Doug Colombik of the Miles City Police Department, Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, and Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department oppose POST's proposed changes to ARM 23.13.207. The commenters oppose the 80-hour intermediate course required of peace officers to obtain an Intermediate Certificate. Lieutenant Rodrick stated that the course is not defined and the course requirements should be provided. Chiefs Oster, Colombik, Crawford, Peters, St. John, Brady, and Mayor Barnhart oppose the changes because they believe that the course is too onerous due to budget constraints and staffing issues. They were also concerned about officers being unable to attend the course and therefore unable to receive wage increases pursuant to their collective bargaining agreements. Many commenters felt that the Montana Law Enforcement Academy (MLEA) would be unable to fulfill the need for the course. Some commenters also oppose changing the years of service required due to issues with renegotiating contracts with unions and because they believe that time and experience are important.

RESPONSE TO COMMENTS 3-11: The POST Council recognizes the difficulties with renegotiating collective bargaining agreements and has restored the required years of service to four years for an intermediate certificate. The Council also has determined to further define curricula for each discipline in consultation with the MLEA which any POST-certified instructor may teach in shortened blocks. POST has removed the requirement for the intermediate courses from ARM 23.13.207.

COMMENTS 3, 5-11: Lieutenant Jeff Rodrick of the Missoula County Detention Facility, Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, and Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department oppose POST's proposed changes to ARM 23.13.208. The commenters oppose the 40-hour advanced course required of officers to obtain an Intermediate Certificate. Lieutenant Rodrick stated that the course is not defined and the course requirements should be provided. Chiefs Oster, Crawford, Peters, St. John, Brady, and Mayor Barnhart oppose the changes because they believe that the course is too onerous due to budget constraints and

staffing issues. They were also concerned about officers being unable to attend the course and therefore unable to receive wage increases pursuant to their collective bargaining agreements. Many commenters felt that the MLEA would be unable to fulfill the need for the course. Some commenters also oppose changing the years of service required due to issues with renegotiating contracts with unions and because they believe that time and experience are important.

RESPONSE TO COMMENTS 3, 5-11: The POST Council recognizes the difficulties with renegotiating collective bargaining agreements and has restored the required years of service to eight years for an advanced certificate. The Council also has determined to further define curriculum for the management course which any POST-certified instructor may teach in shortened blocks. POST has removed the requirement for the advanced course from ARM 23.13.208.

COMMENTS 5-14: Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department, Jerry Williams of MPPA, Matthew Sayler of the Butte Police Protective Association and MPPA, and Darcy Dahle of the Montana Public Employees Association oppose POST's proposed changes to ARM 23.13.301. The commenters feel that it is important that there is a central repository for officer training and having the agencies track and maintain training will diminish the training standards which POST has set. MPPA representatives commented that POST should spend its time and resources on approving and tracking training, rather than on investigations of officer misconduct. They expressed concern that POST is attempting to become an internal affairs investigative agency without any authority to do so, and that POST should rely on agency administrators to investigate complaints and follow whatever recommendation the agencies make. MPPA representatives Smith and Williams commented that POST has no authority to investigate officers without an agency's participation or notification.

RESPONSE TO COMMENTS 5-14: POST agrees that having a transcript of an officer's training hours is beneficial for the officer and for the citizens of Montana. POST has amended its proposal to provide that POST will continue to track training hours which will be done on a POST transcript. However, POST maintains that the time and resources used to review thousands of courses' content each year is too excessive. Reviewing and maintaining supporting documentation of training will be the responsibility of the agencies, officers, or other entities providing training for POST credit hours. POST will maintain records of the trainings attended through the application process such that POST will be able to obtain documentation based upon the information required on the application. POST has statutory authority and a legislative mandate to provide for the suspension or revocation of certification of public safety officers in 44-4-403, MCA. POST's administrative rules and policies

define POST's investigative process and procedure, and those rules and policies require POST to inform an agency of POST's investigations and provide POST with information regarding the agency's investigation. POST has and will continue to adhere to its own rules and policies.

COMMENTS 11-13: Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department, Jerry Williams of MPPA, and Matthew Sayler of the Butte Police Protective Association and MPPA oppose amendments to ARM 23.13.205 which remove an officer's ability to receive POST training credit for military training and college education. Mr. Saylor testified that a great deal of work goes into such training and education, and officers should be able to use it.

RESPONSE TO COMMENTS 11-13: POST will not give credit for college education or military training. The review of the required paragraphs consumes a great deal of time and resources, and the requirements are too subjective. There is no way to clearly and objectively define how the training and education apply to an officer's current employment, and it provides preferential treatment to specific training or education and ignores other types of training, education, or experience which may also be just as relevant. Additionally, many officers receive the benefit of actual employment from their college or military background. The credit hours for college education and military training are already maintained by other entities, and POST sees no benefit to continuing to place them on another transcript.

/s/ Matthew Cochenour
Matthew Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State December 11, 2018.

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

In the matter of the amendment of ARM 24.11.2205 and 24.11.2711, and the adoption of NEW RULE I, pertaining to unemployment insurance contributions	)))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 19, 2018, the Department of Labor and Industry published MAR Notice No. 24-11-341 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2005 of the 2018 Montana Administrative Register, Issue No. 20.

2. On November 9, 2018, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Written comments were received by the November 16, 2018 deadline.

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

Comment 1: A commenter asked if the proposed amendments to ARM 24.11.2711 to require employers of 20 or more employees to report wages electronically have been approved, and what is or will be the effective date of the amendments.

Response 1: ARM 24.11.2711 is being amended with this notice and is effective January 1, 2019. It applies to quarterly reports for all quarters starting with the report for the first quarter of 2019.

Comment 2: A commenter asked if the electronic version of quarterly reports can only be sent to the department via the Internet or via a file upload, or whether the department will accept CD and e-mail submission.

Response 2: The department will accept reports filed via Montana's UI eServices for Employers web portal. This includes direct entry into the site and/or a file upload. File formats accepted for upload into eServices include CSV, Excel, ICESA, and FSET. In addition, the department offers a web service (server-to-server) transmission of ICESA and FSET files. The department will also accept reports via secure e-mail if the file is properly formatted. Due to security concerns, the department is no longer accepting CD or other portable storages devices.

For more specifics on the file layouts and formats that will be accepted, here is a link to the department's current e-Filing Handbook for unemployment insurance employer reports:

http://uid.dli.mt.gov/Portals/55/Documents/Contributions-Bureau/dli-uid-ui009.pdf.

Comment 3: A commenter asked about the status of the proposed amendment of ARM 24.11.2205 and 24.11.2711, and the proposed adoption of New Rule I.

Response 3: The proposed amendments and new rule are being adopted as proposed. The amendments and the new rule are effective January 1, 2019.

4. The department has amended ARM 24.11.2205 and 24.11.2711 as proposed.

5. The department has adopted New Rule I (24.11.2411) as proposed.

6. The amendments and the new rule are effective January 1, 2019.

/s/ Mark Cadwallader
Mark Cadwallader
Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh
Commissioner
Department of Labor and Industry

Certified to the Secretary of State December 11, 2018.

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 24.29.609, 24.29.616, 24.29.703, 24.29.902, 24.29.929, 24.29.956, 24.29.971, 24.29.1401A, 24.29.1801, 24.29.1821, 24.29.2614, 24.29.3103, 24.29.3107, 24.29.3117, 24.29.3124, and the repeal of ARM 24.29.966, 24.29.1425, 24.29.1426, 24.29.1427, 24.29.1428, 24.29.1430, 24.29.1431, 24.29.1511, 24.29.1519, 24.29.1521, 24.29.1531, 24.29.1532, 24.29.1536, 24.29.1537, 24.29.1541, 24.29.1551, 24.29.1561, 24.29.1566, 24.29.1571, 24.29.1572, 24.29.1573, 24.29.1574, 24.29.1575, 24.29.1581, 24.29.1582, 24.29.1583, 24.29.1584, 24.29.1585, 24.29.1586, 24.29.1702, 24.29.1721, 24.29.1722, 24.29.1727, 24.29.1731, 24.29.1733, 24.29.1735, 24.29.1737 pertaining to workers' compensation	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 10, 2018, the Department of Labor and Industry (department) published MAR Notice No. 24-29-339 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1506 of the 2018 Montana Administrative Register, Issue Number 15.

2. The department held a public hearing in Helena on August 31, 2018, at which members of the public commented on the proposed rule actions. Written comments were also submitted to the department during the public comment period.

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 commenter asked for clarification on ARM 24.29.956, the administrative fund and safety assessment rule, as to whether the premium surcharge rate calculation is reported as "direct written premium," "net written premium," or some other premium amount.

Response 1: The department will use "direct premium earned" to calculate the surcharge for assessment purposes and has amended the rule accordingly. The department reserves the right to reconcile data submitted to it by insurers with data submitted by insurers to the Insurance Commissioner.

Comment 2: One commenter stated with respect to the medical benefits reopening rules, ARM 24.29.3103(3), ARM 24.29.3107(5)(a), ARM 24.29.3117(3), and ARM 24.29.3124(4), the references to the reopening period as inevitably being two years are not consistent with the provisions of 39-71-717(8), MCA, and exceed the department's statutory rulemaking authority.

Response 2: The department agrees with the point made that reopening is not inevitably for a two-year period, and therefore has amended the rules accordingly.

4. The department has adopted New Rule I (24.29.963) and New Rule II (24.29.221) as proposed.

5. The department has amended ARM 24.29.609, 24.29.616, 24.29.703, 24.29.902, 24.29.929, 24.29.971, 24.29.1801, 24.29.1821, and 24.29.2614 as proposed.

6. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.956 COMPUTATION AND COLLECTION OF THE ADMINISTRATION FUND AND SAFETY FUND ASSESSMENT PREMIUM SURCHARGE RATE FOR PLAN NO. 2 AND NO. 3 (1) remains as proposed.

(a) In calculating the total administration fund and safety fund assessment premium surcharge rate, the department will use previous calendar year direct premium earned data reported to the department by plan No. 2 insurers and the plan No. 3 insurer.

(b) through (6) remain as proposed.

AUTH: 39-71-203, 50-71-114, MCA
IMP: 39-71-201, 39-71-203, 39-71-2352, 50-71-128, MCA

24.29.3103 DEFINITIONS Terms defined in 39-71-116, MCA, are used in subchapter 31 as they are defined by statute. As used in subchapter 31, the following definitions apply unless the context clearly indicates otherwise:

(1) and (2) remain as proposed.

(3) "Approved" means that after the medical review has been performed, medical benefits are reopened for not more than two years before being subject to a biennial review.

(4) through (22) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-717, MCA

24.29.3107 TIMELINES AND EXPLANATION OF STATUS CLASSIFICATIONS OF A PETITION (1) through (4) remain as proposed.

(5) Once filed, the parties have 14 days to submit medical records and additional information to be considered during the medical review. Once the medical review is completed and the report is issued by the medical director, the petition will have one of the two following status conditions:

(a) the petition is approved, with a recommendation in the report that medical benefits should be provided by the insurer for not more than two years before being subject to a biennial review; or

(b) through (7) remain as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

24.29.3117 JOINT PETITION FOR REOPENING (1) and (2) remain as proposed.

(3) Because the parties agree on the need for reopening medical benefits, the department's medical director will summarily review and approve the petition, reopening medical benefits for not more than two years before being subject to a biennial review.

(4) remains as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

24.29.3124 REVIEW BY MEDICAL REVIEW PANEL - REPORT AND RECOMMENDATIONS (1) through (3) remain as proposed.

(4) If a panel member concludes that additional medical benefits are necessary, the medical benefits should be provided for not more than two years before being subject to a biennial review. The analysis must include the reasons and rationale that explain:

(a) through (6) remain as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

7. The department has repealed ARM 24.29.966, 24.29.1425, 24.29.1426, 24.29.1427, 24.29.1428, 24.29.1430, 24.29.1431, 24.29.1511, 24.29.1519, 24.29.1521, 24.29.1531, 24.29.1532, 24.29.1536, 24.29.1537, 24.29.1541, 24.29.1551, 24.29.1561, 24.29.1566, 24.29.1571, 24.29.1572, 24.29.1573, 24.29.1574, 24.29.1575, 24.29.1581, 24.29.1582, 24.29.1583, 24.29.1584, 24.29.1585, 24.29.1586, 24.29.1702, 24.29.1721, 24.29.1722, 24.29.1727, 24.29.1731, 24.29.1733, 24.29.1735, and 24.29.1737 as proposed.

8. The department advises all interested persons that the adoption notice for MAR Notice No. 24-29-340 appears elsewhere in this issue of the Montana Administrative Register. MAR Notice No. 24-29-340 proposed to amend ARM 24.29.1401A, Definitions, which was also proposed for amendment in this present rule action. Because some of the proposed changes in ARM 24.29.1401A are inconsistently proposed as between the two MAR Notices, the department has decided not to amend ARM 24.29.1401A, Definitions, as proposed in MAR Notice No. 24-29-339. ARM 24.29.1401A is being amended as shown in the adoption notice for MAR Notice. No. 24-29-340.

9. The department advises all interested persons the above rule changes are effective January 1, 2019.

/s/ Mark Cadwallader	/s/ Galen Hollenbaugh
Mark Cadwallader	Galen Hollenbaugh
Rule Reviewer	Commissioner
	Department of Labor and Industry

Certified to the Secretary of State December 11, 2018.

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

In the matter of the adoption of New Rules I through VII, the amendment of ARM 24.29.1401A, the amendment and transfer of ARM 24.29.1591, 24.29.1595, and 24.29.1596, and the transfer of ARM 24.29.1593 and 24.29.1599, pertaining to utilization and treatment guidelines, including a drug formulary, for workers' compensation	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, AND TRANSFER

TO: All Concerned Persons

1. On October 19, 2018, the Department of Labor and Industry (department) published MAR Notice No. 24-29-340 pertaining to the public hearing on the proposed adoption, amendment, amendment and transfer, and transfer of the above-stated rules at page 2010 of the 2018 Montana Administrative Register, Issue Number 20.

2. The department held a public hearing in Helena on November 9, 2018, at which members of the public commented on the proposed rule actions. Written comments were also submitted to the department during the public comment period.

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: One commenter asked when the state expects to have a finalized version of the Montana Utilization and Treatment Guidelines (MT U & T Guidelines).

Response 1: The department implemented the MT U & T Guidelines effective July 1, 2011. Each year, as required by 39-71-704, MCA, the department reviews and updates the guidelines as needed via the administrative rulemaking process.

Comment 2: One commenter asked if the formulary is designed to be two-tiered, incorporating both ODG utilization and treatment guidelines (on which the drug list is based) and the MT U & T Guidelines. If so, the commenter questioned if there is a hierarchy between the two sets of guidelines, and/or the ODG drug list and the MT U & T Guidelines.

Response 2: There is not a "two-tiered" set of guidelines. The only ODG material being adopted in Montana is the formulary developed by ODG. Providers must consult the MT U & T Guidelines for best medical treatment practices and refer to the formulary to determine whether a given medication may be prescribed without

the need for prior authorization. With respect to drugs on the ODG formulary list, if the prescription is injury-appropriate and designated as "Y," the prescription does not require prior authorization.

Comment 3: Several commenters are asking for clarifying language in NEW RULE I(1). One commenter asks the department to use "claim or claims" in its definition of a claim because the plural is used elsewhere in the rule. Another commenter stated the definition is missing language because it assumes an insurer has one claim, but in the adjustment of a workers' compensation case insurers have a series of claims. In addition, that commenter noted the rule applies to initial acceptance, but claims an insurer has the right to accept or deny later claims based on evidence.

Response 3: The department concludes that the definition of "claim" contained in NEW RULE I is sufficiently clear. It may refer to a specific individual claim or it may refer more broadly to claims in general, depending on the context of the sentence in which it is used. The department believes that the rules of statutory construction found at 1-2-105, MCA, are applicable to the definition. The department does not construe its definition of "claim" in terms of being "an accepted claim" as affecting an insurer's rights to make claims liability determinations as established by law.

Comment 4: A commenter stated the reference to "Appendix A" should be removed from NEW RULE I(10) because as the result of ODG's merger with MCG, the document is no longer referred to as "Appendix A."

Response 4: The department has amended the rule accordingly.

Comment 5: A commenter stated that moving definitions from ARM 24.29.1401A will cause confusion and will inadvertently remove definitions from a section to which they still apply.

Response 5: The department generally disagrees with the commenter but acknowledges that the definition for "evidence-based" should remain in ARM 24.29.1401A, and has amended the rule accordingly. The department believes the definitions removed from ARM 24.29.1401A are (except as noted) no longer used in ARM Title 24, chapter 29, subchapters 14 and 15, because of the transfer of the MT U & T Guidelines rules to subchapter 16.

Comment 6: Commenters stated NEW RULE IV(5) would be less disruptive to an injured worker to have their drug therapy start with a Y drug from the outset, rather than have their therapy disrupted outside the seven-day window because the injured worker was given an "N" status drug within seven days of injury.

Response 6: The department has considered the reasons for and against allowing "N" status drugs to be used within the first seven days of the occurrence of an injury. The department notes that only a limited number of prescription drugs are specifically identified as having an "N" status on the formulary list. The department recognizes that in some cases an "N" status drug may be appropriate for short-term

use, but not for a long-term therapy. The department assumes that medical providers will become familiar with the formulary list and can weigh the advantages and disadvantages of prescribing an "N" status drug in the first week following the injury. The department concludes that there will be minimal disruption of care for injured workers by allowing (where appropriate in the judgment of the provider) a limited number of days' worth of "N" status drugs.

Comment 7: A commenter stated NEW RULE IV(5)(b) should include clarifying language that prior authorization exemptions for the initial first fill do not apply to drugs listed under (6)(b), (c), and (d).

Response 7: The department does not see a reading of the rule that could reasonably suggest to a person reviewing the rule that prior authorization is not required for any medication described in (6). Accordingly, the department concludes that an amendment is not appropriate and will not amend the rule as requested.

Comment 8: A commenter asked if utilization review or some other sort of medical review is required to make a prior authorization determination. A commenter noted that because the rule is silent on retrospective review, the commenter is assuming retrospective review is still allowed where adherence to the guidelines might be in question.

Response 8: An insurer must have a reasoned basis for granting or denying prior authorization. The rules do not specify whether a medical provider must be consulted for that decision making. The department concludes that each insurer must use appropriate judgment in responding to a prior authorization request, or else the insurer runs the risk of handling the claim in an unreasonable manner. NEW RULE IV(9) allows, but does not require, an insurer to delegate formulary-related decisions to a PBM.

How and when an insurer engages in "retrospective review" of medications is a matter of the insurer's claims-handling practice. To the extent the commenter is suggesting that an insurer can, at some distant future date, demand a refund for payments made to a pharmacy for a medication the insurer deems inappropriate, the department notes that demand may be incompatible with the requirements of the Montana Workers' Compensation Act, if it results in the injured worker being liable for paying for those medications. If the commenter is only asking whether it can review prior medications when making decisions about future care for that injured worker, then the department's rules do not prohibit that claims-handling practice.

Comment 9: Three commenters asked for clarification in NEW RULE IV(7) because it was unclear when the three-day timeframe begins. One commenter stated the timeframe should be three days from receipt of the request for prior authorization from the insurer.

Response 9: The department agrees with the comment and has modified the rule as suggested.

Comment 10: Two commenters stated that NEW RULE IV(4) should be changed to read "Insurers who have a claim shall pay…"

Response 10: The department believes that it literally goes without saying that an insurer cannot have a present obligation to pay for a claim it does not have, and the department's rules are written in the context of the insurer having received the particular claim in question. NEW RULE IV does not purport to impose on an insurer an obligation to pay anything when no claim is involved. The department concludes that the definition of "claim" provided in NEW RULE I is sufficiently clear that a claim exists when an insurer has accepted liability or is paying under a reservation of rights.

Comment 11: A commenter stated the language of NEW RULE IV fails to take into account that each claim is actually a series of claims, and an injured worker may actually have an injury-appropriate medication prescribed, not because of an injury but because of other intervening causes.

Response 11: The department recognizes that in the course of administering a workers' compensation or occupational disease claim an insurer may be faced with determining whether specific medical treatment is or is not related to the claim and whether the insurer will deny liability for that specific service or item. The department concludes that the definition of "claim" provided in NEW RULE I is sufficiently clear for the purposes of the MT U & T Guidelines.

Comment 12: A commenter stated that a payment made pursuant to NEW RULE IV on an accepted claim could affect the frequency and modification factor and possibly Medicare Set Aside.

Response 12: The department agrees with the statement. All payments made on an accepted claim can affect underwriting factors. To the extent the commenter intended to refer to claims for which liability has not (yet) been accepted, the department believes that the formulary rules do not change how or whether an insurer decided to accept liability on the claim.

Comment 13: One commenter stated that the "forced authorization" under NEW RULE IV(7)(b) potentially violates the rights of the insurer to pay under reservation of rights as outlined in 39-71-608 and 39-71-615, MCA, and could force an accepted claim prior to the time allowed under statute to investigate and accept or deny a claim. The commenter suggests that the issue could be remedied if it is added that any payment made due to an automatic approval is done under reservation of rights until such time that a claim is accepted or denied.

Response 13: The department disagrees with the characterization of NEW RULE IV(7)(b) as being a "forced authorization." The department recognizes that a request for prior authorization of a prescription medication might carry greater urgency than a request for prior authorization of a medical procedure. The department is also

aware of the insurer's duty under 39-71-107, MCA, to promptly handle claims. With respect to concerns by an insurer that it might not have decided whether to accept liability for the claim in its early stages, the department notes that the insurer can deny the request for prior authorization within three days, or the insurer can grant prior authorization subject to a reservation of rights. The automatic approval provisions of the rule can be avoided by merely timely responding to the request for prior authorization. The department concludes that its rule does not interfere with an insurer's rights under the law to investigate a claim.

Comment 14: Two commenters requested changes to language in NEW RULE V. One commenter believes a new (2)(f) should be added to notify the injured worker that an appeals process is available if they are denied coverage because of the change to their prescriptions under the new formulary. Another commenter stated (2)(d) should be changed from claims examiner to "person or persons designated by the insurer to discuss transitioning of legacy claims with the injured worker and treating physician on the insurer's behalf."

Response 14: The department considers the document described in NEW RULE V(2) to be an announcement of a possible upcoming change to medications the injured worker is presently receiving. The document does not represent a decision by the insurer with respect to benefits. If after reviewing the medical recommendation and documentation provided by the treating physician the insurer makes a decision to deny a drug not listed on the formulary with a "Y" status, the department concludes that the required notice of "appeal rights" should be provided at that time. The department concludes that including "appeal rights" language prior to that occurrence is likely to cause unnecessary confusion and concern on the part of the injured worker.

With respect to the suggested change to (2)(d) contact information, the department concludes that pursuant to 39-71-107, MCA, the appropriate contact regarding the claim is the in-state claims examiner. As a matter of clarification, the department has amended the authorization (AUTH) citation to include 39-71-107, MCA. The department believes that if an insurer wants to provide an additional or supplemental contact regarding formulary matters, it may do so, but that the notice must be clear as to the identity of the claims examiner responsible for the claim.

Comment 15: A commenter is concerned, under NEW RULE V(7), what happens to the injured worker if the treating physician doesn't respond.

Response 15: The department believes that it is unlikely that a treating physician would ignore the physician's responsibility to the patient and fail to respond. The department notes that it expressly provides that the physician's time spent in developing a treatment plan or other response is to be paid on a "by-report" basis. However, if a treating physician refuses to respond, despite follow-up requests from the insurer, the department recognizes that an insurer might decide the physician has abandoned the role of "treating physician." In such an instance, an insurer is potentially justified in designating another qualified individual to serve as the injured

worker's treating physician. The department expects that such instances will be quite rare, however.

Comment 16: Several commenters asked for clarification under NEW RULE V(9) and (10), as to whether an insurer is required to pay for supportive services more than once if the injured worker was unsuccessful in the first round of treatment. In addition, one commenter believes language in (10) imposes a different definition of primary medical services than is provided by statute.

Response 16: The department notes that various physical medicine treatments, including courses of physical therapy and even surgery, sometimes need additional courses of treatment in order to get the medically desired result. Insurers routinely pay for such treatments and procedures. The department concludes that the same principal would apply to the provision of supplemental services – what medical services are reasonably necessary for the injured worker? To the extent that an injured worker's drug dependency arises out of the treatment received as a result of a compensable injury or occupational disease, the department concludes that treatment for that drug dependency falls within the definition of "primary medical services" as defined in 39-71-116, MCA.

Comment 17: One commenter believes there needs to be clarification between NEW RULE VI(1) and (2). The commenter stated there is no conjunction between the "only" in each section and without that there could be an excessive burden on the department's medical director.

Response 17: The department intends that (1) and (2) be read together. In response to the comment, the department has amended NEW RULE VI(1) and (2) to make that clarification.

Comment 18: A commenter contends pursuant to NEW RULE VI(7) and (8), a new point of evidence has been created by the department under expediated case review for prescriptions. One commenter suggested if there is evidence created in this process, such evidence must be bi-directional, and it is inappropriate to treat the two outcomes differently. The commenter suggested that (7) should be stricken from the rule, or alternatively (8) should be changed to allow the same evidence creation in the event the expedited review does not find the likelihood of a "medical emergency."

Response 18: The department believes that the opinion of the medical director related to the issues presented in an expedited case could be offered in evidence by any party to the dispute. In order to clarify the matter, the department has amended the rule accordingly.

Comment 19: A commenter believes the department's medical director is not qualified to evaluate the legal defenses of non-work-related problems, notices, or claim filings. In addition, the commenter believes the medical director's report is not admissible in the Worker's Compensation Court because this court is governed by

rules of evidence and the department doesn't have the authority to indicate what may or may not be admitted.

Response 19: Nothing in NEW RULE VI(7) compels any tribunal to admit inadmissible evidence. NEW RULE VI(7) allows a party to offer the findings of the department's medical director into evidence but does not restrict any other party's rights to make foundational or other evidentiary objections to that proffered evidence. The department concludes that the rule does not infringe upon the authority of the Workers' Compensation Court to admit proper evidence and reject improper evidence.

Comment 20: One commenter asked if the term "expedited case review" as used in NEW RULE VI refers to "utilization review."

Response 20: No. As noted in Response 8, "utilization review" and "retrospective review" are internal claims-handling processes developed by an insurer. The expedited case review provided for by NEW RULE VI recognizes that there may be situations where the insurer has denied a previously prescribed medication and there is concern that the denial will create a medical emergency for the injured worker. The department's medical director will conduct a medical review and offer an opinion on the matter.

Comment 21: Two commenters believe language under NEW RULE VII indicates disputes between injured workers and insurers go directly to the Workers' Compensation Court instead of mediation first and asked why the department is trying to impose its rule on what the legislature has already decided.

Response 21: The department concludes that the commenters appear to have misunderstood the language in NEW RULE VII. As provided in (2), disputes are handled as provided by statute. Section 39-71-2905, MCA, provides that the mediation requirements be fulfilled before the Workers' Compensation Court may hear the matter.

Comment 22: One commenter asked for clarification surrounding appropriate medication handling for dates of injury prior to July 1, 2007. Do these claims only follow ODG and what formulary rules would apply to these claims?

Response 22: As provided by ARM 24.29.1596 (now renumbered as ARM 24.29.1604), the MT U & T Guidelines apply to dates of injury occurring on or before June 30, 2007. Accordingly, the drug formulary (which is part of the MT U & T Guidelines) can be applied to those pre-July 1, 2007 claims, so long as the insurer triggers the provisions of the drug formulary as described in NEW RULE V. Those older claims are generally referred to as "legacy claims." See NEW RULE I(7), defining legacy claims. NEW RULE II(2) explains the applicability date of the formulary rules, while NEW RULE V specifically discusses the provisions for transition of treatment of legacy claims. The department notes that only ODG's drug formulary list is used in conjunction with the MT U & T Guidelines, and the treatment

guidelines published elsewhere by ODG are not used in Montana. See also Response 2.

Comment 23: One commenter asked if the department would be defining an appeals process after the denial of a medication.

Response 23: Dispute resolution procedures applicable to an insurer's denial of a medication are identified in NEW RULE VI and NEW RULE VII. If those procedures do not resolve the dispute, the dispute is handled as any other dispute over benefits would be handled.

Comment 24: A commenter questioned why the department was proceeding with a workers' compensation drug formulary at this time, as opposed to waiting to present something to the next legislative session.

Response 24: To the extent that the commenter is suggesting that the department should seek express legislative approval for adoption of a drug formulary, the department concludes that the 2017 enactment of Chap. 433, L. of 2017 (Senate Bill 312), is an indication that no further formal legislative approval is required. The department was given express rulemaking authority to proceed with the adoption of a drug formulary by rule. In addition, the department believes that many stakeholders in the workers' compensation arena want the department to adopt a drug formulary sooner rather than later. Finally, the department, through its staff, announced its proposed timeline for the adoption and implementation of formulary rules to stakeholders and the department wants to fulfill that commitment.

4. The department has adopted the following rules as proposed:

NEW RULE II (24.29.1607) APPLICABILITY OF FORMULARY RULES TO OUT-PATIENT SERVICES

NEW RULE III (24.29.1616) INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY

NEW RULE VII (24.29.1648) DISPUTE RESOLUTION FOR FORMULARY

5. The department has adopted the following rule as proposed, but with the following change to the AUTH citation from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE V (24.29.1631) SPECIAL PROVISIONS FOR TRANSITION OF LEGACY CLAIMS – WHEN APPLICABLE

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-107, 39-71-704, MCA

6. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (24.29.1601) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (9) remain as proposed.

(10) "ODG drug formulary" means the ODG Workers' Compensation Drug Formulary~~, established as Appendix A to the ODG Treatment in Workers' Comp publication,~~ published by MCG Health, LLC.

(11) through (19) remain as proposed.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

NEW RULE IV (24.29.1624) INTEGRATION OF FORMULARY WITH MONTANA UTILIZATION AND TREATMENT GUIDELINES – WHEN PRIOR AUTHORIZATION IS REQUIRED (1) through (6) remain as proposed.

(7) The prior authorization process described in ARM 24.29.1621 applies to formulary matters, except that:

(a) the insurer shall respond within three business days of the receipt of a request for prior authorization being made to the insurer or the insurer's designee, by either approving or denying the request; and

(b) through (9) remain as proposed.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-107, 39-71-704, MCA

NEW RULE VI (24.29.1645) EXPEDITED CASE REVIEW FOR PRESCRIPTION MEDICATIONS BY DLI MEDICAL DIRECTOR

(1) Expedited case review is available only when insurer declines to authorize further dispensing of an already prescribed medication and halting the supply of that medication appears likely to result in a medical emergency.

(2) ~~Expedited case review is only applicable in cases of medical emergency.~~ A medical emergency occurs when all three of the following circumstances are present:

(a) through (6) remain as proposed.

(7) ~~If the~~ The findings of the medical director ~~determine that~~ regarding whether or not a medical emergency is likely to occur as the result of not providing the further dispensing of medication as prescribed by the treating physician~~, those findings~~ may be offered in evidence in mediation or the Workers' Compensation Court.

(8) remains as proposed.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

7. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

(1) through (13) remain as proposed.

(14) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).

(14) through (39) remain as proposed, but are renumbered (15) through (40).

AUTH: 39-71-203, MCA
IMP: 39-71-116, 39-71-704, MCA

8. The department has amended and transferred the following rules as proposed:

24.29.1591 (24.29.1611) UTILIZATION AND TREATMENT GUIDELINES

24.29.1595 (24.29.1641) INDEPENDENT MEDICAL REVIEW PROCESS

9. During preparation of this document, the department noticed that numbering errors were made in the proposed amendments to ARM 24.29.1596 (now ARM 24.29.1604) in that the new numbers for existing rules were inconsistent with the new numbering for those same rules as shown elsewhere in the proposal notice. To correct these numbering errors, the department has amended and transferred the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.1596 (24.29.1604) APPLICABILITY OF UTILIZATION AND TREATMENT RULES (1) The following rules are subject to the applicability provisions of this rule:

(a) ~~ARM 24.29.1609~~ ARM 24.29.1611;
(b) ~~ARM 24.29.1611~~ ARM 24.29.1621;
(c) ~~ARM 24.29.1621~~ ARM 24.29.1641; and
(d) ~~ARM 24.29.1641~~ ARM 24.29.1609.

(2) through (4) remain as proposed.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

10. The department has transferred the following rules as proposed:

24.29.1593 (24.29.1621) PRIOR AUTHORIZATION

24.29.1599 (24.29.1609) APPLICABILITY OF UTILIZATION AND TREATMENT GUIDELINES FOR MANAGED CARE ORGANIZATIONS OR PREFERRED PROVIDER ORGANIZATIONS

11. The department advises all interested persons the above rule changes are effective January 1, 2019, but notes that some of the new rules have a delayed applicability date as stated within the text of the rule.

/s/ Mark Cadwallader	/s/ Galen Hollenbaugh
Mark Cadwallader	Galen Hollenbaugh
Alternate Rule Reviewer	Commissioner
	Department of Labor and Industry

Certified to the Secretary of State December 11, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.1401 definitions, and 32.3.1406 testing of exposed equids	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 24, 2018, the Department of Livestock published MAR Notice No. 32-18-294 regarding the proposed amendment of the above-stated rules at page 1708 of the 2018 Montana Administrative Register, Issue Number 16.

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

3. The department received one comment. The comment and response are below:

COMMENT: "I am opposed to giving out of state horses an exemption 32.3.216 (6) from EIA testing while being transported or held in Montana feedlots waiting 30 or more days to be sent to slaughter in Alberta. Canada is requiring more time to be held before being slaughter to allow drug residue to be absent, and while untested horses from in state or out of state can be a risk to other horses nearby to these holding/feedlot areas, enforcing current law that requires EIA testing of horses being imported into Montana is prudent. This especially true as one herd of over 20 horses had to be destroyed because they were positive to EIA, as the department well knows."

"32.3.216 (5) Any horses crossing state lines must have a negative Coggins test for EIA annually and should never be given an exemption as other Montana horses are at risk when these out of state horses are in Montana. As EIA is a disease that requires death of the horse, relaxing these rules is Significant, and should not be done out of a convenience."

RESPONSE: The department thanks you for your comment. However, this comment is beyond the scope of the proposed rule changes.

BY: */s/ Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: */s/ Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 11, 2018.

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

In the matter of the amendment of ARM 37.34.3005 pertaining to updated Medicaid rates manual	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 19, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-870 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2034 of the 2018 Montana Administrative Register, Issue Number 20.

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 department received many comments that the proposed rule change does not consider nondiscretionary employment/administrative expenses, including payroll taxes, paid leave, other benefits, and training for staff.

RESPONSE #1: The department has taken the comments into consideration and is increasing the available funding, included in the direct care rate adjustments to include an additional 18% available for increased tax and person-specific overhead costs.

COMMENT #2: One commenter asked how the department is defining direct-care staff.

RESPONSE #2: The Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for HCBS 1915c 0208 and 0667 Waiver Programs defines direct care staff as those staff whose primary responsibility is the day-to-day, hands-on, direct support of people with disabilities, training and instruction, and assistance with and management of activities of daily living. In addition, direct care staff is defined in ARM 37.34.102 as "a person employed by a contractor in a position the duties of which focus on the hands on delivery of services to persons with developmental disabilities or to their families or both. Direct care tasks include: monitoring and delivering basic life and health care needs, implementing programs, intervening when maladaptive behaviors occur, recording progress toward meeting goals and objectives, documenting incidents, and sharing information with supervisory staff or other professionals according to the policies and procedures of the contractor. In outreach services, direct care tasks may include

conducting home visits and providing specialized instruction to family members in the implementation of programs to meet individual needs."

COMMENT #3: The department received several comments expressing concern that the proposed rule change does not include all direct care workers. Commenters expressed specific concerns that supported employment staff were not included, but foster families are considered direct care workers.

RESPONSE #3: The waiver defines supported employment as habilitation services and staff supports needed by a person to acquire a job/position or career advancement in the general workforce at or above the state's minimum wage. Additionally, the supported employment rate is based on a higher level of education and training than other rates that received an increase. The supported employment rate currently in effect is $37.88 with the wage component of the supported employment of the rate being $17.52. People who provide adult foster services are direct care workers because their primary responsibility is the day-to-day, hands-on, direct support of people with disabilities, training and instruction, and assistance with and management of activities of daily living.

COMMENT #4: Does the department plan to propose subsequent administrative rules that increase direct care professional's wages by $3 per hour over the biennium?

RESPONSE #4: No. The department is implementing a rate increase sufficient to provide direct care workers a wage increase of $1 per hour with 18% available to cover increased tax and person-specific overhead costs. The department is utilizing funding from Senate Bill 9 (SB 9) to implement the intent of HB 638, Senate Bill 261 (SB 261) and SB 9. Utilizing the funding available from SB 9 ensures the direct care wage funding utilized will be a component of the base budget for the 2020-2021 biennium.

COMMENT #5: One commenter asked whether the department can implement this wage increase by applying it through the already established rate methodology that is approved by the Centers for Medicare and Medicaid (CMS). The commenter further questioned whether the department would be arbitrarily and inappropriately changing the rate methodology by implementing this rulemaking.

RESPONSE #5: The current waiver language approved by CMS regarding the rate-setting process specifies four cost components. The waiver states, "The rate-setting process is designed to allow adjustment to any of the 4 cost components exclusive of the others. So we have the ability to specifically adjust the direct care wage, and to adjust other components of the rate if funding allows. Increases/decreases to rates are due to the legislature." The Developmental Disabilities Program applied the available funding to the rate using the methodology as described and approved in the current 0208 Comprehensive Waiver.

COMMENT #6: The department received a number of questions and comments relating to budget and policy.

RESPONSE #6: The department appreciates the comments, but feels the comments are outside of the limited scope of MAR Notice No. 37-870.

COMMENT #7: One commenter inquired how many hours of direct care the department expects to fund with the implementation of this rulemaking.

RESPONSE #7: The department expects to fund 8,724,292 hours.

COMMENT #8: A commenter expressed concern that employers are uncertain how to retroactively implement the increase.

RESPONSE #8: The department, upon final adoption of the proposed rule amendment, plans to release instructions/details to all providers on how to implement the increase.

4. The department intends to apply this rule amendment retroactively to July 1, 2018. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

/s/ Jennifer C. Kaleczyc
Jennifer C. Kaleczyc
Rule Reviewer

/s/ Erica Johnston for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State December 11, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.681 pertaining to agricultural land valuation	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 2, 2018, the Department of Revenue published MAR Notice No. 42-2-998 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2205 of the 2018 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

4. This rule amendment is effective January 1, 2019.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn, Director
Department of Revenue

Certified to the Secretary of State December 11, 2018.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2018. This table includes notices in which those rules adopted during the period June 6, 2018, through November 16, 2018, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2018, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2018 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-13-577 9-1-1 Grants, p. 1322, 1816
2-13-580 Statewide Emergency Telephone System, p. 1991, 2399
2-59-572 Definitions for Credit Unions, p. 2357

(Public Employees' Retirement Board)
2-43-576 Commencement of Guaranteed Annual Benefit Adjustment, p. 1209, 1719

(State Lottery Commission)
2-63-575 Definitions - Retailer Applications, Required Rule Reading, Bonding, and Commission - Licenses - Business Changes - Electronic Funds Transfer - Tickets - Prizes - Winner Redemptions, p. 908, 1155

(Board of County Printing)
2-67-569 Rates for County Legal Advertising, p. 230, 610, 1100

AGRICULTURE, Department of, Title 4

4-17-243 Montana Pulse Crop Committee, p. 2373, 301, 823, 1101
4-18-248 Pesticide Registration Regulations, p. 758, 1212
4-18-249 Pesticide Container Recycling Program - Waste Pesticide Disposal Program, p. 763, 1213

FISH, WILDLIFE AND PARKS, Department of, Title 12

GOVERNOR, Office of, Title 14

ENVIRONMENTAL QUALITY, Department of, Title 17

17-392 Adoption of a New Version of Department Circular DEQ-8, p. 1580, 522, 1588
17-396 Nutrient Standards Variances, p.377, 1110
17-398 Definitions - Adoption by reference - Solicitation and Evaluation of Qualifications and Maintenance of List - Energy Service Provider Delisting and Discipline - Energy Performance Contract Process - Multiple Projects or Contracts - Measuring and Verifying Guaranteed Cost Savings - Cost of Measurement and Verification - Cost-Effectiveness - Energy Service Provider Reporting Requirements - Operation and Maintenance - Contract Term - Guaranteed Cost Savings as Percentage of Total Project Cost - Guaranteed Cost Savings - Escalation Rates - Open Book Pricing, p. 1458
17-400 Underground Storage Tanks Petroleum and Chemical Substances, p. 1650, 1954

(Board of Environmental Review)
17-397 Air Quality Operation Fees, p. 1132, 2046
17-399 401 Certification, p. 1645

TRANSPORTATION, Department of, Title 18

18-169 Motor Carrier Services Safety Requirements, p. 1007, 1277
18-170 Right-of-Way Occupancy by Water and Sewer Facilities, p. 920, 1278
18-171 Electronic Submission of Transportation Construction Bids, p. 1086, 1599

CORRECTIONS, Department of, Title 20

20-4-64 Facilities Exempt From Geographic Restrictions Applicable to High-Risk Sexual Offenders, p. 684, 1724
20-7-68 Residential Methamphetamine Treatment Programs, p. 1092, 1730
20-24-67 Board of Crime Control, p. 1113

JUSTICE, Department of, Title 23

23-3-251 Imposition of an Administrative Fee for Alcohol or Drug Test Refusal, p. 1010, 1601
23-3-252 Requirements for the Issuance, Replacement, or Renewal of a REAL ID Compliant Driver's License or Identification Card, p. 1330, 1956
23-3-253 Third-Party CDL Skills Testing Program - Commercial Driver's License Testing, p. 1766
23-16-255 Video Gambling Machine Malfunctions - Cash Ticket Validation Systems - Definitions - Video Gambling Machine (VGM) Specifications - Electronic Live Bingo and Keno Equipment Specifications, p. 1481, 1958

(Public Safety Officers Standards and Training Council)
23-13-254 Certification of Public Safety Officers, p. 1342

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

24-11-341 Unemployment Insurance Contributions, p. 2005
24-17-342 Prevailing Wage Rates for Public Works Projects, p. 2280
24-29-339 Workers' Compensation, p. 1506
24-29-340 Utilization and Treatment Guidelines - Drug Formulary - Workers' Compensation, p. 2010
24-301-337 Operation of the Underground Facilities Protection Program, p. 1135, 1827

(Board of Personnel Appeals)
24-26-336 Public Sector Collective Bargaining, p. 382, 1602
24-26-338 Collective Bargaining for Public Sector Employees, p. 1502

(Board of Barbers and Cosmetologists)
24-121-16 Definitions - Fees - Nonroutine Applications - Premises and General Requirements - Licensure by Credentialing With an Out-of-State License - Application for Postsecondary School Licensure - Application for Instructor License - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program - Instructor Requirements–Teacher-Training Programs - Salons/Booth Rental - Implements, Instruments, Supplies, and Equipment - Sanitizing and Disinfecting Implements and Equipment - Foreign-Educated Applicants, p. 925, 1605

(Board of Clinical Laboratory Science Practitioners)
24-129-18 Fees - Inactive Status - Continuing Education Requirements, p. 1943

(Board of Dentistry)
24-138-74 Functions for Dental Hygienists - Limited Access Permit Treatment Guidelines–Practicing Under Public Health Supervision - Dental Hygiene Limited Access Permit - Subject Matter Acceptable for Dentist and Dental Hygienist Continuing Education - Requirements and Restrictions - Limited Prescriptive Authority–Qualifications–Allowable Percentages of Topical Agents, p. 386, 1279
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(Board of Hearing Aid Dispensers)

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(Board of Medical Examiners)

24-156-84 Fee Schedule - Examination - Renewals - Purpose and Authority - Definitions - Fees - Ankle Surgery Certification - Surgery Certification - Accreditation, Approval, and Standards - Physician Assistant Fees - Obligation to Report to Board - Medical Assistant–Delegation and Supervision - Practice Requirements for Physicians Using Telemedicine - Medical Assistant - Effect of Telemedicine License, p. 936, 2048

(Board of Nursing)

24-159-85 Definitions - Enhanced Nurse Licensure Compact Rules - Issuance of a License by a Compact State - Limitations on Multistate Licensure Privilege–Discipline - Information System, p. 624, 947, 1819

24-159-86 Renewal Dates, p. 1778, 2051

(Board of Nursing Home Administrators)

24-162-41 Definitions - Application and Documentation for Licensure - Temporary License - Licensure by Credential - Public Information, p. 1355, 2053

(Board of Occupational Therapy Practice)

24-165-23 Fees - Continuing Education - Unprofessional Conduct - Board Filing Practices - Renewals, p. 2283

(Board of Outfitters)

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(Board of Pharmacy)

24-174-70 Examination for Licensure as a Registered Pharmacist - Requirements to Become a Clinical Pharmacist Practitioner - Requirements for Submitting Prescription Registry Information to the Board - Screening Panel - Complaint Procedure - Legal Suspension or Revocation, p. 535, 1825

(Board of Public Accountants)

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(Board of Real Estate Appraisers)

24-207-42 Appraisal Review - USPAP Exemption - Definitions - Examination - Application Requirements - Approval of Qualifying and Continuing Education Courses - Ad Valorem Appraisal Experience - Qualifying Experience - Inactive License/Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Registration and Renewal of Appraisal Management Companies - Continuing Education-Compliance and Auditing - Unprofessional Conduct for Appraisers - Unprofessional Conduct for Appraisal Management Companies - Incorporation by Reference of the Real Property Appraiser Qualification Criteria - Appraiser Reporting Obligations to the Board - Appraisal Management Company Reporting Obligations to the Board - Regulatory Reviews - Experience-Number of Hours Required - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Scope of Practice - Continuing Education Noncompliance, p. 2166

(Board of Realty Regulation)

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(Board of Sanitarians)

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24-225-40 Definitions - Nonroutine Applications - Temporary Permits - Veterinarian Licenses - Veterinarian Examinations - Licensure of Out-of-State Veterinarian - Continuing Education - Continuing Education Instructors - Record-Keeping Standards - Management of Infectious Wastes - Inspection and Sanitation - Occasional Case Exemption, p. 774, 1281

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37-854 Updating Medicaid Fee Schedules and Effective Dates, p. 1149, 1612
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in November 2018 appear. Potential vacancies from January 1, 2019 through March 31, 2019, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2018.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2018

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Barbers and Cosmetologists			
Mrs. Paula Evans Missoula Qualifications (if required): Cosmetologist	Governor	Battaiola	11/2/2018 10/1/2021
Ms. Katie Fontana Great Falls Qualifications (if required): Member of the public	Governor	Reappointed	11/2/2018 10/1/2023
Mrs. Sarah Ludtke-Heagle Helena Qualifications (if required): Cosmetologist	Governor	Peterson	11/2/2018 10/1/2023
Ms. Angela Printz Livingston Qualifications (if required): Cosmetologist	Governor	Reappointed	11/2/2018 10/1/2022
Ms. Amanda Thompson Missoula Qualifications (if required): Licensed Electrologist, Esthetician, or Manicurist	Governor	Lee	11/2/2018 10/1/2020

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2018

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Professional Engineers and Professional Land Surveyors			
Mr. Ronald Drake Helena	Governor	Reappointed	11/2/2018 7/1/2022
Qualifications (if required): Professional Chemical Engineer			
Mr. Troy Soren Jensen Sidney	Governor	None Stated	11/2/2018 7/1/2022
Qualifications (if required): Professional and practicing land surveyor for at least 12 years			
Ms. Tracy Worley Missoula	Governor	Jacobsen	11/2/2018 6/1/2022
Qualifications (if required): Representative of the public			
Board of Sanitarians			
Ms. Megan Bullock Boulder	Governor	Reappointed	11/2/2018 7/1/2021
Qualifications (if required): Registered Sanitarian			
Mr. Eugene Pizzini Helena	Governor	Reappointed	11/2/2018 7/1/2020
Qualifications (if required): Public at large			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2018

Appointee	Appointed By	Succeeds	Appointment/End Date
Family Education Savings Program Oversight Committee			
Commissioner Clayton Christian	Governor	Reappointed	11/2/2018
Helena			1/1/2021
Qualifications (if required): Presiding officer of the board or designee			
Director John Lewis	Governor	Hogan	11/2/2018
Helena			1/1/2021
Qualifications (if required): State Treasurer			
Mr. Robert W. Minto Jr.	Governor	Reappointed	11/2/2018
Missoula			7/1/2021
Qualifications (if required): Knowledge, skill and experience in accounting, risk management, investment management			
Commissioner Matt Rosendale	Governor	Lindeen	11/2/2018
Helena			1/1/2021
Qualifications (if required): Commissioner of Insurance			
Motorcycle Safety Advisory Committee			
Sergeant Richard Dean Musson Jr.	Governor	Brown	11/2/2018
Bozeman			7/1/2019
Qualifications (if required): Peace officer			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2018

Appointee	Appointed By	Succeeds	Appointment/End Date
State Emergency Response Commission			
Mrs. Georgia Bruski	Governor	Shoemaker	11/2/2018
Ekalaka			10/1/2019
Qualifications (if required): Montana Emergency Management Association Representative			
Ms. Hayley Tuggle	Governor	Luhrsen	11/2/2018
Bozeman			10/1/2019
Qualifications (if required): University Representative			
Trauma Care Committee			
Dr. Whitney Gum	Governor	Sturges	11/2/2018
Billings			11/1/2019
Qualifications (if required): Member of the American College of Emergency Physicians			
Unemployment Insurance Appeals Board			
Mr. Bruce Campbell	Governor	Reappointed	11/2/2018
Helena			1/1/2023
Qualifications (if required): Member of the public who is not a state employee			

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
13th Judicial District Judge		
Mr. Donald L. Harris, Billings	Governor	1/1/2019
Qualifications (if required): None Stated		
Ms. Jessica Teresa Fehr, Billings	Governor	1/1/2019
Qualifications (if required): None Stated		
Board of Aeronautics		
Mr. Fred Lark, Lewistown	Governor	1/1/2019
Qualifications (if required): Representative of the General Public		
Mr. A. Christopher Edwards, Billings	Governor	1/1/2019
Qualifications (if required): Active Fixed Base Operator		
Board of Athletic Trainers		
Dr. John David Michelotti, Helena	Governor	1/1/2019
Qualifications (if required): Physician licensed under Title 37, chapter 3, MCA		
Board of Behavioral Health		
Ms. Mona Summer, Billings	Governor	1/1/2019
Qualifications (if required): Licensed Addiction Counselor		
Mr. Durand T. Bear Medicine, Browning	Governor	1/1/2019
Qualifications (if required): Licensed Addiction Counselor		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Chiropractors		
Dr. Gregory L. Pisk, Kalispell Qualifications (if required): Chiropractor	Governor	1/1/2019
Board of Crime Control		
Representative Angela Russell, Lodge Grass Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Richard Kirn, Poplar Qualifications (if required): Tribal Government Representative	Governor	1/1/2019
Ms. Beth McLaughlin, Helena Qualifications (if required): Judiciary Representative	Governor	1/1/2019
Ms. Brenda C. Desmond, Missoula Qualifications (if required): Judiciary Representative	Governor	1/1/2019
Mr. Mike Batista, Helena Qualifications (if required): Law Enforcement Representative	Governor	1/1/2019
Mr. William Hooks, Helena Qualifications (if required): Criminal Justice Agency Representative	Governor	1/1/2019
Ms. Roxanne Ross, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Crime Control Cont.		
Mrs. Adrianne Cotton, Helena	Governor	1/1/2019
Qualifications (if required): Law Enforcement Representative		
Mr. Derek J. VanLuchene, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		
Director Reginald D. Michael, Helena	Governor	1/1/2019
Qualifications (if required): Law Enforcement Representative		
Mr. Peter Ohman, Butte	Governor	1/1/2019
Qualifications (if required): Criminal Justice Agency		
Board of Environmental Review		
Representative Michele Reinhart, Missoula	Governor	1/1/2019
Qualifications (if required): Public Representative		
Dr. Robert Byron, Hardin	Governor	1/1/2019
Qualifications (if required): Expertise or background as a county health officer		
Mr. Roy Sayles O'Connor, Missoula	Governor	1/1/2019
Qualifications (if required): Public Representative		
Mr. John Felton, Billings	Governor	1/1/2019
Qualifications (if required): Expertise or background as county health officer or as a medical doctor		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Environmental Review Cont.		
Mr. Tim Warner, Bozeman Qualifications (if required): Public Representative	Governor	1/1/2019
Ms. Hillary Hanson, Kalispell Qualifications (if required): Public Representative	Governor	1/1/2019
Board of Horse Racing		
Senator Dale Mahlum, Missoula Qualifications (if required): Horseracing Industry	Governor	1/1/2019
Mr. Gary William Koepplin, Florence Qualifications (if required): District 5	Governor	1/1/2019
Mr. Shawn Real Bird, Crow Agency Qualifications (if required): District 2	Governor	1/1/2019
Board of Housing		
Representative Sheila Rice, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2019
Representative Jeanette S. McKee, Hamilton Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Robert Gauthier, Ronan Qualifications (if required): Public Representative	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Investments		
Mr. Karl Englund, Missoula	Governor	1/1/2019
Qualifications (if required): Attorney		
Ms. Diane Fladmo, Helena	Governor	1/1/2019
Qualifications (if required): Representative of Labor		
Mr. Jon Satre, Helena	Governor	1/1/2019
Qualifications (if required): Representative of Small Business		
Mr. Quinton Edward Nyman, Helena	Governor	1/1/2019
Qualifications (if required): Representative of Labor		
Ms. Teresa Olcott, Helena	Governor	1/1/2019
Qualifications (if required): Representative of the Financial Community		
Board of Labor Appeals		
Mr. Jerry Driscoll, Billings	Governor	1/1/2019
Qualifications (if required): Public Representative		
Board of Livestock		
Mr. John Scully, Bozeman	Governor	1/1/2019
Qualifications (if required): Cattle Producer		
Ms. Elaine Allestad, Big Timber	Governor	1/1/2019
Qualifications (if required): Livestock Industry		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Livestock Cont.		
Mr. John Lehfeldt, Lavina	Governor	1/1/2019
Qualifications (if required): Sheep Producer		
Mr. Larry Trexler, Hamilton	Governor	1/1/2019
Qualifications (if required): Livestock Industry		
Board of Milk Control		
Mr. Jerrold A. Weissman, Great Falls	Governor	1/1/2019
Qualifications (if required): Republican		
Mr. W. Scott Mitchell, Billings	Governor	1/1/2019
Qualifications (if required): Attorney, Democrat		
Board of Occupational Therapy Practice		
Mr. Nathan Stevens Naprstek, Bozeman	Governor	1/1/2019
Qualifications (if required): Occupational Therapist		
Board of Oil and Gas Conservation		
Mr. Paul Gatzemeier, Billings	Governor	1/1/2019
Qualifications (if required): Landowner residing in oil or gas producing county but not involved in industry		
Mr. Ron Efta, Wibaux	Governor	1/1/2019
Qualifications (if required): Attorney		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Oil and Gas Conservation Cont.		
Mr. Steven D. Durrett, Billings	Governor	1/1/2019
Qualifications (if required): Oil and gas industry representative		
Board of Pardons and Parole		
Mr. Mike Batista, Helena	Governor	1/1/2019
Qualifications (if required): Extensive experience in the criminal justice system		
Mr. Mark Staples, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		
Representative Bill McChesney, Miles City	Governor	1/1/2019
Qualifications (if required): Public Representative		
Ms. Kristina Lucero, Missoula	Governor	1/1/2019
Qualifications (if required): Extensive experience in criminal justice system and knowledge of American Indian culture		
Mr. Darrell Bell, Billings	Governor	1/1/2019
Qualifications (if required): Extensive experience in the criminal justice system		
Board of Personnel Appeals		
Mr. Steven Johnson, Missoula	Governor	1/1/2019
Qualifications (if required): Management Employee in organization with collective bargaining		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Personnel Appeals Cont.		
Mr. Jerry Rukavina, Great Falls	Governor	1/1/2019
Qualifications (if required): Alternate member who is full-time employee or elected official of a labor union		
Mr. LeRoy Schramm, Helena	Governor	1/1/2019
Qualifications (if required): Substitute having general labor-management experience		
Ms. Amy Verlanic, Anaconda	Governor	1/1/2019
Qualifications (if required): Represent management in collective bargaining activities		
Mr. James D. Soumas, Billings	Governor	1/1/2019
Qualifications (if required): Employee or elected official of a Labor Union or Association recognized by the Board		
Mr. Mario Valdez Martinez, Great Falls	Governor	1/1/2019
Qualifications (if required): Alternative member who is a full-time employee or elected official of a labor union		
Board of Public Assistance		
Ms. Helen Schmitt, Sidney	Governor	1/1/2019
Qualifications (if required): Public Representative		
Board of Public Education		
Ms. Sharon Carroll, Ekalaka	Governor	2/1/2019
Qualifications (if required): Resident of District 2 and identifies herself as an Independent		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Board of Regents of Higher Education		
Mr. Pat Williams, Missoula	Governor	2/1/2019
Qualifications (if required): Resident of District 1 (Democrat)		
Ms. Fran Maronick Albrecht, Missoula	Education	2/1/2019
Qualifications (if required): District 1 Independent		
Board of Respiratory Care Practitioners		
Mr. William Carmichael, Great Falls	Governor	1/1/2019
Qualifications (if required): Respiratory Care Practitioner		
Mr. Justin Lyle O'Brien, Libby	Governor	1/1/2019
Qualifications (if required): Member of the public who is not a member of a health care profession		
Board of Social Work Examiners and Professional Counselors		
Mr. Peter Degel, Helena	Governor	1/1/2019
Qualifications (if required): Professional Counselor		
Mr. B.A. "Doc" Tweedy, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		
Ms. Carol Staben Burroughs, Bozeman	Governor	1/1/2019
Qualifications (if required): Professional Counselor		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Coal Board		
Representative Ralph L. Lenhart, Glendive Qualifications (if required): Optometrist	Governor	1/1/2019
Ms. Marianne Roose, Eureka Qualifications (if required): District 1	Governor	1/1/2019
Mr. Tim Schaff, Fishtail Qualifications (if required): District 2, expertise in education	Governor	1/1/2019
Mrs. Veronica Small-Eastman, Lodge Grass Qualifications (if required): District 2 and expertise in education	Governor	1/1/2019
Commission for Human Rights		
Ms. Sheri Sprigg, Helena Qualifications (if required):	Governor	1/1/2019
Ms. Eldena Bear Don't Walk, Saint Ignatius Qualifications (if required): Public Representative	Governor	1/1/2019
District Court Judge District 17 Department 1		
Judge Yvonne Laird, Chinook Qualifications (if required): None Stated	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
District Court Judge District 5 Department 1		
Judge Luke Michael Berger, Helena	Governor	1/1/2019
Qualifications (if required): None Stated		
District Court Judge, District 18, Department 2		
Judge Rienne Hartman McElyea, Bozeman	Governor	1/1/2019
Qualifications (if required): None Stated		
Economic Development Advisory Council		
Ms. Shalon Hastings, Helena	Governor	1/1/2019
Qualifications (if required): Montana Business Assistance Connection Region Representative		
Fish and Wildlife Commission		
Mr. Logan Brower, Scobey	Governor	1/1/2019
Qualifications (if required): District 4		
Mr. Richard Kerstein, Billings	Governor	1/1/2019
Qualifications (if required): District 4 representative		
Mr. Dan Vermillion, Livingston	Governor	1/1/2019
Qualifications (if required): District 2 representative		
Hard-Rock Mining Impact Board		
Ms. Marianne Roose, Eureka	Governor	1/1/2019
Qualifications (if required): District 1 impact area		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Hard-Rock Mining Impact Board Cont.		
Commissioner Dolores Plumage, Chinook	Governor	1/1/2019
Qualifications (if required): District 2 impact area		
Ms. Donna von Nieda, Nye	Governor	1/1/2019
Qualifications (if required): District 1 impact area		
Ms. Jane Weber, Great Falls	Governor	1/1/2019
Qualifications (if required): Person when appointed to the board is an elected County Commissioner		
Information Technology Board		
Commissioner Chris Mehl, Bozeman	Governor	1/1/2019
Qualifications (if required): Member representing local government		
Commissioner Galen Hollenbaugh, Helena	Governor	1/1/2019
Qualifications (if required): Director of a State Agency		
Interstate Compact on Educational Opportunity for Military Children		
Captain Michelle Bogden, Fort Harrison	Governor	2/5/2019
Qualifications (if required): Executive Branch Representative		
Judicial Nomination Commission		
Representative Hal Harper, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2019 THROUGH MARCH 31, 2019

Board/Current Position Holder	Appointed By	Term End
Montana Children's Trust Fund Board		
Ms. Tracy Moseman, Helena	Governor	1/1/2019
Qualifications (if required): State government agency involved in education		
Mr. James Scott Wheeler, Kalispell	Governor	1/1/2019
Qualifications (if required): Public Member		
Montana Council on Developmental Disabilities		
Ms. Connie Wethern, Glasgow	Governor	1/1/2019
Qualifications (if required): Secondary consumer		
Ms. Janet Carlson, Malta	Governor	1/1/2019
Qualifications (if required): Primary Consumer		
Ms. Tarra Thomas, Billings	Governor	1/1/2019
Qualifications (if required): Secondary Consumer		
Ms. Heather Juvan, Livingston	Governor	1/1/2019
Qualifications (if required): Primary Consumer		
Montana Facility Finance Authority		
Mr. Joe Quilici, Butte	Governor	1/1/2019
Qualifications (if required): Public Representative		

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Board/Current Position Holder	Appointed By	Term End
Montana Facility Finance Authority Cont.		
Mr. Matthew B. Thiel, Missoula Qualifications (if required): Attorney	Governor	1/1/2019
Ms. Kimberly Rickard, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Paul James Komlosi, White Sulphur Springs Qualifications (if required): Public Representative	Governor	1/1/2019
Potato Commodity Advisory Committee		
Mr. Brad Haidle, Fallon Qualifications (if required): Potato Producer	Governor	3/1/2019
Mr. Pat Fleming, Pablo Qualifications (if required): Potato Producer	Governor	3/1/2019
Public Safety Officers Standards and Training (POST) Council		
Sergeant James D. Wells, Great Falls Qualifications (if required): Local law enforcement officer	Governor	1/1/2019
Mr. Lewis K. Smith, Deer Lodge Qualifications (if required): County Attorney	Governor	1/1/2019

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Board/Current Position Holder	Appointed By	Term End
Public Safety Officers Standards and Training (POST) Council Cont.		
Mr. Kevin Olson, Helena Qualifications (if required): Department of Corrections Representative	Governor	1/1/2019
Mr. William Dial, Whitefish Qualifications (if required): Board of Crime Control Representative	Governor	1/1/2019
Mr. Lewis G. Matthews, Wolf Point Qualifications (if required): Tribal Law Enforcement	Governor	1/1/2019
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Local Law Enforcement	Governor	1/1/2019
Ms. Tia Rikel Robbin, Kalispell Qualifications (if required): Citizen At-Large	Governor	1/1/2019
Ms. Gina Dahl, Havre Qualifications (if required): County Attorney	Governor	1/1/2019
Mr. Ryan L. Oster, Hamilton Qualifications (if required): Chief of Police	Governor	1/1/2019
Pulse Crop Commodity Advisory Committee		
Mr. Jon Stoner, Havre Qualifications (if required): General member	Governor	2/1/2019

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Board/Current Position Holder	Appointed By	Term End
Pulse Crop Commodity Advisory Committee Cont.		
Mr. Dustin Kreger, Great Falls	Governor	2/1/2019
Qualifications (if required): General member		
Mr. Roger Sammons, Cut Bank	Governor	2/1/2019
Qualifications (if required): Producer		
Rail Service Competition Council		
Mr. Dylan Boyle, Whitefish	Governor	1/1/2019
Qualifications (if required): Substantial knowledge and experience related to rail passenger service by Amtrak		
Mr. Craig A. Gilchrist, Glasgow	Governor	1/1/2019
Qualifications (if required): Substantial knowledge and experience related to Class II railroads		
Snowmobile Advisory Committee		
Mr. Wes Fehrer, Bozeman	Governor	3/1/2019
Qualifications (if required): Member		
Mr. Jason Howell, West Yellowstone	Governor	3/1/2019
Qualifications (if required): Montana Snowmobile Association Advisor		
Mr. Don Phillips, Missoula	Governor	3/1/2019
Qualifications (if required): Member		

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Board/Current Position Holder	Appointed By	Term End
Snowmobile Advisory Committee Cont.		
Mr. Seth McArthur, Helena Qualifications (if required): Agency Advisor	Governor	3/1/2019
Mr. John Costello, West Yellowstone Qualifications (if required): Member	Governor	3/1/2019
Mr. Ricky David, Kalispell Qualifications (if required): Member	Governor	3/1/2019
Mr. Jim Norlander, West Yellowstone Qualifications (if required): Agency Advisor	Governor	3/1/2019
Mr. Richard Tramp, Belgrade Qualifications (if required): Member	Governor	3/1/2019
State Lottery Commission		
Mr. Leo Prigge, Butte Qualifications (if required): Certified Public Accountant	Governor	1/1/2019
State Parks and Recreation Board		
Senator Thomas E. "Tom" Towe, Billings Qualifications (if required): District 5	Governor	1/1/2019
Director Mary Sexton, Helena Qualifications (if required): District 3	Governor	1/1/2019

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Board/Current Position Holder	Appointed By	Term End
State Parks and Recreation Board Cont.		
Mr. Rockwood Scott Brown, Billings	Governor	1/1/2019
Qualifications (if required): District 5 member		
State Tax Appeal Board		
Mr. Dave McAlpin, Missoula	Governor	1/1/2019
Qualifications (if required): Public Representative		
Transportation Commission		
Representative Carol Lambert, Broadus	Governor	1/1/2019
Qualifications (if required): District 4 Representative		
Mr. Daniel Belcourt, Missoula	Governor	1/1/2019
Qualifications (if required): District 1 Representative		
Unemployment Insurance Appeals Board		
Mr. Bruce Campbell, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		

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COREY STAPLETON
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620