

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 2.4.401, 2.4.402, 2.4.403,	)	PROPOSED AMENDMENT AND
2.4.404, 2.4.405, 2.4.406, 2.4.409,	)	REPEAL
2.4.410, and 2.4.411 pertaining to)	
accounting and financial reporting)	
standards, report filing fees, filing)	
penalties, waivers and extensions of)	
penalties, audit and audit reporting)	
standards, the roster of independent)	
auditors, resolution and corrections of)	
audit findings, financial reviews, and)	
incorporation by reference of various)	
standards, accounting policies, and)	
federal laws and regulations and the)	
repeal of ARM 2.4.408 pertaining to)	
audit contracts)	

TO: All Concerned Persons

1. On July 17, 2019, at 11:00 a.m., the Department of Administration will hold a public hearing in Room 261 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on July 10, 2019, to advise us of the nature of the accommodation that you need. Please contact Cody Pearce, Department of Administration, Statewide Accounting Bureau, P.O. Box 200102, Helena, MT 59620; telephone (406) 444-3092; fax (406) 444-9144; TDD (406) 444-1421; Montana Relay Service 711; or e-mail LGSPortalRegistration@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department has identified necessary changes included in these proposed amendments. The general approach the department has taken in these proposed amendments is to implement the Legislature's intent while understanding that each local government entity is unique, requiring some flexibility in the department's approach. The department has also eliminated unnecessary rules and shortened others.

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

2.4.401 ACCOUNTING AND FINANCIAL REPORTING STANDARDS

(1) All counties, cities, ~~and towns, and special purpose districts, other than school districts and special education cooperatives,~~ shall adhere to the accounting and financial reporting standards applicable to the reporting period adopted by the Governmental Accounting Standards Board (see ARM 2.4.411).

(2) If approved by the department, a local government shall adhere to the provisions described in the Small Government Financial Reporting Framework instead of the provisions provided in (1) (see ARM 2.4.411).

~~(2) All counties, cities, and towns shall utilize the chart of accounts prescribed by the department in the budgetary, accounting, and reporting system for Montana cities, towns, and counties (see ARM 2.4.411).~~

~~(3) All local government entities except school districts and associated cooperatives shall file an annual financial report with the department as required by 2-7-503, MCA.~~

~~(4) The annual financial report must be on a form required by the department or, subject to the approval of the department, in a form that provides at least the same information required by the department's form.~~

AUTH: 2-7-504, 2-7-513, MCA

IMP: 2-7-504, 2-7-513, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) to clarify that all local governments, including special purpose districts other than school districts and associated cooperatives, must submit financial reports in accordance with reporting standards applicable to the report's reporting period. Because the department proposes to amend ARM 2.4.411 to provide the current edition date of generally accepted accounting principles, the proposed amendment to (1) clarifies that local governments should not inappropriately apply current reporting standards to financial reports applicable to past reporting periods.

The department proposes to delete (2) through (4) to remove unnecessary duplication of statutory language in accordance with 2-4-305(2), MCA.

The department proposes (2) to establish a small government financial reporting framework in accordance with L. 2019, Senate Bill 2, which amended 2-7-504, MCA, to provide rulemaking authority to the department to define an alternative reporting framework for small local governments. The department believes the proposed framework will provide relief to those smaller local governments that struggle to meet certain financial reporting requirements of generally accepted accounting principles (GAAP). The framework excludes from GAAP the most costly and burdensome aspects of financial reporting that also lack relevance to the users of those local governments. One such example is actuarially determined post-employment benefit information, which is not only highly technical and expensive to produce, but also does not factor into the day-to-day, cash-basis or budgetary-basis decisions of the governing officials of small, rural governments. The department believes providing a separate document outside of administrative rule by an incorporation by reference

facilitates beneficial coordination with other local government resources provided to assist the annual financial statement preparation process. Those resources include the annual financial report form and the uniform chart of accounts authorized at 2-7-503, MCA.

2.4.402 REPORT FILING FEE (1) ~~As provided by 2-7-514, MCA, each local government entity required to have an audit under 2-7-503, MCA, shall pay an annual filing fee to the department. A local government filing fee is based on the following definitions:~~

~~(2) For purposes of this rule "annual"~~

~~(a) "Annual" refers to means the fiscal year utilized by of the local government entity.~~

~~(3) As required by 2-7-514, MCA, the fee schedule shall be based upon the local government entity's annual revenue amounts.~~

~~(4) For purposes of this rule "revenue"~~

~~(b) "Revenues" means all receipts or inflows of resources of a local government entity from any source excluding the proceeds from bond issuances and other long-term debt not received from state or federal sources.~~

~~(i) Revenues must be based on the recognition criteria of the financial reporting framework presented in the audit report.~~

~~(ii) Revenues may be provisionally based on amounts presented in the financial report required by 2-7-503, MCA, until such time that the audit report for the same period is issued.~~

~~(iii) The department and the local government entity shall settle the balance of any resulting difference in the filing fee when the audited revenues are available.~~

~~(iv) When applicable, revenues do not include receipts or inflows of resources presented in the governmentwide, investment trust funds, or custodial funds financial statements.~~

~~(5) Each local government entity except school districts shall pay the annual filing fee to the department at the time the entity files the annual financial report required by 2-7-503, MCA, with the department.~~

~~(6)~~(2) For school districts and associated cooperatives:

~~(a) as required by 2-7-514, MCA, the Office of Public Instruction shall pay the annual filing fee~~ revenues are based on the recognition criteria of the financial reporting framework presented in the financial report required by 20-9-213, MCA;

~~(b) in the case of combined elementary and high school districts, the annual filing fee will be is based upon the combined annual revenue amounts of both districts; and~~

~~(c) in the case of school districts and associated cooperatives having an audit covering two fiscal years, the department will shall calculate a separate fee based on the annual revenue amounts for each fiscal year covered by the audit.~~

~~(7)~~(3) The annual filing fees for local government entities are ~~as follows:~~

Annual Revenues Equal to or Greater Than in <u>Excess of:</u>	<u>Annual Revenues Equal</u> <u>to or Less Than:</u>	<u>Fee</u>
\$500,000 <u>750,000</u>	<u>\$1,000,000</u>	<u>\$550</u>

\$1,000,000	\$1,500,000	\$800
\$1,500,000	\$2,500,000	\$950
\$2,500,000	\$5,000,000	\$1,300
\$5,000,000	\$10,000,000	\$1,700
\$10,000,000	\$50,000,000	\$2,500
\$50,000,000		\$3,000

This filing fee schedule is effective for annual financial reports ~~for years ended June 30, 2015, and~~ due on or after July 1, 2017.

AUTH: 2-7-514, MCA

IMP: 2-7-514, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) and (2) to provide style corrections and to remove unnecessary duplication of statutory language.

The department proposes to delete (3) and (5) to remove unnecessary duplication of statutory language.

The department proposes to amend (4) to provide style and grammar corrections and to resolve confusion over whether the filing fee is calculated from revenue amounts reported in the annual financial report or the audit report of the same period. Because revenues reported in the unaudited annual financial report are typically provided prior to the independently verified revenue amounts in the audit report, which provides more reliable revenue amounts for the basis of the filing fee, an entity may provisionally calculate the filing fee from amounts reported in the annual financial report until the audit report is completed. The department believes this approach is reasonable based on the above-described timing differences. The amendment also clarifies that revenues do not include any revenues of the governmentwide, investment trust fund, or custodial funds. The department has taken this approach because these revenues either have already been accounted for in other areas of the financial statements or do not belong to the primary government. In the latter case, these revenues belong to other, legally separate entities.

The department proposes to amend (6) to remove unnecessary duplication of statutory language, to make style corrections, and to provide to the Office of Public Instruction an expediency exception to the proposed amendments to (4). The exception approach is warranted because the Office of Public Instruction reviews the revenue amounts presented in the Trustees' Financial Summary, which provides to the department reasonable assurance of the correct valuation of the filing fee. The Office of Public Instruction calculates and pays the filing fees of school districts and associated cooperatives from revenue amounts presented in the Trustees' Financial Summary. The Trustees' Financial Summary is a financial report prescribed by, submitted to, and reviewed by the Office of Public Instruction.

The department proposes to amend (7) to update the filing fee schedule resulting from L. 2017, Senate Bill 372, which increased the audit threshold from \$500,000 to \$750,000. Accordingly, the filing fee schedule applicable to all local government entities subject to an audit must reflect the same increase.

2.4.403 PENALTIES FOR FAILING TO FILE REPORTS WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION (1) ~~As provided by 2-7-517, MCA, if a local government entity is unable to file its reports with the department as required by 2-7-503, MCA, the department may grant an extension of time in which to file the reports or may waive the fines, fees, and other penalties if the local government entity demonstrates that it has good cause for not submitting the reports within the prescribed time or that the failure to comply was the result of circumstances beyond the entity's control.~~

~~(a) Good cause will be deemed to exist if the local government entity has exercised ordinary business care and prudence and was nevertheless unable to prepare and properly submit the annual financial report within the prescribed time.~~

~~(b) The department will determine what constitutes the exercise of ordinary business care and prudence based on the facts of each case.~~

~~(c) The department shall determine, based on the facts of each case, what constitutes circumstances beyond the entity's control. Examples of circumstances beyond an entity's control may include, but are not limited to, unexpected loss of key accounting staff, loss or inaccessibility of accounting records due to computer malfunction, or natural disaster.~~

(1) The department shall assess a monthly penalty of 10 percent of the required filing fee established in ARM 2.4.402 when a local government entity does not submit by the due date the annual financial report required by 2-7-503, MCA.

(a) If the filing fee applicable to the reporting period is not known to the department, the department shall use the filing fee of the most recent reporting period available to calculate the late submission penalty.

(b) If the local government entity is not required to pay a filing fee, the late submission penalty must be calculated using the minimum filing fee.

(2) In addition to imposing the late submission penalty established in (1), the department may issue an order to withhold payment of any state financial assistance to the local government entity. The department shall notify state agencies of the order.

(a) Upon receipt of the required report and all late submission penalties, the department shall release any financial assistance withheld pursuant to the department's order to the local government entity.

~~(2)(3) If The department shall assess a \$75 fine and provide public notice when a local government entity has not filed the fails to file a reports required by 2-7-503, MCA, within 180 days of the required due dates and the department has not granted an extension for filing the reports, the department shall notify the entity of the fine due and shall provide public notice of the delinquent reports.~~

~~(a) Public notice means publishing in the local newspaper, if available, and posting on the department's web site website: <https://sfsd.mt.gov/LGSB>.~~

~~(b) Based on the cost of providing public notice, the department shall charge a delinquent filing fee of \$50 for reports not filed within 180 days of the required due dates.~~

AUTH: 2-7-517, MCA
IMP: 2-7-503, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend the catchphrase to reflect more accurately the rule's contents.

The department proposes to amend (1) to remove unnecessary duplication of statutory language and to align the rule with long-standing department practice of assessing late submission penalties. The department has used 10 percent and proposes to continue this same penalty because it believes that this amount will incentivize action but not unreasonably punish a local government entity. The department believes that a 15 percent penalty, for example, would be unreasonably harsh. The department expects no change in penalty revenues as a result of the amendment.

The department proposes to amend (2) to provide style corrections, to remove unnecessary duplication of statutory language, and to increase the publication fee from \$50 to \$75. The \$75 fee per publication reflects recent costs associated with average newspaper publication costs and employee processing costs. Average costs are expected to range between \$71 and \$79 for the next five years. The proposed fee is estimated to annually affect 53 local government entities for an annual cumulative amount of \$3,975.

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE ~~(1) If the required filing fee is not submitted with the annual financial report, the department will notify the local government entity of the filing fee requirement and of the amount due to the department, and of the penalties for failure to pay the required fee.~~

~~(2) If the required filing fee is not submitted to the department within 60 days of the due date of the annual report, the department may add to the filing fee a late payment penalty equal to 10% of the required filing fee for each month or portion of a month that the filing fee is delinquent in excess of 60 days.~~

(1) The department shall assess a monthly penalty equal to 10 percent of the required filing fee in ARM 2.4.402 when a local government entity does not submit the filing fee required by 2-7-514, MCA, within 60 days of the due date.

(a) If the revenues and filing fee applicable to the reporting period have not been reported or are not known, the department shall use the filing fee of the most recent reporting period available to calculate the late filing fee penalty.

~~(3)(2) In addition to imposing the late payment penalty established in (2)(1), the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the required filing fee plus the late payment penalty.~~

~~(4)(3)~~ Upon receipt of the required filing fee ~~plus the~~ and all late payment ~~penalty penalties~~, the department ~~will~~ shall notify each state agency that any financial assistance withheld pursuant to the department's order ~~is to be~~ has been released to the local government entity.

AUTH: 2-7-514, 2-7-517, MCA

IMP: 2-7-514, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) and (2) to remove unnecessary duplication of statutory language, to provide style corrections, and to align the rule with long-standing department practice of assessing a late filing fee penalty of 10 percent. The department has used 10 percent and proposes to continue this same penalty because it believes that this amount will incentivize action but not unreasonably punish a local government entity. The department believes that a 15 percent penalty, for example, would be unreasonably harsh. The department expects no change in penalty revenues as a result of the amendment.

The department proposes to amend (3) and (4) to update numbering references, remove redundant language, and provide style corrections.

2.4.405 AUDIT AND AUDIT REPORTING STANDARDS ~~(1) All audits performed under 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States (see ARM 2.4.411), that are applicable to financial audits. These standards incorporate generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants.~~

~~(2)(1)~~ Audits When applicable, audits and audit reporting must conform to the requirements of the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133 the requirements of Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as published in the Federal Register, Volume 78, No. 248 (see ARM 2.4.411).

(2) When approved by the department, audits and audit reporting of financial statements prepared in accordance with a small government financial reporting framework must apply the reporting requirements provided in ARM 2.4.401.

~~(3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the Comptroller General of the United States, which incorporate the standards of reporting for financial audits prescribed by the American Institute of Certified Public Accountants (see ARM 2.4.411).~~

~~(4) For audits conducted under the provisions of the OMB Circular A-133, the audit reports must comply with the reporting requirements of that circular (see ARM 2.4.411).~~

AUTH: 2-7-504, 2-7-505, 2-7-513, MCA

IMP: 2-7-504, 2-7-505, 2-7-513, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) and (3) to remove unnecessary duplication of statutory language found in 2-7-513, MCA.

The department proposes to amend (2) to include audit reporting requirements from (4) for the sake of brevity and to update for the publication of Title 2 CFR Part 200, which superseded the requirements of the OMB Circular A-133. The requirements of Title 2 U.S. Code of Federal Regulations Part 200 became effective for all federal awards awarded to nonfederal entities after December 26, 2014.

The department proposes (3) to establish that audits of local governments approved to report in accordance with the department's small government financial reporting framework, provided by the passage of L. 2019, Senate Bill 2, must apply the requirements identified at ARM 2.4.401. The reasons for this proposal are explained in the Statement of Reasonable Necessity following the proposed amendments to ARM 2.4.401.

The department proposes to delete (4) to remove redundant language already provided in (2).

The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, addresses accounting methods and details rather than audit and audit reporting standards, which are instead provided at 2-7-505 and 2-7-513, MCA.

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES ~~(1) Local government entity audits conducted under the provisions of Title 2, chapter 7, part 5, MCA, must be conducted by an independent auditor as defined by 2-7-501, MCA. For purposes of this requirement, an "independent auditor" is:~~

~~(a) a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States; or~~

~~(b) a licensed accountant who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States (see ARM 2.4.411).~~

~~(2)(1)~~ In order to To conduct audits of local government entities, an independent auditor must be on the department's roster of authorized independent auditors ~~authorized to conduct such audits that is maintained by the department.~~

~~(3)(2)~~ In order to To be placed on the roster, independent an auditors must shall complete an a department-prescribed application form ~~prescribed by the department~~ and meet the criteria ~~set out~~ in this rule.

~~(4)(3)~~ Independent auditors Auditors with separate offices registered as required by 37-50-335, MCA, must shall submit separate application forms for each office that is to be placed separately identified on the roster.

~~(5)(4)~~ To be eligible for inclusion on the roster, an ~~independent~~ auditor must:

~~(a) if an individual, hold a current Montana certificate as a certified public accountant and hold a current annual permit license to engage in the practice of public accounting under 37-50-314, MCA, or hold a current license as a licensed public accountant, have been licensed on or before December 31, 1970, and hold a current annual permit to engage in the practice of public accounting under 37-50-314, MCA;~~

~~(b) have each office if a firm that has established or maintained offices in this state for the practice of public accounting, register annually as provided under 37-50-335, MCA; by:~~

~~(i) a certified public accountant or a partnership or corporation of certified public accountants registered annually as provided under 37-50-335, MCA; or~~

~~(ii) a licensed public accountant or a partnership or corporation of licensed public accountants registered annually as provided under 37-50-335, MCA, and have been registered on or before December 31, 1970;~~

~~(c) if a firm that does not have an office in this state, comply with the requirements contained in 37-50-335, MCA;~~

~~(e)(d)~~ meet the continuing education requirements specified in Government Auditing Standards, as established by the Comptroller General of the United States;

~~(d)(e)~~ have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as established by the Comptroller General of the United States, and receive a peer review rating of "pass" or "pass with deficiencies" from the reviewing firm, team, or association;

~~(i) a firm that undergoes a board-sanctioned compliance or peer review process and receives a provisional pass with deficiencies rating must complete, or be in the process of completing, all required remediation required by the peer review program administrator;~~

~~(ii) upon request, firms with provisional pass with deficiencies ratings shall provide the department all interim and final communications with the peer review program administrator relating to the firm's remedial activities;~~

~~(e)(f)~~ not have been restricted in the conduct of governmental auditing by the Montana Board of Public Accountants;

~~(f)(g)~~ not have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from performing audits by any state or federal department or agency; and

~~(g)(h)~~ not have been deemed ineligible to conduct local government entity audits by the department because of failure:

~~(i) of failure to conduct local government entity audits under contract with the department during the previous two years in accordance with the audit standards described in 2-7-513, MCA, or ARM 2.4.405; or~~

~~(ii) of failure during the previous two years to adhere to the terms and conditions of an audit contract with the department; or~~

~~(iii) the independent auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the department and has not obtained the department's written consent to an extension of the contracted filing date.~~

~~(6)(5)~~ An independent auditor may be removed by the department from the roster of independent auditors authorized to conduct audits of local government entities for failure to continue to meet the eligibility requirements specified above.

~~(7)(6)~~ If an independent auditor is removed by the department from the roster as provided in ~~(6)(5)~~, the independent auditor must complete the application form prescribed by the department, meet the eligibility requirements set out in ~~(5)(4)~~, and pay the fee specified in ~~(10)(9)~~ in order to again be placed on the roster.

~~(8)(7)~~ To remain on the roster, an independent auditor must shall complete and submit to the department on or before June 30 of each year a renewal form ~~prescribed by the department on which the independent auditor certifies~~ certifying that the individual, partnership, or corporation or firm continues to meet the eligibility requirements specified above.

~~(9)(8)~~ To ensure that each independent auditor meets the eligibility requirements specified above, the department may, at any other time during the year, require the independent auditor to submit to the department evidence that the independent auditor meets the above eligibility requirements, including, but not limited to, documentation of required continuing professional education and the required external quality control review.

~~(10)(9)~~ At the time of original application to the department for placement on the roster and at the time the annual renewal form is submitted, to the department, each independent auditor, including each office, separately identified on the roster shall pay to the department a fee of \$100.

~~(11)(10)~~ If an independent auditor is removed from or does not renew to the roster, or if an independent auditor does not properly renew for continuance on the roster, any and all contracts for local government entity audits entered into under the provisions of 2-7-506, MCA, to which the independent auditor is a party are terminated, and the department will notify the local government entities of the termination. If an independent auditor is removed from the roster, the department will not refund any portion of the roster application fee paid to the department by that independent auditor for placement on the roster.

~~(12)(11)~~ Upon the department's notification of the termination of a contract for a local government entity audit, the local government entity must shall select another independent auditor from the department's roster of independent auditors authorized to conduct local government audits and present a signed contract to the department for approval within 90 days of notification of the termination.

AUTH: ~~2-7-504, 2-7-506, MCA~~

IMP: ~~2-7-504, 2-7-506, MCA~~

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) to remove unnecessary duplication of statutory language.

The department proposes to amend (2) and (3) to correct the rule for style and brevity.

The department proposes to amend (4) to address changes resulting from L. 2017 HB 500, which revised registration and ownership requirements of accounting firms.

While separate firm offices are no longer required to separately register with the state of Montana, a firm may choose to separately identify each office on the department's roster of independent auditors by submitting a separate application form for each office.

The department proposes to amend (5)(a) to address terminology changes resulting from L. 2015 HB 44, which substituted language relating to the former CPA designations of "Certificate" and "Permit to Practice" with "license."

The department proposes to amend (5)(b) and (8) and add new (c) to current (5) to address changes from L. 2017 HB 500, which provided that a public accounting firm that does not have an office in Montana may use the title "CPA" or "CPA firm" in Montana without registering, so long as it meets certain other criteria specified in statute.

The department proposes the addition of (d)(i) and (ii) to current (5)(d) to clarify firm responsibilities when receiving provisional peer review ratings. The department must monitor provisional peer review ratings to ensure eligible roster membership and the appropriate provision of audit services to local government entities.

The department proposes to amend (5)(g)(i) to change the reference for Government Auditing Standards from ARM 2.4.405 to 2-7-513, MCA. As noted earlier in this notice, the department has proposed amendments to ARM 2.4.405 because parts of this rule needlessly repeat statutory language. However, to protect the public interest, the department believes it must evaluate auditor performance against a standard and that the Government Auditing Standards are the appropriate guideposts to assess an auditor's work.

The department proposes to remove (5)(g)(iii) to align the rule with 2-7-503(3), MCA, which provides that the audit requirement applies to the entity, not to the auditor.

The department proposes to amend (6), (7), (9), (10), and (12) to update reference numbers.

The department proposes to amend (3) through (12) to update for style and to remove unnecessary and redundant language, including the often-repeated word "independent."

The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, provides rulemaking authority for methods and details of accounting but does not provide rulemaking authority for the roster of independent auditors, which is instead provided at 2-7-506, MCA. Nor does the rule implement the requirements of 2-7-504, MCA, and so is proposed to be removed.

2.4.409 ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING
BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR

FAILURE TO DO SO (1) ~~As provided by 2-7-515, MCA, the local government entity shall adopt measures to correct the findings contained in its audit report and shall submit a copy of the corrective action plan, or response to the audit report findings, to the department within 30 days of the entity's receipt of the audit report.~~

~~(2) In the case of school districts or associated cooperatives, a copy of the response or corrective action plan must also be filed with the Superintendent of Public Instruction.~~

~~(3) If no findings, deficiencies, or recommendations appear in the audit report, no response or corrective action plan is required to be filed with the department.~~

~~(4) The department will review the local government entity's response or corrective action plan and notify the entity in writing upon the acceptance of the response or plan.~~

~~(5) If the department does not approve all or any portion of a local government entity's response or corrective action plan, or if the department requires additional information in order to evaluate a response, the department will contact the entity regarding the response or corrective action plan.~~

~~(6) If deemed necessary by the department, the department may also contact the independent auditor who performed the audit to obtain additional information regarding the facts related to the independent auditor's findings and the reasons for the independent auditor's recommendations.~~

~~(7) In the case of a school district or associated cooperative audit, the department shall also contact the Superintendent of Public Instruction regarding the acceptability of a school district's or associated cooperative's response or corrective action plan.~~

~~(8) If, as a result of the communications described above, the department agrees to accept the local government entity's response or corrective action plan, the department will notify the entity in writing of that acceptance.~~

~~(9) If, as a result of the communications described above, the local government entity agrees to revise all or a portion of its response or corrective action plan, it will submit such changes or revisions to the department in writing.~~

~~(10) The department will review the local government entity's revised response or corrective action plan and notify the local government entity in writing when the department has accepted the response or plan.~~

~~(11) If, after the communications described above, the department still does not approve all or any portion of a local government entity's response or corrective action plan and the entity does not agree to revise its response or corrective action plan so that it is acceptable to the department, the department will notify the entity in writing of its nonacceptance, the reasons for the nonacceptance and the fact that, pursuant to 2-7-515, MCA, financial assistance can be withheld from the entity if within 30 days of the date of the notification letter the entity does not develop and submit to the department a response to audit findings or a corrective action plan that is acceptable to the department.~~

~~(12) If the department does not receive an acceptable response or corrective action plan within 30 days, it can request, pursuant to 2-7-515, MCA, that state agencies withhold payments of financial assistance from the local government entity pending receipt of an acceptable response or corrective action plan. The~~

department, after consultation with the appropriate state agency or agencies, may designate the financial assistance payments to be withheld.

~~(13) In the case of school districts or associated cooperatives, the department will obtain the concurrence of the Superintendent of Public Instruction before issuing an order withholding payments of financial assistance.~~

~~(14) Upon receipt by the department of an acceptable response or corrective action plan from the local government entity, the department will notify the entity in writing of the acceptance, and will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity.~~

(1) If a local government entity does not submit its planned corrective measures to findings reported in audit and financial review reports required by Title 2, chapter 7, part 5, MCA, to the department within 30 days of the report issuance date, the department shall notify the entity of the delinquency and publish notice of the delinquency on the department's website.

(2) The planned corrective measures must be responsive to the findings identified and provide for a probable resolution of the findings within a reasonable period.

(3) The department shall base a determination of the acceptableness of the local government entity's planned corrective measures on the risks, facts, and circumstances of the findings and of the entity.

(4) If the department does not receive acceptable corrective measures for findings the department deems to be significant, the department may, in addition to its statutory remedies, request additional details, supporting information, or evidence of implementation of the corrective measures.

(5) The department shall base the significance of findings on the risks to the entity of doubtful going concern, significantly distressed operations, or substantially unprotected public interest.

(6) Any financial assistance withheld must be released to the local government entity once the department finds that the local government entity has initiated or taken corrective measures sufficient to provide for a probable resolution of the findings within a reasonable period.

(7) The department shall obtain the concurrence of the Superintendent of Public Instruction before accepting or rejecting any planned corrective measures or withholding or releasing any financial assistance of any school district or associated cooperative.

(8) If the subsequent audit or financial review report repeats a significant finding, the department shall withhold financial assistance from the entity.

(a) The financial assistance withholding process may be halted if the entity demonstrates good cause for the repeat finding. Good cause may be demonstrated with sufficient evidence of:

(i) the entity's good faith effort to implement corrective measures;

(ii) circumstances outside of the entity's control; or

(iii) an inability to address a finding or findings because of the passage of time.

(b) If the subsequent audit report is delinquent, the department may withhold financial assistance until the department receives the delinquent audit report that does not repeat a significant finding.

(c) For those local governments that are not required to have an audit for the subsequent fiscal year, the department may require the entity to have a financial review as defined in ARM 2.4.410. The department shall determine the requirement for a financial review on a case-by-case basis, based on the quality of supporting documentation received from the entity to confirm corrective measures have been taken.

(9) The department shall notify all state agencies any time the department issues an order to withhold or release financial assistance.

AUTH: 2-7-515, MCA

IMP: 2-7-515, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to replace (1) through (14) with (1) through (9) to remove unnecessary duplication of statutory language, to update for style and brevity, and to establish a more reasonable and practical due process before financial assistance can be withheld.

The department proposes (2) and (3) to clarify the department's expectations for the content of the planned corrective measures to avoid confusion or unnecessary inefficiencies in the submissions and administration of corrective action acceptance and monitoring activities.

The department proposes (4) and (5) to limit the withholding of financial assistance only for findings deemed to be significant because withholding assistance could have serious repercussions on the local government's citizens and stakeholders. The department believes that insignificant findings such as findings regarding auditor-prepared financial statements or small office segregation of duties should not warrant withholding given these potential negative impacts. The department has taken this approach because it believes the Legislature did not intend that minor findings should trigger withholding of financial assistance.

The department proposes (6) because the department believes it is important to inform local governments what criteria must be satisfied to resume the payment of financial assistance. The department believes that a "probable resolution of the findings within a reasonable period" is a fair standard because it requires the entity to show meaningful progress with its efforts to resolve the findings, while leaving some flexibility regarding timing. The department considered other alternative approaches, such as requiring action to be taken within a specific time period, but felt that option was too restrictive given the varying circumstances that could affect a government's corrective action plan.

The department proposes (7) to coordinate with the Office of Public Instruction (OPI) regarding its monitoring of corrective measures of school districts and associated

cooperatives so as not to duplicate effort or to hamper OPI's ability to regulate those entities.

The department proposes (8) to address a repeat of significant findings. The department proposes that financial assistance must, subject to narrow exceptions, be withheld in this case because the local government needs a strong incentive to correct inadequacies in important areas.

The department proposes (8)(a) to provide a good cause exception to address concerns that the department should not withhold financial assistance if a reasonable basis exists for a repeat finding. To facilitate determinations of permissible exceptions, the department proposes examples of permissible exceptions. The department believes that good faith efforts in resolving findings should be considered because continuing to withhold financial assistance would not necessarily create any additional incentive to resolve findings—on the contrary, the continued withholding may be perceived as punishment for making progress. The department proposes a "force majeure" condition because situations may arise that the entity cannot control, and the department believes that withholding may not serve the public interest in this instance. Finally, the department proposes (8)(a)(iii) because in some cases the passage of time will render moot an entity's efforts to address findings. For example, a repeat audit finding for late submission of a report may be repeated several years in a row because all of the applicable deadlines had previously lapsed. Likewise, occasionally a repeat finding pertains to a grant award that is no longer offered or taken.

The department proposes (8)(b) and (8)(c) to provide for the contingency of an entity not submitting a subsequent audit or financial review report when it also has an outstanding significant finding. In subsequent periods, if significant findings are not resolved or if evidence of the resolution of the significant findings is not obtained, the department has concluded that a reasonable person would find that the risk to an entity's constituents unacceptably unmitigated. In such cases, the department may either withhold financial assistance or may require, under the authority provided in 2-7-503(5), MCA, that a financial review be performed.

The department proposes (9) because it believes it is important to ensure proper notification to state agencies so that withholding or releasing financial assistance is consistently done across state government. Lack of consistency will frustrate the local governments and undermine the statutory goals.

2.4.410 REVIEW OF FINANCIAL STATEMENTS ~~(1) As provided by 2-7-503, MCA, the governing body or managing or executive officer of a local government entity that is not required to have an audit based on the criteria established in 2-7-503, MCA, shall at least once every four years, if directed by the department, or, in the case of a school district or associated cooperative, if directed by the department at the request of the Superintendent of Public Instruction, cause a financial review to be conducted of the financial statements of the entity for the preceding fiscal year.~~

~~(2)~~(1) A "financial review" is defined as an agreed-upon procedures engagement in which an independent auditor ~~is engaged to~~ issues a report of findings based on specific procedures ~~performed on subject matter~~ in accordance with standards established by the American Institute of Certified Public Accountants (see ARM 2.4.411). The procedures to be performed during the financial review of a ~~specific type of~~ local government entity are prescribed by the department and ~~are~~ specified in the contract referred to in ~~(4)~~(3).

~~(3)~~(2) Financial reviews of a local government entity conducted at the direction of the department must be performed either by an independent auditor, ~~as defined by 2-7-501, MCA, who is on the department's roster of independent auditors authorized to conduct audits of local government entities~~ or by the department.

~~(4)~~(3) Financial reviews required by the department must be performed pursuant to a contract ~~entered into by the local government entity, the independent auditor, and the department~~. Work may not commence under the contract until it is signed by the department. All contracts for conducting financial reviews must be in a form prescribed by the department.

~~(5)~~(4) The compensation to the independent auditor for conducting a financial review must be agreed upon by the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid. If performed by the department, the department shall charge the local government entity an hourly rate to cover the costs of performing the financial review.

~~(6)~~(5) ~~A~~ An administrative fee of \$75 will be charged to each entity required to have a financial review. Entities required to have a financial review will be notified in writing, and the ~~The administrative fee is due 60 days from the date of the department's letter notifying the entity of the financial review requirement~~ within six months of the entity's fiscal year end.

~~(7)~~ The provisions of 2-7-517, MCA, regarding the penalty for failing to pay an audit fee ~~apply to the failure to pay a financial review fee.~~

~~(8)~~ Reports on financial reviews must be prepared in accordance with reporting standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements (see ARM 2.4.411), and in addition ~~must include any schedules specified in the contract referred to in (4).~~

~~(9)~~(6) The independent auditor shall file copies of the financial review report with the department. In the case of school districts or associated cooperatives, the independent auditor shall also file a copy of the review report with the Superintendent of Public Instruction.

~~(10)~~(7) The provisions of 2-7-515, MCA, and ARM 2.4.409, regarding the actions of local government governing bodies to resolve and correct audit findings, and the penalty for failure to do so, ~~apply to financial review reports.~~

~~(11)~~(8) The provisions of 2-7-522, MCA, regarding audit report reviews by the department ~~apply to financial review reports.~~

AUTH: 2-7-503, 2-7-504, 2-7-514, MCA

IMP: 2-7-503, 2-7-504, 2-7-514, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) and (7) to remove unnecessary duplication of statutory language.

The department proposes changes to (3) and (4) to provide that the department may perform financial reviews and charge a fee to cover the costs of performing of financial review so that certain small local governments may have a cost-beneficial alternative for meeting their financial review requirement. The department estimates that the average cost to perform a financial review is \$45.65 an hour based on current hourly costs of audit and support staff. The department estimates that the average time to complete a financial review is 23 hours based on an experience-driven weighted average of time to complete a financial review. Based on those assumptions, the department estimates a total of \$1,050 per review. The department estimates offering financial review services to 12 local government entities each year for an annual cumulative amount for all persons affected of \$12,600. The average cost of a private CPA firm financial review engagement for fiscal year 2018 was \$3,053.

The department proposes to amend (6) to conform to language used in 2-7-514(2), MCA, and to provide alignment of financial review administrative fee due dates and filing fee due dates. Because the financial review administrative fee is assessed in lieu of the filing fee, to apply consistent treatment to the two fees, they should be due at the same time. Because the filing fee is due when the annual financial report is due, the administrative fee should also be due when the annual financial report is due.

Section (8) is proposed for removal because schedules to be included in the financial review report are included in the contract, making this section unnecessary.

Other rule amendments are proposed to improve style and readability. The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, provides rulemaking authority for methods and details of accounting but does not provide rulemaking authority for financial reviews, which is instead provided at 2-7-503, MCA. Nor does the rule implement the requirements of 2-7-504, MCA, and so is also proposed to be removed. Additionally, the authority to implement an administrative fee by rule is found at 2-7-514, MCA.

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS (1) The department adopts and incorporates by reference the Codification of Governmental Accounting and Financial Reporting Standards, updated through June 30, 2019, adopted by the Governmental Accounting Standards Board as the required standards for counties, cities, and towns, as provided by ARM 2.4.401.

(a) and (b) remain the same.

~~(2) The department adopts and incorporates by reference the chart of accounts prescribed by the department in the Budgetary, Accounting and Reporting System for Montana Cities, Towns and Counties for use by counties, cities, and towns, as provided by ARM 2.4.401.~~

~~(a) The chart of accounts incorporated by reference in (2) contains the required fund classifications, balance sheet accounts, revenue accounts, expenditure accounts, and objects of expenditure to be used by counties, cities, and towns.~~

~~(b) The chart of accounts adopted by reference in (2) may be obtained from the Montana Department of Administration, Local Government Services Bureau, 125 North Roberts Street, Room 270 Mitchell Building, P.O. Box 200547, Helena, MT 59620-0547.~~

~~(2) The department adopts and incorporates by reference the Small Government Financial Reporting Framework established by the department as of June 30, 2019, as provided by ARM 2.4.401, available at <https://sfsd.mt.gov/LGSB>.~~

~~(3) The department adopts and incorporates by reference the Government Auditing Standards, 2011 and 2018 revisions, established by the Comptroller General of the United States for financial audits as required standards for independent auditors in conducting audits of local government entities, as provided by ARM 2.4.405 2.4.406.~~

~~(a) Government Auditing Standards incorporated by reference in (3) contain standards to be followed by an independent auditor in conducting financial audits of local government entities, including general standards, field work standards, and reporting standards.~~

~~(b) Government Auditing Standards established by the Comptroller General of the United States adopted by reference in (3) may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401. These standards may also be accessed at the following web site address: <http://www.gao.gov/>.~~

~~(4) The department adopts and incorporates by reference the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations," as requirements to which local government audits must conform Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as published in the Federal Register, Volume 78, No. 248, as provided by ARM 2.4.405.~~

~~(a) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 and the OMB Circular A-133 relate to the following:~~

- ~~(i) background and purpose;~~
- ~~(ii) applicability of the act and circular;~~
- ~~(iii) audit requirements and scope of audits conducted under the act and circular;~~
- ~~(iv) frequency of audits;~~
- ~~(v) federal agency and pass-through entity responsibilities;~~
- ~~(vi) requirements relating to subrecipients and vendors;~~
- ~~(vii) relation to other audit requirements;~~
- ~~(viii) auditee responsibilities;~~
- ~~(ix) illegal acts or irregularities;~~
- ~~(x) audit report requirements;~~
- ~~(xi) audit resolution;~~

- ~~(xii) audit working papers and reports;~~
- ~~(xiii) audit costs and auditor selection; and~~
- ~~(xiv) sanctions.~~

~~(b)(a)~~ The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 is codified as Chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following website address:

~~http://uscode.house.gov/browse/prelim@title31/subtitle5/chapter75&edition=prelim~~
~~http://uscode.house.gov/.~~

~~(c)(b)~~ The circular is available from the federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address:

~~http://whitehouse.gov/omb/circulars_default/.~~ Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) can be accessed at <https://www.gpo.gov/>.

(5) The department adopts and incorporates by reference the standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements, updated through June 30, 2019, under which financial reviews of local government entities must be conducted, as provided by ARM 2.4.410, available at <https://www.aicpa.org/>.

~~(a) These standards contain:~~

- ~~(i) conditions for engagement performance;~~
- ~~(ii) the subject matter and related assertions;~~
- ~~(iii) the nature, timing, and extent of procedures;~~
- ~~(iv) the presentation of the results of applying agreed-upon procedures to specific subject matter in the form of findings;~~
- ~~(v) reporting requirements; and~~
- ~~(vi) written representations.~~

~~(b) The standards for agreed-upon procedures engagements are contained in Section 201 of the Codification of Statements on Standards for Attestation Engagements, which may be obtained from the American Institute of Certified Public Accountants by calling (888) 777-7077 or at the following web site address: <https://www.cpa2biz.com>.~~

AUTH: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1), (3), and (5) to provide the edition dates for materials incorporated by reference.

The department proposes to delete (2) to remove unnecessary duplication of statutory language

The department proposes (2) to incorporate by reference the Small Government Financial Reporting Framework, which establishes an alternative financial reporting option for small local governments in accordance with L. 2019, Senate Bill 2. The department believes the proposed framework will provide relief to those smaller local

governments that struggle to meet certain financial reporting requirements of GAAP. The framework excludes from GAAP the most costly and burdensome aspects of financial reporting that also lack relevance to the users of those local governments. One such example is actuarially determined post-employment benefit information, which is not only highly technical and expensive to produce, but also does not factor into the day-to-day, cash-basis or budgetary-basis decisions of most governing officials of small, rural governments.

The department believes providing a separate document outside of administrative rule by an incorporation by reference facilitates beneficial coordination with other local government resources provided to assist the annual financial statement preparation process. Those resources include the annual financial report form and the uniform chart of accounts authorized at 2-7-503, MCA.

The department proposes to amend (3) to remove unnecessary duplication of statutory language, to correct for style, and to correct the cross-reference to ARM 2.4.406, due to the removal of Government Audit Standards provisions from ARM 2.4.405.

The department proposes to amend (4) to update for the publication of Title 2 CFR Part 200, which superseded the requirements of the OMB Circular A-133. The requirements of Title 2 CFR Part 200 became effective for nonfederal entities for all federal awards awarded after December 26, 2014.

The department proposes to amend (4)(b) to update the U.S. Code web address to the home page of the U.S. Code website. The department expects the home page to be a more reliable web address over time than an address that includes specific search parameters.

The department proposes to amend (5) to remove outdated and unnecessary language and references to the Codification of Statements on Standards for Attestation Engagements, which were amended and reorganized in state fiscal year 2016. The department also proposes to correct for style and to update the web address for the location of the applicable attestation standards.

The department proposes to amend the rule to correct the authority citation. Section 2-7-503(3)(b), MCA, provides rulemaking authority for financial reviews, which are to be performed under the Statements on Standards for Attestation Engagements.

5. The department proposes to repeal the following rule:

2.4.408 AUDIT CONTRACTS, found on ARM page 2-85.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal this rule because it unnecessarily repeats statutory language.

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 Cody Pearce, Department of Administration, Statewide Accounting Bureau, P.O. Box 200102, Helena, MT 59620; telephone (406) 444-3092; fax (406) 444-9144; Montana Relay Service 711; or e-mail LGSPortalRegistration@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

7. Cody Pearce, Department of Administration, 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding the Single Audit Act rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Margaret MacDonald, was contacted on May 22, 2019, by email and U.S. mail.

11. The department has determined that under 2-4-111, MCA, the proposed amendments and repeal will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 11, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.12.106, 4.12.109, and) PROPOSED AMENDMENT
4.12.113 pertaining to apiary fees)

TO: All Concerned Persons

1. On July 17, 2019, at 9:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on July 12, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov.

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

4.12.106 INSPECTION OF APIARY EQUIPMENT (1) through (3) remain the same.

(4) The Department of Agriculture must have at least two weeks' notice and preferably more, during the rush season of spring and early fall for the need of an inspection. ~~No inspection will be scheduled if received later than September 15, except in extreme emergencies.~~

(5) and (6) remain the same.

AUTH: 80-6-102, 80-6-202, MCA

IMP: 80-6-102, 80-6-202, MCA

REASON: The Department of Agriculture regularly performs inspections after September 15th. Unnecessary language is stricken.

4.12.109 CIVIL PENALTIES – ENFORCEMENT (1) remains the same.

(2) Each violation ~~shall be~~ is considered a separate offense and is subject to a separate penalty not to exceed ~~\$1,000~~ \$10,000. A repeat violation ~~shall be~~ is considered a first violation if it occurred two or more years after the previous violation.

(3) remains the same.

AUTH: 80-6-201, MCA

IMP: 80-6-303, MCA

REASON: A separate penalty amount typo is corrected, from \$1,000 to \$10,000, as written in ARM 4.12.110 Civil Penalties – Matrix: Failure to meet importation requirements specified in 80-6-202, MCA. A first offense is \$5,000, a second is \$7,500, and a subsequent offense is \$10,000.

4.12.113 REGISTRATION AND CERTIFICATION FEES—APIARY FEES

(1) The application fee for owners or applicants not currently registered in the department's apiary database is ~~\$20~~ \$10. The new application fee is due at the time the owner or applicant submits a registration for an apiary site. The application fee is in addition to all apiary site registration fees due annually. Site registration will not be issued until the new application and site registration fees are paid.

(2) The registration or reregistration fee for ~~an~~ commercial and pollination apiary sites is ~~\$19~~ \$35 per site.

(3) The registration or reregistration fee for hobbyist and landowner apiary sites is \$10 per site.

~~(3)~~ (4) The fee for issuance of a certificate of health (certificate of inspection) is \$125. The fee for a certificate of health must be paid at the time of the request for a certificate of health.

AUTH: 80-6-102, 80-6-106, 80-6-202, MCA

IMP: 80-6-102, 80-6-106, 80-6-202, MCA

REASON: House Bill 443, sponsored by Rep. Ross Fitzgerald in the 2019 Session of the Montana Legislature, was signed by Governor Steve Bullock on May 8, 2019. HB 443 requires all hobbyist apiary sites register with the Montana Department of Agriculture. Registration requirements and a proposed \$10 site fee are included in ARM 4.12.113.

Department of Agriculture staff met with members of the Montana Beekeepers Association (MBA) on May 10, 2019. Apiary site registration fees were discussed, and members supported increasing commercial site fees to \$35. MBA members are interested in hiring a second state entomologist, and this increase would help with funding.

Because landowner apiary sites are often registered with less than 50 colonies, they are often considered small-scale businesses or hobbies, and their fee structure should be congruent with hobbyist sites. Pollination sites are usually temporary sites that commercial beekeepers are contracted out for. Since they are registered with commercial hives, it is appropriate for pollination sites to pay the same fee as permanent commercial sites.

ECONOMIC IMPACT: Proposed registration fees are shown below.

Commercial:

5,930 (commercial apiaries) * \$35 (proposed site registration fee) = \$207,550

5,930 (commercial apiaries) * \$19 (current site registration fee) = \$112,670

Pollination:

32 (pollination apiaries) * \$35 (proposed site registration fee) = \$1,120

32 (pollination apiaries) * \$19 (current site registration fee) = \$608

Hobbyist:

69 (registered hobbyist apiaries) (1,000 additional estimated apiaries) * \$10
(proposed site registration fee) = \$20,311

69 (registered hobbyist apiaries) * \$19 (current site registration fee) = \$1,311

Landowner:

160 (landowner apiaries) * \$35 (proposed site registration fee) = \$5,600

160 (landowner apiaries) * \$19 (current site registration fee) = \$3,040

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., July 24, 2019.

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

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 10, 2019.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses. Please refer to the estimated increased site registration calculations listed after ARM 4.12.113 above.

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State June 11, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.99.301 and 8.99.304	)	AMENDMENT
pertaining to the Certified Regional)	
Development Corporation Program.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 30, 2019, the Department of Commerce proposes to amend the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m. on July 16, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie J. Martello, Paralegal, Montana Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD (406) 841-2702; or e-mail bmartello@mt.gov.

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

8.99.301 DEFINITIONS (1) through (1)(g) remain the same.

~~(h) "Council" means the Economic Development Advisory Council provided for in 2-15-1820, MCA;~~

~~(j)~~ (h) "Department" means the Department of Commerce provided for in 2-15-1801, MCA;

~~(j)~~ (i) "Local and regional planning" means a long-range planning process that encourages citizens to develop a mission statement, goals, strategies, and actions used to prioritize the efforts of citizens and communities and guide the development of the economy of a region or a portion of a region;

~~(k)~~ (j) "Program" means the Certified Regional Development Corporations Program provided for in 90-1-116, MCA;

~~(l)~~ (k) "Region" means one of not more than 12 service regions. At a minimum, a service region must include two contiguous counties in their entirety;

~~(m)~~ (l) "Revolving loan fund" means a self-sustaining loan program that provides debt financing to eligible businesses to sustain or develop a region's economy; and

~~(n)~~ (m) "Technical assistance" means business-related assistance in a one-to-one setting that includes business plan composition, formation, financing, management, and operation of a small business.

AUTH: 90-1-116, MCA
IMP: 90-1-116, MCA

REASON: It is reasonably necessary to amend this rule because HB 558 of the 66th legislative session repealed the Economic Development Advisory Council.

8.99.304 ASSISTANCE GRANTS – ALLOWABLE USES (1) As prescribed by the department council, allowable administrative expenses for which assistance grants may be used by a CRDC include:

- (a) remains the same.
- (b) any other expenses deemed necessary by the department council to maintain the organization's certification as a CRDC.

AUTH: 90-1-116, MCA
IMP: 90-1-116, MCA

REASON: It is reasonably necessary to amend this rule because HB 558 of the 66th legislative session repealed the Economic Development Advisory Council.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., July 19, 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 1.1 persons based on 11 certified regional development corporations.

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

delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Garrett R. Norcott

Garrett R. Norcott
Rule Reviewer

/s/ Tara Rice

Tara Rice
Director
Department of Commerce

Certified to the Secretary of State June 11, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.99.917 pertaining to the	)	AMENDMENT
implementation of the Big Sky)	
Economic Development Trust	)	NO PUBLIC HEARING
Program	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 30, 2019, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m. on July 16, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie J. Martello, Paralegal, Montana Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD (406) 841-2702; or e-mail bmartello@mt.gov.

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

8.99.917 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS (1) The department adopts and incorporates by reference the ~~2018-2019~~ Big Sky Economic Development Trust Fund Application Guidelines (~~August 2018~~ June 2019), with the most current guidelines being posted on the Big Sky Economic Development Trust Fund web site, as rules governing the submission and review of applications under the program.

(2) remains the same.

(3) Copies of the Application Guidelines and Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://marketmt.com/BSTF>.

AUTH: 90-1-203, MCA

IMP: 90-1-203, 90-1-204, 90-1-205, MCA

REASON: It is reasonably necessary to amend this rule to implement the requirements of HB 19 from the 66th Legislative session.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406)

841-2702; or e-mail DOCAAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., July 19, 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 20, based on 52 counties, 130 municipalities, and 15 eligible economic development organizations.

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

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 rule will not significantly and directly impact small businesses.

/s/Garrett R. Norcott
Garrett R. Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State June 11, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF EXTENSION OF
ARM 10.16.3010, 10.16.3011,) COMMENT PERIOD ON
10.16.3022, and 10.16.3806) PROPOSED AMENDMENT
pertaining to special education)

TO: All Concerned Persons

1. On February 8, 2019, the Superintendent of Public Instruction published MAR Notice No. 10-16-132 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 165 of the 2019 Montana Administrative Register, Issue Number 3.

2. A public hearing was held on March 12, 2019. Several comments were received regarding the changes to ARM 10.16.3011. The intent of OPI and the public was to modify the current rule to reflect the advances to the clinical and scientific understanding of autism as well as treatment options that have been made since the last revisions to this rule 19 years ago. In addition, changes were made to eliminate contradictions and confusing language. The changes were made in an effort to make it easier to provide services to the children who need them. After the public hearing, the comments were reviewed and taken into consideration. The superintendent is proposing new changes to the original proposal as set forth below. In light of these changes, the superintendent is extending the comment period on this rule to 5:00 p.m., July 22, 2019.

3. ARM 10.16.3010, 10.16.3022, and 10.16.3806 remain as proposed in the original notice.

4. ARM 10.16.3011 is proposed to be amended from the original proposal as follows, new matter underlined, deleted matter interlined:

10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) The student may be identified as having autism if the results of a comprehensive evaluation document significant difficulties in social communication; ~~and~~ and social interaction; ~~and~~ and in restricted and repetitive behaviors and interests. A student must have at least one characteristic in each of these three areas and a total of eight or more characteristics to be identified as a student with autism.

(2) The characteristics below are those which most frequently occur with the student but may not occur in every situation.

(a) Significant difficulties in social communication must be documented for at least ~~six~~ one of the following characteristics:

(i) ~~does not initiate~~ initiating or maintaining eye contact while interacting with others;

(ii) ~~does not use or has limited use of~~ facial expressions to communicate with others;

(iii) ~~has difficulty~~ identifying and/or understanding the communicative intent of another person's facial expressions;

(iv) ~~does not use~~ using gestures to direct attention to an object (for example, showing, bringing, or pointing out objects of interest);

(v) ~~does not use~~ using gestures for communication;

(vi) ~~does not~~ responding to or ~~misinterprets~~ interpreting other's use of gestures;

(vii) ~~does not notice~~ noticing or ~~misinterprets~~ interpreting other's use of body language;

(viii) ~~does not use or has inconsistent~~ use of own body language for communication;

(ix) ~~does not use~~ expressive verbal or alternative language for communication and social interaction;

(x) ~~echolalia (immediate and/or delayed) is present~~;

(xi)(x) ~~has verbal language but has difficulties in expressive verbal communication~~ receptive verbal communication; or

(xii) ~~has verbal language but has difficulties in receptive verbal communication~~; or

(xiii)(xi) ~~interpretation of other's verbal communication is often concrete and literal (for example: does not understand idioms or sarcasm).~~ interpretation of other's verbal communication (often concrete and literal; for example, does not understand idioms or sarcasm).

(b) Significant difficulties in social interaction must be documented for at least five one of the following characteristics:

(i) ~~does not~~ seeking to share enjoyment, interests, or achievements with others;

(ii) ~~does not initiate~~ initiating social interaction unless seeking preferred items or help;

(iii) ~~no or minimal response~~ responding to social interactions initiated by others;

(iv) ~~has difficulty~~ initiating a conversation on non-preferred topics;

(v) ~~has difficulty~~ sustaining a conversation on non-preferred topics;

(vi) ~~has difficulty~~ explaining another person's perspective ~~in verbal and/or non verbal communication.~~ (e.g., for example, what other people are thinking or feeling);

(vii) ~~does not~~ joining play activities of others (solitary play preferred);

(viii) play lacks elements of make-believe (e.g., ~~using blocks as food~~);

(ix) ~~has difficulty in~~ participating in make-believe play with others; or

(x) ~~does not engage in social imitative play (such as playacting, fantasy characters, animals, pretending adult role).~~

(x) engaging in social imitative play (for example, playacting, fantasy characters, animals, pretending adult role).

(c) Significant difficulties ~~in~~ resulting from restricted and repetitive behaviors and interests must be documented for at least ~~three~~ one of the following characteristics:

(i) makes repeated vocalizations or verbalizations (e.g. for example, repeats same word, phrase, or sound);

(ii) through (vii) remain as proposed.

~~(3) A student must have the minimum number of characteristics in all three areas above to be identified as a student with autism.~~

~~(4) A student who has the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 1. A student who has more than the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 2.~~

5. The Superintendent of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on July 10, 2019, to advise us of the nature of the accommodation that you need. Please contact Brittany Divine, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail Brittany.Divine@mt.gov.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Brittany Divine, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail Brittany.Divine@mt.gov, and must be received no later than 5:00 p.m., July 22, 2019.

/s/ Julia Swingley
Julia Swingley
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State June 11, 2019.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PROPOSED
Rule I pertaining to deadlines for) ADOPTION
Transformational Learning Aid)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Board of Public Education (board) proposes to adopt the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on July 5, 2019, to advise us of the nature of the accommodation that you need. Please contact Pete Donovan, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

NEW RULE I DEADLINES FOR APPLICATIONS (1) For applications submitted for transformational learning aid in 2019, the following deadlines apply:
(a) the opening date for applications is October 1, 2019; and
(b) the closing date for applications is November 1, 2019.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA, Chapter 402, L. 2019
IMP: Mont. Const. Art. X, sec. 9, Chapter 402, L. 2019

REASON: The board proposes to adopt the proposed rule to meet the requirement in HB 351 (2019) (Chapter 402, Laws of 2019) that the board establish by rule the deadlines for applications. The Superintendent of Public Instruction recommended the proposed deadlines to the board, after consultation with statewide education organizations, because the deadlines provide a reasonable time for school districts to prepare and file applications and provide a reasonable time for review of and decision on the applications prior to distribution of funds. The Superintendent of Public Instruction determined that the proposed deadlines are administrative in nature and, thus, the negotiated rulemaking process was unnecessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Pete Donovan, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59635; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Pete Donovan at the above address no later than 5:00 p.m., July 19, 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 41 persons based on 409 public school districts in Montana.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by phone on May 21, 2019.

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

/s/ Pete Donovan
Pete Donovan
Executive Director
Rule Reviewer

/s/ Dr. Darlene Schottle
Dr. Darlene Schottle
Chair
Board of Public Education

Certified to the Secretary of State June 11, 2019.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, the amendment of	)	PROPOSED ADOPTION,
ARM 37.111.801, 37.111.804,	)	AMENDMENT, AND REPEAL
37.111.805, 37.111.810, 37.111.811,)	
37.111.812, 37.111.825, 37.111.832,)	
37.111.833, 37.111.834, 37.111.840,)	
37.111.841, 37.111.842, 37.111.846,)	
and the repeal of 37.111.831)	
pertaining to healthy learning)	
environments in Montana public)	
schools)	

TO: All Concerned Persons

1. On July 11, 2019, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 2, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I INDOOR AIR QUALITY (1) Ventilation systems must undergo annual checks by the school facility manager, school administrator, or administrator-approved staff to ensure they are operating within manufacturer parameters.

(2) Air filters shall have a minimum efficiency reporting value of between 8 and 13 as recommended by the National Air Filtration Association and the Environmental Protection Agency (EPA).

(3) Indoor air quality inspections must be completed annually using the Walk Through Inspection Checklist from EPA's Indoor Air Quality Tools for Schools or other department-approved inspection form.

AUTH: 50-1-206, MCA

IMP: 50-1-206, MCA

NEW RULE II OUTDOOR AIR QUALITY (1) Schools shall reference the Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities developed by the Montana Department of Public Health and Human Services and the Montana Department of Environmental Quality to determine local air quality conditions and choose to cancel outdoor recess and delay or not delay outdoor school-sponsored events.

(2) Schools must have a protocol in place on how to seal school buildings to outside air during poor air quality conditions.

AUTH: 50-1-206, MCA

IMP: 50-1-206, MCA

NEW RULE III SCIENCE, SHOP, AND ART LABORATORY SAFETY

(1) Schools must comply with the Montana Employee and Community Hazardous Chemical Information Act (ECHCIA), 50-78-101, MCA, et seq.

(2) Schools containing science, shop, and art labs must maintain a Chemical Hygiene Plan and designate a school and district Chemical Hygiene Officer (dCHO) in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) Occupational Exposure to Hazardous Chemicals in Laboratories standard 29 CFR 1910.1450.

(3) Chemical Hygiene Plans must include plans for appropriate selection, storage, inventory, use, and disposal of hazardous chemicals, and biological materials.

(a) The dCHO has primary responsibility for ensuring the implementation of all components of the Chemical Hygiene Plan (CHP).

(b) The school Chemical Hygiene Officer (sCHO) must oversee the implementation and enforcement of the schools' CHP at their school(s). A science chairperson, or equivalently qualified faculty member may be designed as the sCHO.

(4) Material Safety Data Sheets (SDS) for all materials in science, shop and art labs, and storage rooms will be stored in those rooms and be accessible at all times.

(a) The SDS must also be kept in a secure, remote site outside of the science, shop, and art labs, and storage rooms.

(b) The SDS must be made publicly available online.

(5) All storage areas must be kept clean and organized according to OSHA Standard 29 CFR 1910.1450.

(6) Unused hazardous materials must be disposed in a timely manner as stated by the manufacturer and approved by the Department of Environmental Quality (DEQ). Schools must consult with the DEQ for additional information about how they can discard hazardous material.

(7) The department may work with the Department of Labor and Industry to determine if stop work orders are necessary to protect the safety of school employees and students.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

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

- (a) Department of Public Health and Human Services and Department of Environmental Quality "Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities" (2016 edition).
- (b) 29 CFR 1910.1450 "Occupational exposure to hazardous chemicals in laboratories" (effective January 22, 2013).
- (c) ARM Title 17, chapter 38, subchapter 2, setting forth public water supply requirements.
- (d) United States Consumer Product Safety Commission "Public Playground Safety Handbook" (2010 edition).
- (e) United States Department of Justice "2010 ADA Standards for Accessible Design."
- (f) Department of Environmental Quality Circular 4, "Montana Standards for Subsurface Wastewater Treatment Systems (2013 edition), setting forth construction and operation standards for sewage systems.
- (g) The definition of "school administrator" provided for under ARM 10.55.602.

(2) Copies of these publications may be obtained from the Department of Public Health and Human Services, Chronic Disease Prevention and Health Promotion Bureau, chronicdiseaseprevention@mt.gov; 1(844)684-5848, CDPHP Bureau, P.O. Box 202951, 1400 Broadway, Suite C317, Helena MT 59601.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

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

37.111.801 DEFINITIONS (1) "Approved" means acceptable to the department, based on its determination of conformance with this subchapter and good public health practices.

(2) "Bin placement" means placing sample results into the correct cell within Table 1 in ARM 37.111.832, to determine the required response to those results.

(3) "Bin placement sample" means those samples that will be used to determine bin placement in ARM 37.111.832.

(4) "Chemical" means any substance which has been assigned an EPA Hazardous Waste Number.

(5) "Contamination" means impairment or other alteration of the physical, chemical, or biological properties of water, including causing violation of the maximum contaminant levels for public water supplies contained in ARM Title 17, chapter 38, subchapter 2 or otherwise creating a hazard to human health.

~~(4)~~ (6) "Department" means the Department of Public Health and Human Services.

(7) "First-draw sample" means a one-liter sample of tap water that has stood motionless in the plumbing pipes for at least six hours and is collected without flushing the tap.

(2) ~~"School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the Board of Public Education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(f), MCA.~~

(3) (8) "Fixtures" means a any shower, toilet, toilet seat, urinal, lavatory, drinking fountain, kitchen sink, janitor and custodial sink, utensil sink, handwashing sink, eye washing station, emergency shower, and all exposed plumbing integral to them.

(4) (9) "Floors" means floor covering of all rooms including stairways, hallways, and lobbies.

(10) "Foot Candles" is the unit as defined as the amount of illumination the inside surface of a one-foot-radius sphere would be receiving if there were a uniform point source of one candela in the exact center of the sphere.

(5) (11) "Furnishings" means draperies, curtains, blinds, light fixtures, chairs, tables, desks, shelves, and bookcases.

(12) "Green products" means products and services that have a lesser or reduced negative effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison applies to raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, and disposal. These products have a "Green Approval Stamp" certified by at least one of the following organizations: Green Seal, UL ECOLOGO®, the EPA Safer Choice, and the USDA Bio-Preferred.

(13) "Human consumption fixture (HCF)" means any endpoint device that provides or may reasonably provide water for human consumption or for food preparation.

(14) "Inactive" means the student population is not accessing the school for a period of more than 3 days. This includes, but is not limited to: holidays, summer vacation, or emergency situations.

(15) "Laboratory" or "Lab" is any space where hazardous chemicals are used for educational purposes.

(6) (16) "Local health authority" means a local health officer, local sanitarian, or their authorized agents.

(7) (17) "Sanitarian" means ~~the~~ a person ~~who is~~ qualified under Title 37, chapter 40, part 3 1, MCA, and represents the health officer.

(18) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the Board of Public Education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(2)(e), MCA.

(19) "School administrator" has the meaning provided for under ARM 10.55.602.

(8) (20) "School site" means the ground immediately adjacent to a school used on a regular basis for school-related activity.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.804 PRECONSTRUCTION REVIEW (1) Before construction commences, plans for construction of a new school or an addition to or an alteration of an existing school must be submitted to the department or local health authority for review and approval. Plans must include the following where applicable:

(a) location and detail of classrooms used for science or science laboratories, home economics, art classrooms, art supply rooms, mechanic/carpentry, and shops, including location and venting detail of lockable storage area of chemicals and other hazardous products;

(b) location and detail of janitorial facilities;

(c) specifications for the sewage treatment and disposal system to serve the school, except as provided in (2);

(d) specifications for the water supply to serve the school, except as provided in (2);

(e) locations for all emergency eyewash and shower stations, which must meet the American National Standard for Emergency Eyewash and Shower Equipment (ANSI/ISEA Z358.1);

~~(e)~~ (f) location and detail of laundry facilities including description of equipment and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding, and storage;

~~(f)~~ (g) specifications for the final finishes of floors, walls and ceilings in toilet, locker and shower rooms, laundries, and janitorial closets;

~~(g)~~ (h) a statement from the designer of the facilities that lighting capable of meeting the minimum requirements of ARM 37.111.830 will be provided;

~~(h)~~ (i) location and detail of the solid waste storage facilities;

~~(i)~~ (j) name of ~~department~~ DEQ-approved sanitary landfill which will receive solid waste from the school;

~~(j)~~ (k) specifications for a food service to serve the school unless the food service has been previously approved by the department and/or local health department;

~~(k)~~ (l) any other information requested by the department or local health authority relating to the health, sanitation, safety, and physical well-being of the teachers, staff, and students;

(m) specifications for any new or modified playground equipment, which must comply with the standards of the United States Consumer Product Safety Commission's Handbook for Public Playground Safety (2010 edition) and the requirements of the 2010 ADA Standards for Accessible Design;

(n) specifications for any new or modified air intakes; and

(o) specifications for any radon-resistant technique used in the building process.

(2) If the sewage treatment or disposal system or water supply has been previously approved by the department and/or DEQ and is designed to handle any increased load necessitated by the school's use, the applicant need not submit system specifications, but must submit written certification that the owner of the system has agreed to provide service.

(3) Schools will be constructed in locations which present the least risk of exposure to pollutants or other health hazards originating onsite or offsite. If potential environmental concerns are identified during the preconstruction process, and the Local Education Agency (LEA) still desires to consider the site, a more comprehensive environmental review must be performed with the help of the department or local health authority.

(4) All chemical storage areas should be constructed to maintain negative air pressure to eliminate contamination of the school's indoor air quality by being vented to the outside of the building.

(5) Gas supply lines serving science laboratories, home economics, shops, and other rooms utilizing multiple outlets must have a master shut-off valve that is readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

(6) Shops and other rooms using electrically operated instruction equipment which presents a significant safety hazard to the student utilizing such equipment must be supplied with a master electric switch readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

~~(3)~~ (7) Construction may not commence until all plans required by (1) through ~~(6)~~ of this rule have been approved by the department or local health authority. The department or local health authority shall complete this review within 60 days after submission to them of complete plans and specifications. Construction must be in accordance with the plans as approved unless permission is granted in writing by the department or local health authority to make changes.

~~(4)~~ (8) Approval will be granted for a period not to exceed 3 years, after which, if construction has not been completed, plans must again be submitted to the department or local health authority for re-evaluation.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.805 EXISTING BUILDING: CHANGE OF USE (1) An existing building not currently used as a school may not be used as a school without the prior approval of the department or local health authority.

(a) When a proposal to use an existing building as a school involves physical modification, plans meeting the requirements of ~~(1)~~ of ARM 37.111.804 ~~(1)~~ through (6) must be submitted to the department or local health authority for review and approval. If no physical modification is involved, the department or local health authority may waive the requirement for submission of plans if an inspection by the department or local health authority indicates that the proposed school meets the requirements of this subchapter.

~~(2) Whenever compliance with this subchapter requires capital expenditures for the modification of an existing building currently being used as a school on April 11, 1986, compliance with such requirements must be achieved no later than December 31, 1987.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.810 INSPECTION (1) Representatives of the department or local health authority must be permitted to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this subchapter. ~~Such inspections should be conducted as frequently as possible and appropriate, ideally at least once in every 12 months.~~ Annual internal inspections must be conducted by a school administrator, facility manager, or other staff member approved by the school administration, as well as having a department or local health authority inspection once a year or more often if necessary. The department or local health authority may determine that special circumstances or local conditions warrant inspections with greater or less frequency. Upon receiving a complaint, the local health authority may determine if more inspections are necessary.

(2) Inspections of school facilities must be done using forms approved by the department.

(3) Inspection records must be kept on file at the school for at least three years from the time of inspection.

~~(2) (4) Immediately f~~Following each inspection, representatives of the department or local health authority shall give the school administration a copy of an inspection report which notes any deficiencies and sets a time schedule for compliance. The report must include written citations for every rule violation.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.811 PHYSICAL REQUIREMENTS (1) A school must comply with the following physical requirements:

(a) Adequate lockable, vented, and convenient janitorial facilities including a sink and storage area for equipment and chemicals must be provided.

(b) Floors, walls, and ceilings in toilet, locker, and shower rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be maintained in a smooth and non-absorbent condition. Non-absorbent, non-skid floor matting may be used where appropriate to prevent injury.

(c) Adequate ~~wrap~~ coat/jacket and book storage for each pupil must be provided.

(d) The school shall have and follow written policies and procedures regarding the storage, administration, and lawful disposal of prescription, nonprescription, and over-the-counter medication.

(e) All medication must be kept in a locked, nonportable container, stored in its original container with the original prescription label.

(f) The school must comply with the applicable requirements of Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C 207) and 39-2-215, MCA, requiring employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The school must provide a place for an employee to express breast milk.

(g) The school must provide reasonable accommodations for lactating pupils on the school campus to express breast milk, breastfeed an infant child, or address

other needs related to breastfeeding. Reasonable accommodations include, but are not limited to, all the following:

(i) access to a private and secure room, other than a toilet room or sick room, to express breast milk or breastfeed an infant child;

(ii) permission to bring onto a school campus a breast pump and any other equipment used to express breast milk;

(iii) access to a power source for a breast pump or any other equipment used to express breast milk; and

(iv) access to a place to store expressed breast milk safely.

(h) The school must take measures consistent with the programmatic and developmental needs of its students to ensure the safe use and secure storage of any equipment including but not limited to: kitchen appliances, shop equipment, maintenance tools, and hazardous art supplies.

(i) To reduce the spread of animal-borne diseases, livestock and poultry must be located more than 50 feet from food service areas, offices, or classrooms except those offices and classrooms associated with animal husbandry activities or other demonstrations as approved by the school administration.

(2) In addition to compliance with this subchapter, school officials ~~should also be aware of the need to~~ must comply with the Building and Fire Safety Codes administered by the State Building Codes Division and the State Fire Marshal or by local building officials (see Title 50, chapters 60 and 61, MCA, and rules adopted thereunder).

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.812 SAFETY REQUIREMENTS (1) Janitorial and other storage areas that contain toxic or hazardous materials must be kept locked between periods of use. Custodial closets, boiler rooms, and other areas where hazardous or poisonous compounds are stored should be inaccessible to students.

(2) All cleaning compounds and other toxic chemicals not stored in the product container or package in which it was obtained must be stored in a labeled container that clearly identifies the product by name.

(3) Chemicals must be stored as specified by the chemical's Safety Data Sheet (SDS).

~~(3) (4) Water~~ Hot and cold water must be provided to handsinks handwashing sinks and shower facilities. Hot water may must not be below 100°F not nor exceed a temperature of 120°F.

~~(4) Gas supply lines serving science laboratories, home economics, shops, and other rooms utilizing multiple outlets must have a master shutoff valve that is readily accessible to the instructor or instructors in charge.~~

~~(5) Shops and other rooms using electrically operated instruction equipment which presents a significant safety hazard to the student utilizing such equipment must be supplied with a master electric switch readily accessible to the instructor or instructors in charge.~~

~~(6) (5)~~ The school and school site must be free of objects or conditions which create unreasonable or unnecessary dangers to health or safety.

~~(7)~~ (6) The topography of the site must permit good drainage of surface water away from the school building to eliminate significant areas of standing water and infiltration of surface water into the school building.

(7) First aid kits and AEDs must be provided and stored in accessible locations that are easily identifiable to staff and trained personnel.

(8) Playground and school yards must be inspected every month by the facility manager or other school personnel and the inspection must be recorded and records kept on the school site. Inspections must be conducted using a playground safety checklist approved by the department.

(9) Playground inspection results must be made available for review by the local health authority.

(10) Periodic maintenance and repair is performed on playground equipment according to the manufacturer's specifications. Repairs must be documented.

~~(8)~~ (11) Playground equipment must be maintained in a safe condition.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.825 HEALTH SUPERVISION AND MAINTENANCE (1) Soap and disposable towels or other hand-drying devices must be available at all handwashing sinks. Common-use cloth towels are prohibited.

(2) Sanitary napkin disposal must be provided for girls of age ten or older and in teachers' toilet rooms and nurses' toilet rooms. The school must provide either sanitary napkin dispensers in the girls', nurses', and teachers' toilet rooms or some other readily available on-site access to sanitary napkins.

(3) If a child or a staff member develops symptoms of any reportable communicable or infectious illness as defined by ARM 37.114.203 while at school, the responsible school officials shall do the following:

(a) isolate the child immediately from other children in a room or area segregated for that purpose; and

(b) inform the parent or guardian as soon as possible about the illness and request him or her to pick up the child; and

(c) report the case to the local health officer pursuant to 37-2-301, MCA.

(4) Schools shall develop and enforce policies on first aid which include, at a minimum, the following:

(a) obtaining emergency phone numbers for parents or guardians;

(b) procedures to be followed in the event of accidents, or injuries, or chronic disease exacerbations; and

(c) emergency coverage, including the presence of a person with a currently valid American Red Cross standard first aid card or American Heart Association CPR and first aid or current certification from an equivalent first aid course, during school-sponsored activities, including field trips, athletic, and other off-campus events. Recommendations for first aid supplies, health history tracking, emergency contact forms, chronic disease management training, and policies may be secured from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section and the Chronic Disease

Prevention and Health Promotion Bureau, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(5) ~~Smoking~~ In addition to the requirements of 50-40-104 and 20-1-220, MCA, must be prohibited during school hours in rooms and any other areas used by children, and no smoking no tobacco use signs must be posted in each hallway, entryway, gymnasium, lunchroom, and restroom, though not in each classroom. Smoking must be prohibited in school vehicles while used by children for school-related functions.

(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to the immunization of children (~~20-5-402, et seq., MCA; ARM 37.114.701, et seq.~~), in ARM Title 37, chapter 114 and communicable disease reporting in 37-2-301, MCA, the health of school employees (ARM 37.114.1010), and the reporting of communicable diseases (ARM 37.114.201, 37.114.202, and 37s.114.501, et seq.). Copies of these requirements may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, ~~Food and Consumer Safety Section~~ Office of Epidemiology and Scientific Support, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951, or by visiting the website at <https://dphhs.mt.gov/publichealth/epidemiology>.

(7) Pursuant to the advisory authority of 50-1-202(11) and (12), MCA, the department recommends that students be evaluated by registered professional nurses or other appropriately qualified health professionals on a periodic basis in order to identify those health problems which have the potential for interfering with learning, including:

- (a) assessment of student's health and developmental status;
- (b) vision screening;
- (c) hearing screening;
- (d) ~~scoliosis screening;~~
- ~~(e) (d) chemical and alcohol abuse;~~
- (e) mental health screening;
- (f) nutritional screening; and
- (g) dental screening.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.832 WATER SUPPLY SYSTEM (1) The department ~~hereby~~ adopts and incorporates by reference ARM Title 17, chapter 38, subchapters 1, and 2, and 5, which set forth standards for design, operation, and maintenance of public water supplies; ~~and circular #84-11, "Minimum Design Standards for Small Water Systems," DEQ Circulars 1, 3, and PWS 5, published by the Department of Environmental Quality, which sets construction, operation, and maintenance standards for small water systems, and the Department Nonpublic Water Supply Circular Food and Consumer Safety 1-2016 (FCS 1-2016).~~ Copies of ARM Title 17, chapter 38, subchapter 1, 2 and 5, ~~and circular #84-11~~ these publications may be obtained from the Department of Public Health and Human Services, ~~Health Policy~~

~~and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(2) In order to ensure an adequate and potable supply of water, a school must either:

(a) connect to a water supply system meeting the requirements of ARM Title 17, chapter 38, subchapters 1, ~~and 2, and 5 of the Administrative Rules of Montana~~; or

(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public water supply system satisfying the requirements of ARM Title 17, chapter 38, subchapters 1, and 2 and 5, is not accessible, utilize a non-public system whose construction and use meet the standards set in circular #84-11 Nonpublic Water Supply Circular Food and Consumer Safety 1-2016 published by the ~~Department of Environmental Quality~~ department.

(3) A water supply system of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department or local health authority.

(4) If a water supply system is used other than described in (2)(a) above, a school must submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of the water supplied in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207 and following all testing requirements in Circular FCS 1-2016.

(5) A school must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207; ~~or~~

(b) exceeds the Maximum Contaminant Level (MCL) for all other contaminants in Circular FCS 1-2016; or

~~(b)~~ (c) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(6) Common drinking cups or containers are prohibited.

(7) Where water under pressure cannot be made available, the drinking water from an approved source must be stored in a clean and sanitized container having a tight-fitting lid and a suitable faucet apparatus for filling individual cups. Single service drinking cups must be provided.

(8) Starting October 1, 2019, schools must sample all human consumption fixtures (HCF) for lead. Initial samples must be taken within one year of the start date. All samples must be analyzed by a Montana certified lab using EPA-approved standard drinking water methods for the detection and quantification of lead.

(a) Schools shall submit to the department a schematic and inventory identifying plumbing materials, all fixture locations, and those fixtures meeting the definition of a HCF. Templates for creating the inventory are available from the department or the Montana Department of Environmental Quality (DEQ) and should be used to complete this requirement. Lead service lines must be clearly identified in the inventory and should be considered for replacement.

(b) The schematic and inventory shall be maintained by the school and shall record any modification that may result in a change in lead exposure from water. Sample results for each HCF must also be maintained in conjunction with the plan and inventory.

(c) All samples collected must be first-draw samples unless otherwise requested or approved by the department or DEQ and samples must be reported to DEQ.

(d) Each first-draw sample for lead must be one liter in volume and must have stood motionless in the plumbing system of each sampling site for at least six hours. For fixtures with hot and cold water, first-draw samples shall only be collected from the cold water. First-draw samples may be collected by a school representative instructed in the proper sampling procedures specified in this rule.

(e) All sample results must be submitted electronically to DEQ in a format approved by the department. All sample results must be submitted to DEQ no later than 48 hours after the school has received the results. Sample results may be submitted to DEQ by certified labs on behalf of the school.

(f) All samples will be considered bin placement samples and must be placed into the appropriate bin in Table 1 unless otherwise designated by the department or DEQ. Follow-up actions are required for each HCF based on the bin placement.

(g) All schools must conduct follow-up sampling of each HCF according to the requirements of Table 2.

(h) Schools must make test results publicly available.

(9) All schools shall create and implement a flushing program unless the school meets the waiver requirements indicated under (9)(c).

(a) Schools shall use the template provided by the department to produce their flushing program.

(b) Flushing will be required any time the school is inactive.

(c) Schools may apply to DEQ for a flushing program waiver based on materials inventory and certification by the school that the school meets the lead-free definition as defined in Section 1417 of the Safe Drinking Water Act.

Table 1.

<u>Bin Placement</u>	<u>Lead Detection</u>	<u>Follow-up Actions</u>
<u>1</u>	<u>Above 15.0 ug/L</u>	<u>Immediately discontinue use of the affected HCF by physical removal or plumbing disconnection. Remediation is required before the school can resume use of the HCF, subject to the follow-up sampling requirements of Table 2. Remedial action must be completed within 6 months of the bin determination.</u>
<u>2</u>	<u>5.0 ug/L up to 15.0 ug/L</u>	<u>Evaluate the conditions at the affected HCF. Determine appropriate remedial action(s) to reduce lead concentration(s) to below 5.0 ug/L. Remedial action must be completed within 6 months of the bin determination.</u>

<u>3</u>	<u>Below 5.0 ug/L</u>	<u>HCF below 5.0 ug/L does not require remedial action but must be sampled according to Table 2.</u>
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Table 2.

<u>Bin Placement</u>	<u>Follow-up Sampling Requirement</u>
<u>1</u>	<u>Each Bin 1 HCF will be required to be resampled after remediation to show effectiveness of the remediation effort before it is returned to service. The HCF must be resampled within one year of the sample that returned the fixture to service.</u>
<u>2</u>	<u>Each Bin 2 HCF must be resampled after remediation. The HCF must be resampled within one year of the HCF's last sample.</u>
<u>3</u>	<u>Each Bin 3 HCF must be sampled within every 3 years of the last sample date to confirm that the HCFs continue to deliver water below 5.0 ug/L.</u>

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.833 SEWAGE SYSTEM (1) ~~The department hereby adopts and incorporates by reference the following Department of Environmental Quality publications setting construction and operation standards for sewage systems:~~

~~(a) circular #84-10, "Sewers and Sewage Treatment for Multi-Family and Non-Residential Buildings";~~

~~(b) circular #13, "The Sanitary Pit Privy". Copies of circulars #84-10 and #13 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1, which sets forth standards for design, maintenance and operation of public sewer systems. Copies of ARM Title 17, chapter 38, subchapter 1 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(3) (1) In order to ensure sewage is completely and safely disposed of, a school must:~~

~~(a) connect to a public sewage system meeting the requirements of ARM Title 17, chapter 38, subchapter 1 of the Administrative Rules of Montana; or~~

~~(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public sewage system satisfying the requirements of ARM Title 17, chapter 38, subchapter 1 is not available, utilize a non-public system whose construction and use meet the construction and operation standards contained in circular #84-10 DEQ Circular 4 incorporated by reference in (1) of this rule.~~

~~(4) (2)~~ Where pit privies are currently in use, the privies must be operated and maintained in compliance with the standards specified in ~~circular #13, "The Sanitary Pit Privy~~ DEQ Circular 4."

~~(5) (3)~~ A sewage system design of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department, DEQ, or local health authority.

~~(6) A school must replace or repair its sewage system whenever:~~

~~(a) it fails to accept sewage effluent at the rate of application;~~

~~(b) seepage of effluent from, or ponding of effluent on or around the system occurs;~~

~~(c) effluent from the sewage system causes contamination of a potable water supply or state waters; or~~

~~(d) a mechanical failure occurs, including electrical outage, or collapse or breakage of septic tank, inlet lines, or drainfield lines.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.834 SOLID WASTE (1) In order to ensure that solid waste is safely stored and disposed of, a school must:

~~(4) (a)~~ store all solid waste between collections in containers which have lids, are corrosion-resistant, and are constructed to minimize ~~insect and rodent~~ pest attraction and harborage;

~~(2) (b)~~ clean all solid waste containers with sufficient frequency to maintain them in a condition which minimizes ~~insect and rodent~~ pest attraction;

~~(3) (c)~~ for exterior containers other than dumpsters or compactors, utilize stands which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them;

~~(a) (i)~~ dumpsters or compactors must be located on or above a smooth surface of non-absorbent material, such as concrete or asphalt, that is maintained in clean and good condition;

~~(4) (d)~~ transport, or utilize a private or municipal hauler to transport, the solid waste at least weekly to a landfill site approved by the ~~department~~ Department of Environmental Quality in a covered vehicle or covered containers.

(2) Solid waste includes recycling material.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.840 LAUNDRY FACILITIES (1) Laundries operated in conjunction with or utilized by a school must be provided with:

(a) a mechanical washer and hot air tumble dryer. Manual washing and line drying of towels and other laundry items is prohibited. Dryers must be properly vented to prevent maintenance problems and buildup of moisture.

(b) a hot water supply system capable of supplying water at a temperature of 120°F to the washer during all periods of use.

(c) sufficient separation between the area used for sorting and storing soiled laundry and the area used for folding and storing clean laundry to prevent the possibility of cross-contamination.

(d) separate carts for transporting soiled and clean laundry.

(e) handwashing facilities including sink, soap, and disposable towels. A soak sink may double as a handwashing sink.

(2) Towels and other laundry items must be machine washed at a minimum temperature of 120°F for a minimum time of ~~eight~~ ten minutes and dried to greater or equal to 130°F in a hot air tumble dryer.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.841 CLEANING AND MAINTENANCE (1) A school must comply with the following cleaning and maintenance requirements:

(a) Daily cleaning and maintenance services must be provided whenever the school is in use.

(b) Each janitor room must be kept clean, ventilated, lockable, and free from odors.

(c) Soiled mop heads must be changed frequently, using laundered replacements.

(d) Toilets, lavatories, and showers ~~may~~ must not be used for washing and rinsing of mops, brooms, brushes, or any other cleaning device.

(e) Cleaners used in cleaning showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides.

(f) Deodorizers and odor-masking agents ~~may~~ must not be used ~~unless the room in which used is clean to sight and touch~~.

(g) Toilet bowl brushes, mops and sponges ~~may~~ must be used only for cleaning toilet bowls and urinals and must be stored separately from other cleaning devices. Cleaning devices used for lavatories and showers may not be used for any other purposes.

(h) Dry dust mops and dry dust cloths for cleaning purposes are prohibited, except for use on gymnasium floors. Only treated mops, wet mops, treated cloths, moist cloths or other means approved by the department or health authority which will not spread soil from one place to another may be used for dusting and cleaning, with the exception of gymnasium floors.

(i) All furnishings, fixtures, floors, walls, and ceilings must be clean and in good repair.

(j) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions.

(k) Safety data sheets must be kept with all cleaning supplies in the area where the cleaning supplies are located.

(l) As current non-green cleaning supplies are depleted it is recommended that they are replaced with cleaning products that are "Green Products."

(m) All cleaning supplies need to have an EOA registration number, a "use by" reading letter, be stored with approved ventilation, and stored out of the reach of children.

(n) There must be an approved district policy on how to safely clean up vomit, blood, and fecal matter including diarrhea. Cleaning supplies used for vomit, blood, and fecal matter must be disposed of per approved district policy.

~~(k)~~ (o) Whenever therapeutic whirlpools are used, they must be constructed and maintained for easy cleaning. Whirlpools must be drained and ~~an effective disinfectant applied to the interior surfaces after periods of use~~ sanitized after each use. Individuals with open sores or infections are prohibited from using therapeutic whirlpools.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.842 FOOD SERVICE REQUIREMENTS (1) Whenever a food service is operated as an integral part of a school, compliance with ARM Title 37, chapter 110, subchapter 2, rules for food service establishments, is required.

(a) If the food service is available only to staff and students of the school and their guests, licensure as a food service establishment is not required, but compliance with ARM Title 37, chapter 110, subchapter 2, rules for food service establishments, is required.

~~(2) The department hereby adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth rules and standards for food service establishments. Copies of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.846 NOXIOUS PLANT AND ANIMAL CONTROL (1) The school and school site must be maintained free of harborage for insects, rodents, and other ~~vermin~~ pests. Extermination methods and other measures to control ~~insects and rodents~~ pests must conform with the requirements of the department or the local health authority.

(2) All areas must be maintained free of accumulation of debris or standing water which may provide ~~rodent~~ harborage ~~or breeding places for flies, mosquitoes, and other pests~~.

(3) ~~Whenever potential for rodent infestation exists,~~ Storage areas must be maintained so as to prevent ~~rodent~~ pest harborage. Lumber, pipe, and other building materials must be stored neatly ~~at least one foot above the ground~~.

(4) ~~Whenever the potential for insect and rodent infestation exists,~~ building construction must be of a type which will not provide harborage. The growth of brush, weeds, and grass must be controlled to prevent harborage of ~~noxious insects and other vermin~~ pests. School grounds must be maintained to prevent the growth of noxious weeds considered detrimental to health.

(5) Schools must develop and implement an approved Integrated Pest Management (IPM) program beginning September 1, 2020. Students, parents, and staff will be notified when chemicals for IPM are going to be used.

(6) The school IPM must include strategies to prevent the spread of pests.

(7) The school administrator must, whenever practical, ensure the use of nonchemical methods to control pests, including proper sanitation practices, structural repair, and window screens.

(8) Except as provided in (9)(c), at least 24 hours before the application of a pesticide to an area of the school that is used by or is accessible to children, the school administrator must notify parents or guardians of children of the application. A notice of application must include:

(a) a description of the area where the pesticide will be applied;

(b) the date and approximate time of application;

(c) the common or brand name of each pesticide to be used;

(d) the targeted pests to be controlled by the pesticide;

(e) each active ingredient in the pesticide;

(f) the EPA registration number;

(g) the telephone contact number, if any, on the label of the pesticide for additional information about each pesticide; and

(h) a contact name and telephone number at the school.

(i) If the application will be outdoors, the notification must also include three dates in chronological order in case the preceding date is canceled due to weather.

(9) During the school term the required notification must be made by individual notice delivered by phone, face-to-face oral communication, electronic mail, postal mail, or facsimile. A school or school district may also develop a registration system to provide this notification only to those parents who wish to receive the notification. If the school or school district develops a registration system, the school administrator must provide written notice to the parents or guardians of the children at the beginning of the school year, or upon a child's enrollment, that pesticides may be used in or around the school, and must explain to each parent or guardian how to register to be notified at least 24 hours before a pesticide treatment.

(a) If pesticides are used outside the school term and the school is open or to be accessible by the public, the notification required must be prominently posted in a conspicuous location on the school premises at least 24 hours before the pesticide treatment is scheduled to begin.

(b) Immediately before starting the application of a pesticide, the certified applicator must post in the area of the school where the pesticide is to be applied, a sign 8.5x11-inch in size, or greater. The department recommends that the print fonts be no smaller than 26 point (one-fourth inch). The school administrator must ensure the sign remains posted and children are kept out of the treated area until the reentry interval on the label, if any, has expired, or, if the label does not specify a reentry interval, for at least 24 hours.

(c) A school administrator may authorize an immediate pesticide treatment without prior notification if the school administrator determines an emergency exists. An emergency includes an immediate and unanticipated threat to the health and

safety of the individuals at the school. An emergency does not exempt the school from the requirements of (9)(f).

(d) The following pesticide applications are not subject to the notification or posting requirements of this rule:

(i) applications of antimicrobial pesticides;

(ii) an application where the school remains unoccupied for a continuous 72-hour period following the application of the pesticide;

(iii) applications of rodenticides in tamper-resistant bait stations or in areas inaccessible to children; and

(iv) applications of silica gels and other ready-to-use pastes, foams, or gels that will be used in areas inaccessible to children.

(10) A school administrator must keep records of pesticide applications subject to the notification and posting requirements of this rule.

(a) Records must include:

(i) a copy of each notice issued;

(ii) the date of application;

(iii) the name and employer of the individual who applied the pesticide, including the individual's certification number;

(iv) the rate of application;

(v) the concentration of the pesticide applied; and

(vi) the total amount of pesticide used.

(b) If a school administrator authorizes a pesticide application under (9)(c), all the information that is required in a notice under (9)(e) must be included in the record.

(c) Records required to be kept for at least five years, must be made available to the public for review.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

5. The department proposes to repeal the following rule:

37.111.831 HEATING is found on page 37-27963 of the Administrative Rules of Montana.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV, amend ARM 37.111.801, 37.111.804, 37.111.805, 37.111.810, 37.111.811, 37.111.812, 37.111.825, 37.111.832, 37.111.833, 37.111.834, 37.111.840, 37.111.841, 37.111.842, 37.111.846, and repeal 37.111.831 pertaining to healthy learning environments in Montana public schools.

These rules have not been updated since 1986. Revision of the rules is necessary to ensure compliance with current law. Revision of the rules is also necessary to implement the best practices in school settings that have developed over the last 30 years as the evidence base regarding health and safety in schools has expanded. The proposed rules are designed to protect the health and safety of Montana students and to help guide school administrators to make the best choices for their schools and districts.

NEW RULE I

The department is proposing New Rule I to ensure healthy indoor air quality within schools. Indoor air pollution can have significant and harmful health effects. The U.S. Environmental Protection Agency (EPA) studies of human exposure to air pollutants indicate that indoor levels of pollutants can be significantly higher than outdoor air pollution levels. Indoor air pollutants are of particular concern because most people, including students, spend significant amounts of time indoors.

Nearly 1 in 13 children of school-age has asthma, the leading cause of school absenteeism due to chronic illness. There is substantial evidence that indoor environmental exposure to allergens, such as dust mites, pests, and molds, plays a role in triggering asthma symptoms. These allergens are common in schools. There is also evidence that exposure to exhaust from school buses and other vehicles exacerbates asthma and allergies.

To address these concerns, the new rule includes requirements for the periodic inspection of ventilation systems and air filtration.

NEW RULE II

The department is proposing New Rule II to limit student exposure to the outdoors during periods of unsafe air quality and to mitigate the effects of unsafe outdoor air quality on the impact of school indoor air quality.

Exposing children to environmental pollutants during important times of physiological development can lead to long-lasting health problems, dysfunction, and disease. Research has also shown that children exposed to air pollution perform worse on cognitive functioning tests, have impaired neurological function, and lower IQ scores compared with other children. Wildfires and cold weather inversions affect the air quality in many Montana communities.

This rule contains requirements and recommendations schools should follow to minimize the infiltration of outdoor air pollution into school buildings and to limit student exposure to unhealthy air quality during poor air quality days.

NEW RULE III

The department is proposing New Rule III to ensure that hazardous chemicals maintained by schools as part of science, art, and vocational programs are used, stored, and accessed in a safe manner. The importance of laboratory safety has been recognized for many years in industry. However, educational institutions have been slower to adopt such safety practices and programs. Ensuring proper use and storage of hazardous chemicals that are part of the classroom setting is critical to the health and safety of students and school employees.

NEW RULE IV

The department is proposing New Rule IV. This rule adopts and incorporates by reference federal rules, other state agency rules, and publications referenced within the revised rules. The rule is necessary to comply with the requirements of 2-4-307, MCA.

ARM 37.111.801

New definitions have been added as a result of the new proposed rules. Definitions have also been revised and updated to reflect changes in law since the rule was last revised. The revisions are necessary to clarify the meaning of terms used throughout the rules and to provide for a better understanding of the rules.

ARM 37.111.804

The rule governs preconstruction review requirements for schools. Five primary revisions to the rule are proposed. First, the department proposes to revise the rule to address safety concerns related to chemical storage areas, classrooms with gas supply lines, and classrooms with shop equipment. Second, the department proposes to revise the rule to address the location of emergency eyewash and shower stations. Third, the department proposes to revise the rule to address playground safety standards. Fourth, the department proposes to revise the rule to require submission of plans for school air intakes and radon mitigation. Fifth, the department proposes to revise the rule to address site location of new schools in areas with potential health hazards. The revisions are necessary to ensure the physical characteristics of schools provide a safe and healthy environment for students and school employees.

ARM 37.111.805

The department proposes to revise this rule to conform with proposed revisions to ARM 37.111.804 and to remove an outdated reference to capital expenditures.

ARM 37.111.810

The rule governs inspections of schools. The department proposes to revise the rule to require annual inspections, clarify how inspections are to be conducted, and provide for inspection recordkeeping requirements. The revisions are necessary to

ensure school inspections are performed in a consistent and uniform manner and inspection results are accessible.

ARM 37.111.811

The department proposes to revise this rule to address storage and administration of medication within schools. The department proposes to revise this rule to address reasonable accommodations for breastfeeding, which provides important health benefits to both nursing mothers and infants. The department proposes to revise the rule to address the spread of animal-borne diseases by addressing where livestock and other animals may be located within schools. The revisions are necessary to provide for the safety and physical well-being of students and school employees.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.812

The department proposes to revise this rule to address school building safety protocols including AED/First Aid Kit supply and location, water temperature, chemical storage, playground maintenance, and playground safety inspection. The revisions are necessary to provide for the safety and physical well-being of students and school employees.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.825

The department proposes to revise the rule to update reporting requirements for communicable diseases. The department also proposes to revise the rule's tobacco-free language to reference tobacco-free statutory provisions. The revisions are necessary to ensure the rules conform with applicable law.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.832

The rule governs water supply systems for schools. The department is proposing to revise the rule by requiring schools to test all human consumption fixtures for lead and to implement remedial measures should the testing reveal unsafe lead levels.

Exposure to lead is a significant health concern, especially for children whose growing bodies tend to absorb more lead than the average adult. Lead is a neurotoxin that can accumulate in the body over time with long lasting effects, particularly for children. According to the Centers for Disease Control and Prevention, lead in drinking water can cause health effects if it enters the

bloodstream and causes an elevated blood lead level. High lead levels can cause multiple and irreversible health problems, which include learning disabilities, attention deficit-hyperactivity disorder (ADHD), developmental or cognitive delays, growth stunting, seizures, coma, or, at high levels, death.

Even though water delivered from the community's public water supply must meet Environmental Protection Agency (EPA) standards for lead, a building may still have too much lead in the drinking water because of lead-containing plumbing materials and water use patterns. The EPA strongly encourages schools to test water for lead. Testing water in schools is important because students spend a significant portion of their days at school, and likely consume water while there. The longer water remains in contact with leaded plumbing, the more opportunity exists for lead to leach into water. As a result, facilities with on-again/off-again water use patterns, such as schools, may have elevated lead concentrations in the water.

The lead testing and remediation requirements proposed are necessary to ensure the health and physical well-being of students and school employees.

The department is also proposing to revise the rule to update references to current circulars.

ARM 37.111.833

The rule governs school sewage systems. The department is proposing to revise the rule to update references to current circulars. The revisions are necessary to ensure the rule references circulars currently in effect.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.834

The rule governs solid waste disposal for schools. The department is proposing to revise the rule by clarifying that solid waste includes recyclables and by identifying the department responsible for approving landfills. The proposed revisions are necessary to clarify requirements for solid waste disposal.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.840

The rule governs school laundry facilities. The department is proposing to revise the rule by imposing additional requirements related to the drying of laundry. The proposed revisions are necessary to address concerns related to mold and bedbugs.

ARM 37.111.841

The rule governs cleaning and maintenance requirements for schools. The department is proposing to revise the rule to make the cleaning procedures outlined in the rule mandatory rather than discretionary. The department is proposing to add additional cleaning requirements and to recommend schools use green products. The revisions are necessary to ensure schools are maintained in a clean and sanitary manner that protects the health and safety of students and school employees.

ARM 37.111.842

The rule governs food service requirements in schools. The department is proposing to revise the rule by striking language relating to adoption and incorporation by reference of the department's own rules. The department proposes to remove the language because it is unnecessary for the department to adopt and incorporate by reference its own rules.

ARM 37.111.846

The rule governs control and prevention of pests. The department is proposing to revise the rule to require schools to develop and implement Integrated Pest Management (IPM) plans. The rule provides requirements for IPM plans designed to prevent the spread of bedbugs, lice, rodents, and other pests. The rule also provides IPM plan requirements that are designed to ensure transparency about the use of pesticides within schools and on school grounds.

The revisions are necessary to ensure hazardous chemicals deployed to control pests are used in a safe manner that protects the health and physical well-being of students and school employees.

ARM 37.111.831

The department is proposing to repeal this rule because heating standards are addressed through the state building code promulgated by the Department of Labor and Industry.

Fiscal Impact

The proposed rulemaking is estimated to affect 146,722 students enrolled in Montana public schools and 13,832 students in non-public Office of Public Instruction (OPI) accredited K-12 schools. The proposed rule amendments will also affect approximately 15,273 licensed K-12 staff and paraprofessional staff, as well as food service and custodial staff.

With the exception of the lead testing rule (ARM 37.111.832), the proposed rule changes are not anticipated to have a fiscal impact. The lead testing rule is anticipated to have a significant fiscal impact associated with the cost of lead testing

and remediation measures should the test results reveal unsafe levels of lead. The estimated cost of lead testing is set forth below. Calculating the estimated cost of remediation is not feasible because the costs are dependent upon variables that are currently unknown such as the extent to which lead testing results will reveal the need for remediation and site-specific factors relating to remediation of individual school facilities.

There are 825 OPI accredited schools in Montana sharing a total of 582 unique school building addresses. Annexed buildings also exist at many of the larger schools and may not be reflected in the total number of unique school addresses. For this cost estimate, schools were categorized into groups based on student enrollment. The number of human consumption fixtures per school size category were based on the average number of fixtures reported by similar size schools who responded to requests from the department School Health Program. The number of schools per student enrollment category was determined using 2017-2018 student enrollment data from the Montana Office of Public Instruction. The data is summarized in the following table:

Table 1. Number of Human Consumption Fixtures Based on School Size

School Size by Enrollment	Estimated Number of HCF	Number of Unique School Buildings by Address	Number of HCFs Per School Size Group
1-25	4	211	844
26-50	9	116	1044
51-100	14	121	1694
101-300	16	211	3376
301-500	17	116	1972
501-750	22	27	594
751-1,000	25	7	175
1,001-1,500	35	10	350
1,501+	43	6	258
Total		825	10,307

Table 2. Total Estimated Fiscal Impact

Testing cost per sample	\$25.00
Shipping cost per sample	\$ 4.17
Human consumption fixtures in OPI accredited schools	10,307
10,307 x \$29.17 = \$300,655.19	

The estimated costs of laboratory testing, testing kit delivery, and shipping were calculated as follows:

Laboratory Test for Lead in Water

The Montana State Environmental Laboratory charges \$25 per one-liter water sample. Bottles and coolers are sent to individuals and organizations that will be collecting the water sample. There are four environmental laboratories in the state that can test for lead and other heavy metals. In the case that a school chooses to use a certified private laboratory, the laboratory will send sample bottles and coolers to the school.

Testing Kit Delivery

Coolers with test bottles will be sent to schools by the Montana State Environmental Laboratory or a private lab. Schools will be responsible for collecting samples and returning the samples to the lab. School staff may conduct the testing or schools may choose to hire an independent contractor to conduct the water sampling for them. Sampling bottles are commonly sent in coolers using UPS or USPS. Cost of shipping is determined by the size and weight of the cooler. If working with the State Environmental Lab, schools will not be charged shipping to receive the sampling bottles and coolers.

The following estimates are based on current UPS and USPS pricing according to weight, size, and distance.

Estimated Return Shipping Costs

50 lb+ package (24"x24"x24")

(15 1-liter samples per large cooler box)

Cooler & packaging material = Free

Return Shipping Service

UPS Ground \$60 avg.

USPS Ground \$70 avg.

Total Estimated Shipping Cost Per Sample Cooler = \$65

25-50 lb package (20"x20"x20")

(9 1-liter samples per box)

Cooler & packaging material = Free

Return Shipping Service

UPS Ground \$35 avg.

USPS Ground \$35 avg.

Total Estimated Shipping Cost Per Sample Cooler = \$35

Overall average cost per cooler shipment $[(\$65 + \$35)/2] = \$50$

The following table sets forth the estimated average testing cost based upon school size:

Table 3. Overall Average Testing Cost Based on School Size

School Size by Student Enrollment	Testing Cost per School Avg. Number HCFs x \$29.17	Number of Schools in Size Category
1-25 students	\$116.68	211
25-50 students	\$262.53	116
51-100 students	\$408.38	121
101-300 students	\$466.72	211
301-500 students	\$495.81	116
501-750 students	\$641.74	27
751-1,000 students	\$729.25	7
1,001-1,500 students	\$1,020.95	10
>1,501 students	\$1,254.31	6

Note: 94% of the K-12 schools in Montana have less than 500 students and would pay \$500 or less for testing.

Average number of bottles per cooler shipment $[(9+15)/2] = 12$ bottles

Average shipping cost per sample = \$4.17

The following resources and funding may reduce the estimated financial costs for schools:

Montana State Environmental Laboratory: Free Courier Service

The Montana State Environmental Laboratory has contracts in place to provide free courier services for healthcare organizations using the state lab. Schools may take advantage of this free courier service by coordinating with local healthcare organizations and the state lab to schedule sample pick-ups from designated sites. There are currently 14 pick-up sites around the state located in hospitals or other healthcare facilities. The courier services are available for pick-up Monday through Saturday in all locations with varying availability on Sundays.

Water Infrastructure Improvements for the Nation Act (WIIN) Grants

Financial support for testing may be available through the National Lead Testing in School and Childcare Program. The Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 appropriated funding to assist local and tribal education agencies in voluntary testing for lead contamination in drinking water at schools and childcare programs. The non-competitive grant is based on a funding formula that includes factors for population, poverty, and lead exposure risk. The state has submitted a letter of intent to access this funding and has determined that the Department of Environmental Quality is the appropriate state agency to administer grant funding to local educational agencies. If grant funding is awarded, the department will work closely with the Department of Environmental Quality to distribute funding to Montana public schools as they test for lead under the requirements of these administrative rules.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

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

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

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

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.104.3001 pertaining to) PROPOSED AMENDMENT
Montana Trauma System Plan 2019)

TO: All Concerned Persons

1. On July 11, 2019, at 11:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 2, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.104.3001 DEFINITIONS In addition to the definitions in 50-6-401, MCA, the following definitions apply to this subchapter:

(1) ~~"Appendix J of the State Trauma Plan" means the appendix of the 2006-2010 Montana Trauma System Plan that contains the criteria for including a patient in the state trauma register, the format specified by the department for a health care facility trauma registry, and the requirements for collection of state trauma register and health care facility registry data. The department adopts and incorporates by reference Appendix J of the department's 2006-2010 Montana Trauma System Plan. A copy of Appendix J of the 2006-2010 Montana Trauma System Plan may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(2) through (10) remain the same, but are renumbered (1) through (9).

~~(11)~~ (10) "Montana Trauma Facility Designation Criteria ~~(2014)~~ (2019)" means the document that contains the requirements for a facility to meet in order to be designated as a particular type of trauma care facility. The department adopts and incorporates by reference the department's Montana Trauma Facility Designation Criteria ~~(2014)~~ (2019) ~~located within the Montana Trauma System Plan, which sets forth the facility requirements for designation of trauma facilities.~~ A copy

of the Montana Trauma Facility Designation Criteria ~~(2014)~~ (2019) may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 ~~or at this web site:~~
~~<http://dphhs.mt.gov/publichealth/EMSTS/traumasystems.aspx>~~.

(12) through (24) remain the same, but are renumbered (11) through (23).

AUTH: 50-6-402, MCA

IMP: 50-6-401, 50-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.104.3001. The rule was last updated in 2015. The "State Trauma Plan (2006-2010)" referenced in the rule is outdated. An updated State Trauma Plan has been created and approved by the State Trauma Care Committee (STCC) and Regional Trauma Care Committees (RTACs). The STCC is comprised of members of various medical groups across the state including: Montana Trauma Coordinators; Central Regional Trauma Advisory Committee (RTAC), Eastern RTAC; Committee on Trauma/American College of Surgeons (ACS); Medical Association; MT Hospital Association; MT Emergency Nurses Association; Emergency Medical Services (EMS) Association; Indian Health Service, Western RTAC; Private Ambulance Operators; and American College of Emergency Physicians. The updated plan better reflects current trauma care and needs. The updated plan also further explains and expands upon the previous designation criteria and clarifies expectations for facilities to succeed.

Since the Designation Criteria is adopted and incorporated by reference, the rule must be updated to reflect adoption of the updated plan. The department is proposing to revise the rule to reference the updated plan. Additionally, the department is proposing to revise the rule to remove reference to an outdated reference to Appendix J of the State Trauma Plan 2006-2010, which defines the criteria for including a patient in the state trauma registry. There is no Appendix J in the updated plan and the rule already provides for the data required to be submitted to the department's trauma registry.

The department is proposing to renumber the remaining definitions within the rule to reflect removal of the reference to Appendix J. The department is also proposing to remove the reference to the Montana Trauma System Plan website as the plan is not available online. The plan is provided to trauma coordinators throughout the state and can be provided upon request to other individuals by contacting the department at the mailing address specified in the rule.

The proposed revisions are necessary to ensure the rule refers to the updated plan. The updated plan is necessary to reflect the continued advancement of medical practice that has occurred throughout the nation and to clarify the designation criteria.

Fiscal Impact

This proposed rule amendment is anticipated to have no fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 19, 2019.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above 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 rule will not significantly and directly impact small businesses.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.5.208 pertaining to the state)
noxious weed list)

TO: All Concerned Persons

1. On April 26, 2019, the Department of Agriculture published MAR Notice No. 4-19-257 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 413 of the 2019 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State June 11, 2019.

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

TO: All Concerned Persons

1. On December 21, 2018, the Board of Environmental Review and Department of Environmental Quality published MAR Notice No. 17-403 regarding the public hearing on the proposed amendment of the above-stated rules at page 2446 of the 2018 Montana Administrative Register, Issue No. 24. On February 22, 2019, the board and department published MAR Notice No. 17-403 regarding an additional public hearing and extension of comment period at page 196 of the 2019 Montana Administrative Register, Issue No. 4.

2. The board has amended ARM 17.24.645, 17.24.646, 17.30.502, 17.30.619, 17.30.702, and 17.30.1001 exactly as proposed. The department has amended ARM 17.36.345, 17.55.109, 17.56.507, and 17.56.608 exactly as proposed.

In addition, the board has revised the ground water standards in Department Circular DEQ-7 for diallate; dioxane, 1,4-; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA) as proposed. The board has determined it will not proceed with the proposed revisions to ground water standards in Department Circular DEQ-7 for iron and manganese at this time.

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

COMMENT NO. 1: We request an extension of the public comment period beyond the initial 45-day period which started on December 21, 2018.

RESPONSE: The department requested the extension from the Board of Environmental Review on February 8, 2019, and it was granted. The extended public comment period for both the department and board rules continued to 5:00 p.m. on March 25, 2019.

COMMENT NO. 2: We support the board's and department's proposed adoption of ground water standards for diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA).

RESPONSE: Thank you for the comment. See response to Comment No. 3.

COMMENT NO. 3: We support the department's recommendation that the rulemaking not proceed with the proposed ground water standards for iron and manganese, but instead proceed only with: diallate; dioxane, 1,4-; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA).

RESPONSE: The board appreciates the department's recommendation, and the additional parties that requested Department Circular DEQ-7 to be revised without the proposed iron and manganese ground water standards. The department made this recommendation at the second public hearing on the proposed amendment of the rules on March 19, 2019. An important characteristic of diallate; dioxane, 1,4-; PFOS; and PFOA is that they are all manmade compounds and their natural background concentrations are zero. Iron and manganese, in contrast, are naturally occurring and in many locations natural background concentrations can equal or exceed the proposed criteria. Multiple department programs implement ground water standards, and the department is working to synchronize their methods, especially in relation to characterization of natural background. It is best this work be completed before, instead of after, the adoption of the iron and manganese criteria. As a result, the board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. The board asks the department to continue working with the programs that implement Department Circular DEQ-7 to understand the details of how iron and manganese standards would apply in permitting and remediation decisions and to return to the board with this information.

COMMENT NO. 4: All of the proposed ground water standards are another unneeded and unjustified burden and huge expense for businesses who will have to test for them.

RESPONSE: The board and department do not agree with the comment. The board and department propose water quality standards that will protect public health and the environment. The requirement to test for specific water quality standards varies widely; it is not an automatic requirement for all businesses who discharge to state waters. The necessity for the ground water standards is explained in MAR Notice No. 17-403, starting at page 2446 of the 2018 Montana Administrative Register, Issue No. 24.

COMMENT NO. 5: The statements of reason should be clear that EPA's lifetime health advisory was not intended to be applied to ground water; it is a drinking water health advisory. The lifetime health advisory for PFOS and PFOA are non-enforceable and non-regulatory per EPA's 2016 memo "*Clarification about the Appropriate Application of the PFOA and PFOS Drinking Water Health Advisories.*"

RESPONSE: The board and department do not agree with the comment. The referenced EPA memo addresses whether EPA's PFOA and PFOS health advisory can be used to manage risk related to exposure to these compounds through ingestion via food sources. It clarifies that, for PFOA and PFOS, EPA's lifetime health advisories (those used for the proposed rule) only apply to exposure involving drinking water. This is precisely the scenario the proposed rule addresses:

exposure to PFOA and PFOS in ground water, where drinking is a beneficial use. There is no assumption of exposure via food consumption included in the criteria.

COMMENT NO. 6: The new standards are more stringent than the drinking water standards currently in place. It does not make sense that the department would promulgate cleanup standards more stringent than drinking water standards.

RESPONSE: The board does not agree with the comment. There are currently no drinking water standards for any of the proposed criteria. See responses to Comment Nos. 3 and 7.

COMMENT NO. 7: The rulemaking proposal for iron and manganese is a significant departure from how EPA and other states approach iron and manganese regulation in ground water—no other state appears to have ground water standards at the levels proposed by the department.

RESPONSE: The department is charged with collecting and furnishing information related to the prevention and control of water pollution (75-5-212, MCA), and the board is responsible for formulating and adopting standards of water quality (75-5-301, MCA) which will protect the public health and the state's ground water resources. The consideration of the proposed iron and manganese standards falls clearly within these authorities. However, please see response to Comment No. 3.

COMMENT NO. 8: We appreciate the proactive efforts the department is taking to update water quality standards.

RESPONSE: Thank you for the comment. See response to Comment No. 3.

COMMENT NO. 9: The need for the iron and manganese criteria is unclear since EPA currently has regional screening levels (RSLs) for drinking water for them that could be relied on by the department to guide remedial activities.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. See response to Comment No. 3.

COMMENT NO. 10: The department's proposal is significantly more stringent than the regional screening levels (RSLs).

RESPONSE: RSLs are calculated using CERCLA risk assessment guidance and are intended to be used as a concentration that would generally indicate if a chemical should be further considered at a superfund site. Department Circular DEQ-7 ground water standards are established under the authority of the state of Montana as provided for in 75-5-301(1), MCA, and are intended to protect beneficial uses. RSLs are a default calculation that account for exposures directly related to a specific site and evaluate dermal, inhalation, and ingestion pathways directly. Department Circular DEQ-7 ground water standards consider direct ingestion and use a relative source contribution to account for other exposure pathways. As noted elsewhere in the response to comments, the department has the delegated authority to establish state water quality standards more stringent than the federal water quality criteria.

COMMENT NO. 11: We question the appropriateness of enacting state-wide water quality standards to address what the department has described as concerns connected to drinking water.

RESPONSE: The board does not agree with the comment. The board's responsibility is to adopt scientifically supported water quality standards to protect beneficial uses. In the case of this rulemaking, ground water standards are proposed to protect "public and private water supplies" (ARM 17.30.1006(1)(a)(i) and (2)(a)(i)). Scientific literature in the recent past has demonstrated, to our satisfaction, that the parameters included in this rulemaking may pose an unacceptable level of harm at certain concentrations to "public and private water supplies" and as such deserve consideration for a ground water quality standard.

COMMENT NO. 12: Given the availability of regional screening values to guide remediation, lack of potability when manganese concentrations exceed 50 µg/L, and the upcoming availability of pharmacokinetic models which will reduce uncertainty in high-dose to low-dose extrapolations, it is not advisable for DEQ to propose a health-based manganese criterion at this time.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 13: The showing required under 75-5-203, MCA, has not been met for manganese.

RESPONSE: The proposed criterion for manganese is more stringent than comparable federal guidelines. As a result, to adopt the proposed criterion, the board would need to make written stringency findings from the hearing record as specified at 75-5-203, MCA. The required findings include a consideration of the costs to the regulated community that are directly attributable to the proposed manganese criterion. The hearing record does not contain the required cost information and therefore the board cannot make the required stringency findings under 75-5-203, MCA. For this reason, the board agrees with the commenter that the showing required under 75-5-302, MCA, has not been met. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 14: Section 75-5-301(2)(a), MCA, states that if a chemical exceeds the federal standards set forth in 40 CFR 141, the federal standard must be adopted. We believe that the adoption of the iron standard would violate this statute.

RESPONSE: The commenter misinterprets the statute. The cited statute, 75-5-301(2)(a), MCA, only applies to arsenic and other carcinogens and prescribes how standards are established at certain risk levels. Iron is not listed as a carcinogen in Department Circular DEQ-7 and the cited statute is, therefore, inapplicable. The board and department are not proceeding with the proposed ground water standards for iron at this time. See response to Comment No. 3.

COMMENT NO. 15: The inclusion of PFOS and PFOA at the proposed levels, for the purpose of establishing clean-up standards for hazardous waste

permitted facilities, exceeds the department's statutory authority to regulate ground water under the underground storage tanks statutes.

RESPONSE: The department is charged with adopting rules concerning underground storage tanks and related cleanup activities (75-11-505, MCA, and 75-11-319, MCA). The board is responsible for formulating and adopting standards of water quality (75-5-301, MCA) which will protect the public health and the state's ground water resources. The consideration and adoption of the proposed PFOS and PFOA ground water standards falls clearly within these authorities. These standards are state water quality standards that programs at the department use for the protection of human health and the environment, including the Hazardous Waste Program and the Underground Storage Tank Program. See response to Comment No. 18.

COMMENT NO. 16: The inclusion of PFOS and PFOA at the proposed levels, for the purpose of establishing cleanup standards for hazardous waste permitted facilities, is inappropriate, because the department is using the EPA's lifetime health advisory despite the EPA's recommendation against states using lifetime health advisories as a cleanup standard.

RESPONSE: DEQ agrees that the EPA Health Advisories should not be used directly as cleanup standards, and is not doing so; DEQ does, however, use the equations and assumptions found in the EPA Health Advisories in calculating its own DEQ-7 standards that are protective of human health. Once approved, these standards are incorporated into DEQ-7 and have the force of law. Additionally, see response to Comment No. 15.

COMMENT NO. 17: The inclusion of PFOS and PFOA at the proposed levels for the purpose of establishing cleanup standards for hazardous waste permitted facilities is inappropriate. It is inappropriate to apply the new rule to site cleanups already governed by CERCLA or RCRA where cleanup is based on a site-specific human health risk assessment process.

RESPONSE: Site-specific human health risk-based cleanup levels are used when enforceable, promulgated standards such as those in Department Circular DEQ-7 are not available. Pursuant to CERCLA, the selected remedy must meet the threshold criteria of protectiveness and meet Applicable or Relevant and Appropriate Requirements (ARARs) unless a waiver is justified. 40 CFR 300.430. Department Circular DEQ-7 standards are a state ARAR that must be met. Likewise, for facilities regulated under the Montana Hazardous Waste Act, risk-based numbers are not used where enforceable, promulgated standards such as those in Department Circular DEQ-7 exist.

COMMENT NO. 18: The statutes cited as the department's authority to implement the proposed ground water standards (75-11-319, 75-11-505, and 75-11-309, MCA) have no readily apparent nexus to the establishment of new cleanup standards for hazardous waste permitted facilities based on ground water criteria.

RESPONSE: The commenter noted that the department cited 75-11-319, 75-11-505, and 75-11-309, MCA. Referencing 75-11-319, 75-11-505, and 75-11-309, MCA, was necessary so the department could adopt the current version of

Department Circular DEQ-7 by reference into necessary rules, including ARM 17.56.507 and ARM 17.56.608. The new water quality standards are used by multiple programs. Regardless of the regulatory authority that a party may fall under, it is a violation to cause pollution of any state waters (which includes ground water) or place or cause to be placed any waste where they will cause pollution of state waters. See 75-5-605, MCA. The board has separate authority, under 75-5-301, MCA, to adopt standards of water quality.

COMMENT NO. 19: The proposed ground water criteria for Department Circular DEQ-7 should not apply where other federal and Department of Defense (DOD) environmental requirements govern.

RESPONSE: The state of Montana has primacy in regulating ground water as a state resource. The Montana Water Quality Act, 75-5-605, MCA, provides that it is unlawful to cause pollution of any state waters or place or cause to be placed any wastes where they will cause pollution of any state waters. Specifically, ARM 17.30.1006 classifies ground water into Classes I through IV based upon its specific conductance and establishes the ground water quality standards applicable with respect to each ground water classification. The quality of a class of ground water must be maintained so that it is suitable for established uses. Concentrations of substances in ground water within these classes may not exceed the human health standards for ground water listed in Department Circular DEQ-7, Montana Numeric Water Quality Standards. The DOD must not only comply with federal environmental laws regarding ground water but state requirements such as Department Circular DEQ-7 standards, also where those state requirements are more stringent. See also response to Comment No. 15.

COMMENT NO. 20: The PFOS and PFOA compounds are not identified in 40 CFR Part 261 as either characteristic hazardous wastes or listed hazardous wastes or toxic constituents, and no CERCLA/IRIS (risk-based) standard for the PFOA/PFOS compounds have been promulgated; therefore, adopting them in Department Circular DEQ-7 cannot expand the state's jurisdiction under RCRA as applied to the Department of Defense.

RESPONSE: The rulemaking at issue concerns Department Circular DEQ-7 and the state's authority to regulate pollution of ground water. All facilities regulated under the Montana Hazardous Waste Act must also comply with the Montana Water Quality Act, including compliance with the specific state standards for ground water set forth in Department Circular DEQ-7.

COMMENT NO. 21: DEQ has not provided sufficient evidence that iron and manganese constitute harm to the public health.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. See response to Comment No. 3.

COMMENT NO. 22: The proposed rulemaking contains no data regarding the economic impact of the proposal, including that required under 75-5-301(2), MCA. We would like some information on that.

RESPONSE: The board and department are not proceeding with the proposed ground water standards for iron and manganese at this time. The department is continuing to work on clarifying and synchronizing its approach to implementing iron and manganese standards, especially for situations where there may be a large natural background component. When this work is completed, the economics of waste treatment and prevention will be considered for these parameters. Regarding diallate; dioxane, 1,4-; PFOS; and PFOA, the proposed ground water standards for these will be primarily (if not exclusively) used by the department's Waste Management and Remediation Division as cleanup endpoints. Remediation sites are assessed on a case-by-case basis and financially responsible or liable parties are required to remediate contaminated sites to a level that assures protection of human health, safety, and welfare of the environment. These four ground water standards will primarily be addressed through remediation and not through the permitting activities contemplated under Title 75, chapter 5, MCA. No significant economic impacts are anticipated under the Montana ground water pollution control system permitting program as a result of the adoption of the proposed ground water standards for diallate; dioxane, 1,4-; PFOS; or PFOA. Please see response to Comment No. 3.

COMMENT NO. 23: What effect will the proposed standards have on ground water classification?

RESPONSE: The board is not revising Department Circular DEQ-7 to include ground water standards for iron and manganese at this time. The adoption of the proposed ground water standards for diallate; dioxane, 1,4-; PFOS; and PFOA, will have no impact on the ground water classes. Montana's ground water classes are described in ARM 17.30.1005 and 17.30.1006. The ground water classes and their associated beneficial uses are based on specific conductance, a measure of how salty the ground water is. Discharge compliance with the proposed standards, or for that matter, with any of the ground water standards already adopted in Department Circular DEQ-7, is a separate compliance consideration made on a parameter-by-parameter, case-by-case basis.

COMMENT NO. 24: How do the proposed standards coincide with the board's authority to adopt rules under Public Water Supplies at 75-6-103(2)(a), MCA?

RESPONSE: The board has separate authority for (a) adopting rules pertaining to surface and ground water standards, and (b) adopting rules pertaining to maximum contamination levels for public water supplies. The proposed rulemaking fell under the board's authority at 75-5-301(2)(a), MCA, for surface and ground water standards. The department is currently working on manganese standards applicable to public water supplies; when proposed, those would be addressed by the board under its authority at 75-6-103(2)(a), MCA.

COMMENT NO. 25: The department's proposed 100 microgram per liter ground water standard for manganese is important for the protection of public health.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards

for manganese and iron at this time. See response to Comment No. 3.

COMMENT NO. 26: The iron criterion proposed by the department is based on a reference dose (RfD; 0.59 mg/kg-day) modified from the RfD of 0.7 mg/kg-day derived by EPA in their 2016 PPRTV document. The department modified the RfD for a body weight of 80 kg, whereas EPA's RfD was developed using an assumed body weight of 70 kg. EPA does not recommend using alternate body weights to modify RfDs in this manner.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for iron at this time. See response to Comment No. 3.

COMMENT NO. 27: The 1,000-fold uncertainty factor applied to rodent data for the derivation of the department manganese RfD shows that the level of confidence in this value—in terms of applicability to human infants—is very low.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards for manganese at this time. See response to Comment No. 3.

COMMENT NO. 28: DEQ applies an uncertainty factor of 10 to address variability within the human population in the development of the manganese criterion, but this is unnecessary because DEQ already relied on a RfD based on the most sensitive portion of the population—developing fetuses and infants.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 29: DEQ should not use the EPA PPRTV (2016) reference dose (RfD) because it assumes a high concentration one-time ingestion and is not relevant to the typical environmental iron ingestion, which is spread out over time.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for iron at this time. See response to Comment No. 3.

COMMENT NO. 30: The iron criterion does not consider that iron is an essential requirement in the human diet; DEQ's use of the relative source contribution for drinking water of 0.2 is overly conservative considering the typical daily iron intake is 11 mg/day.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for iron at this time. See response to Comment No. 3.

COMMENT NO. 31: The proposed cumulative standard cleanup level for PFOA and PFOS is not consistent with acceptable toxicological practices per EPA's *Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures*, August 2000.

RESPONSE: PFOA and PFOS are two compounds falling within a larger

group called Per- and Polyfluoroalkyl substances, or "PFAS." Other compounds in the PFAS group are PFHxS and PFNA. Among the compounds of the PFAS group, EPA found that PFOA and PFOS were detected at concentrations greater than the proposed criterion (0.07 µg/L) in 1.3 percent of all U.S. public water supplies serving 10,000 people or fewer. For this reason, EPA has focused on PFOA and PFOS criteria for drinking water. EPA's 2016 Health Advisory for lifetime exposure is for individual and combined PFOA and PFOS concentrations, consistent with how the board proposed the rule.

COMMENT NO. 32: The rationale in MAR Notice No. 17-403 fails to explain why both manganese and iron are proposed to be classified as toxins.

RESPONSE: The board agrees that the notice could have better explained the toxic effects of these elements, primarily those of iron. The board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. See response to Comment No. 3.

COMMENT NO. 33: The Agency for Toxic Substances and Disease Registry indicates there is little difference in sensitivity between rats and humans, so DEQ's calculations likely overestimate the risk of manganese by assuming humans are more sensitive.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 34: Manganese, iron, zinc, and calcium all interact to reduce their respective absorption and toxicity; therefore the bioavailability of manganese in ground water will likely be less than assumed in the department's calculations and the studies they relied on.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. See response to Comment No. 3.

COMMENT NO. 35: Personal communication between EPA Region VIII's toxicologist offering a professional opinion as to the scientific quality of the recent manganese studies is insufficiently rigorous to cause DEQ to modify its manganese drinking water criterion to be more stringent than the federal equivalent.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3. However, it should be noted that consultation with EPA Region VIII's Human Health Risk Assessor is provided for in state law for cases where the department derives toxic human health criteria (see pages 5 to 7, Department Circular DEQ-7, May 2017 edition).

COMMENT NO. 36: It is unclear where the values for the average body weight and water ingestion for infants zero to <6 months came from in the development of the manganese criterion.

RESPONSE: The board and the department appreciate the comment. The

board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 37: In the development of the manganese criterion, why was the water consumption variable from Table 3-15 of EPA's Exposure Factors Handbook selected rather than that from a newer study (NHANES 2003-2006)?

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standard for manganese at this time. See response to Comment No. 3.

COMMENT NO. 38: Abundance of iron and manganese naturally available in soils, combined with their solubility, make regulation and compliance difficult, if not impossible. Even if background levels are considered, it places an undue burden of proof on dischargers and industry to demonstrate background levels.

RESPONSE: The board and the department appreciate the comment. The board and department are not proceeding with the proposed ground water standards for manganese and iron at this time. See response to Comment No. 3.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Christine Deveny

CHRISTINE DEVENY

Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath

SHAUN McGRATH

Director

Certified to the Secretary of State, June 11, 2019.

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

TO: All Concerned Persons

1. On December 21, 2018, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-404 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 2455 of the 2018 Montana Administrative Register, Issue No. 24.

2. The board has amended ARM 17.30.1001 and 17.38.101 exactly as proposed. The board has amended ARM 17.30.1334 exactly as proposed but has updated the citations for authority and implementation to correct an inadvertent omission:

AUTH: 75-5-201, 75-5-401, 75-5-802, MCA
IMP: 75-5-201, 75-5-401, 75-5-802, MCA

3. The department has amended ARM 17.36.103, 17.36.345, and 17.50.819 exactly as proposed.

4. The department has adopted New Rule I (17.30.1702) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.30.1702) SETBACKS BETWEEN SEWAGE LAGOONS AND WATER WELLS (1) through (4) remain as proposed.

(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:

$$t_1 = (d) * (\theta) \div (\alpha) \div 365$$
$$t_1 = [(d) * (\theta) \div (\alpha)] * 365$$

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:

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

$$t2 = [ne \div (K * i)] * [x - \{(Q \div (2 * \pi * K * b * i)) * (\ln(1 + ((2 * \pi * K * b * i * x) \div Q)))\}]$$

Where:

t2 = horizontal travel time (days)

K is hydraulic conductivity of the saturated aquifer (feet/day)

i is hydraulic gradient (feet/feet foot)

b is aquifer saturated thickness (feet)

ne is effective porosity (dimensionless)

π is pi, 3.14 (dimensionless)

ln is natural logarithm

Q is the maximum day well demand (feet³/day)

x is the horizontal distance from the sewage lagoon to the water well (feet).

Value is positive when well is downgradient of sewage lagoon, negative if well is upgradient of sewage lagoon.

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) and (c) remain as proposed.

(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 groundwater 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	<u>2,950</u> 94,500
Fine sand	51
Glacial Till	0.72
Glacial Till (fractured)	29.5
Gravel	<u>13,500</u> 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) through (c)(iii) remain as proposed.

(iv) For purposes of defining soil effective porosity and volumetric soil moisture that are used in (5), soils ~~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) through (7) remain as proposed.

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

COMMENT NO. 1: The equation for vertical travel time for wastewater in the unsaturated (vadose) zone in New Rule I(5)(a) is missing the infiltration factor (α) parameter, and appears to replace the infiltration factor with a time parameter, 365 days. Why is the infiltration factor, which is set at a value of 0.5 and is included in a similar equation used by the state of Wyoming, not included in the equation?

RESPONSE: The commenter is correct that the equation in (5)(a) for vertical travel time is different than the equation used by the state of Wyoming. The Wyoming method equation is designed for a subsurface drainfield where precipitation will have an effect on the amount of recharge that mixes with the wastewater. Because this infiltration affects the travel time calculation, the Wyoming method equation includes a 0.5 infiltration factor as an estimate of the percent of precipitation that infiltrates the ground. New Rule I, on the other hand, applies to sewage lagoons that are conservatively assumed to be filled with wastewater and are leaking at the constant design rate regardless of precipitation. Because of that, the equation in (5)(a) was modified from the Wyoming method equation for use with sewage lagoons by removing the 0.5 infiltration factor. The 365-day value in the equation was not used to replace the 0.5 infiltration factor but to convert the equation units from years to days, which was necessary to maintain consistent units between other parameters and equations in New Rule I.

COMMENT NO. 2: The following equation for vertical travel time for wastewater in the unsaturated (vadose) zone in New Rule I(5)(a) is incorrect:

$$t_1 = (d) * (\theta) \div (\alpha) \div 365$$

The 365 (day) value should be multiplied by the product/quotient of the first three variables in the equation instead of being divided into the product/quotient of the first three variables.

RESPONSE: The department agrees that the equation incorrectly divided by 365 instead of multiplying by 365. The equation shown in the comment has been corrected as suggested and is shown below.

$$t_1 = [(d) * (\theta) \div (\alpha)] * 365$$

COMMENT NO. 3: The soil type of Sandy Clay Loam in Table 1 in New Rule I is incorrect. The Sandy Clay Loam soil type is from the United States Department of Agriculture (USDA) soil classification system, whereas the other soil types in the table were from the Unified Soil Classification System (USCS). The rule should be revised to include a USCS soil type such as Clay Loam or Sandy Clay instead of Sandy Clay Loam.

RESPONSE: The commenter is correct that the description of Sandy Clay Loam in Table 1 is from the USDA, but the department disagrees that the description is incorrectly included in Table 1. The geologic materials listed in Table 1 are based on published values of hydraulic conductivity from various sources and are not necessarily based on the USCS. Table 1 incorporates many other types of geologic materials that do not have a USCS classification.

Nevertheless, the comment indicates that New Rule I may not be sufficiently clear in its use of the USCS. While Table 1 is based on various sources, (6)(c)(iv) of New Rule I requires that test pit/borehole soils be described using the USCS. To clarify the issue raised by the commenter, the department has modified (6)(c)(iv) by adding the following language at the beginning of the section: "For purposes of defining soil effective porosity and volumetric soil moisture that are used in (5)." This modification does not change the meaning or intent of (6)(c)(iv) but has been added solely to provide clarification.

COMMENT NO. 4: One commenter stated that both the vertical and horizontal travel time equations in New Rule I(5)(a) are incorrect because both equations omitted a variable for the water well pumping rate. The commenter also proposed some effluent rate conversions that would include the water well pumping rate.

RESPONSE: The department agrees that the equation for horizontal travel time should include a variable for the water well pumping rate but disagrees that the variable should be included in the equation for vertical travel time.

The equation for horizontal travel time in (5)(a) should include the well pumping rate to account for the non-linear hydraulic gradient that is created in the groundwater due to the withdrawal of water from the well. The current equation in New Rule I (shown below) uses a linear hydraulic gradient that in many cases does not accurately account for the well pumping rate.

$$t_2 = (x) \div [(K) \cdot (i) \div (n_e)]$$

The above equation has been revised in (5)(a) of New Rule I to the following equation that accounts for the well pumping rate. In modifying the equation, the department corrected a typographical error by changing feet to foot to correctly describe hydraulic gradient.

The definitions of the new variables in the revised equation have been added to (5)(a) as shown below.

$$t_2 = [n_e \div (K \cdot i)] * [x - \{(Q \div (2 * \pi * K * b * i)) * (\ln(1 + ((2 * \pi * K * b * i * x) \div Q)))\}]$$

Where:

t_2 = horizontal travel time (days)

K is hydraulic conductivity of the saturated aquifer (feet/day)

i is hydraulic gradient (feet/foot)

b is aquifer saturated thickness (feet)

n_e is effective porosity (dimensionless)

π is pi, 3.14 (dimensionless)

\ln is natural logarithm

Q is the maximum day well demand (feet³/day)

x is the horizontal distance from the sewage lagoon to the water well (feet).

Value is positive when well is downgradient of sewage lagoon, negative if well is upgradient of sewage lagoon.

On the other hand, the department does not agree that the equation for vertical travel time in (5)(a) needs a variable for the well pumping rate. The vertical travel time equation only accounts for travel in the unsaturated zone. The rate of travel in the unsaturated zone is not impacted by fluctuations in the water table level caused by pumping of the water well, so the well pumping rate is not needed in the vertical travel time equation. The department does not agree that the commenter's suggested rate conversions should be added because the well pumping rate has been directly incorporated into the horizontal travel time equation as described above.

COMMENT NO. 5: The hydraulic conductivity value in Table 1 of New Rule I(6)(a)(i) for gravel material is incorrect. Table 1 has a value of 201,600 feet per day, while most other hydrology books have a maximum value of 10,000 feet per day for clean, well-sorted gravels.

RESPONSE: The department agrees that the hydraulic conductivity value for gravel in Table 1 (201,600 feet/day) is much higher than most published values. That hydraulic conductivity was based on a value from a commonly cited textbook (Freeze and Cherry, 1979). A review of the published data shows the commenter is correct that the gravel hydraulic conductivity value in Table 1 is over ten times larger than other published values and is likely not representative of gravel materials.

The department has modified the value for gravel in Table 1 from 201,600 feet/day to 13,500 feet/day. The department used 13,500 feet/day instead of the commenter's proposed 10,000 feet/day to maintain consistency in Table 1. Specifically, the hydraulic conductivity value of 13,500 feet/day is based on the same calculations for determining the other values in Table 1 as described in the statement of reasonable necessity for New Rule I.

The change in the hydraulic conductivity for gravel also required the department to reexamine the other values in Table 1 to ensure that the values were consistent with each other and to ensure that the Freeze and Cherry textbook did not use any other unusually high values. Table 1 proposed a hydraulic conductivity for coarse sand of 94,500 feet/day. This value is over 10 times higher than other published values for coarse sand and would be erroneously greater than the modified value for gravel. Accordingly, the department has modified the value for coarse sand in Table 1 from 94,500 feet/day to 2,950 feet/day to be internally consistent and to be consistent with published values other than the Freeze and Cherry textbook.

COMMENT NO. 6: Three commenters disagreed with the default 1,000-foot setback distance in New Rule I(3)(a). Two commenters stated that the default 1,000-foot setback was arbitrary and did not account for site-specific conditions. One of these commenters stated that more science should be used to account for variations in groundwater depth and geology, and another stated that the 1,000-foot setback should be reevaluated.

RESPONSE: The department does not agree that the 1,000-foot default setback is arbitrary. The 1,000-foot setback was determined using the pathogen reduction equations in (5)(a). By using those equations and using hydrogeologic conditions that can exist in high hydraulic conductivity and shallow aquifers in Montana, the department determined that a 1,000-foot separation from a sewage lagoon to a water well is needed to provide 4-logs of pathogen inactivation.

The department also does not agree that more scientific methods are needed in New Rule I to determine the correct setback. New Rule I uses site-specific and science-based information (e.g., geology, hydrology, and soil type) to allow reduction of the default 1,000-foot setback to as short as 100 feet by calculating or prescribing the necessary conditions to provide adequate pathogen reduction. In (3)(d), (4), and (5), there are several ways to demonstrate that a shorter setback than 1,000 feet is appropriate, including demonstrating a lack of hydraulic connection between sewage lagoons and water wells due to impermeable geologic layers; demonstrating a lack of hydraulic connection between sewage lagoons and water wells due to groundwater flow directions; and demonstrating adequate pathogen reduction as wastewater migrates through soils. In addition, (3)(b) and (3)(c) allow the reduction of the default setback to 200 feet if there is adequate disinfection of the well water or the sewage lagoon wastewater.

COMMENT NO. 7: Three commenters stated that New Rule I should apply only to domestic wells and should exclude stock and irrigation wells.

RESPONSE: The department generally does not regulate stock or irrigation wells. As part of this joint rulemaking, the department is adopting New Rule I by reference into the subdivision rules, and the board is adopting New Rule I into the public water supply and CAFO rules. New Rule I would therefore not apply to stock or irrigation wells unless department review was otherwise triggered under the subdivision, public water supply, or CAFO rules. If department review was not required under those rules, New Rule I would not apply to stock or irrigation wells. If department review was required under those rules, the department and board disagree that New Rule I should apply only to domestic wells. Additionally, HB 368 required the department to adopt setbacks between sewage lagoons and water wells, which is a defined term in 75-5-102, MCA, that includes all wells, not just domestic wells. Finally, stock and irrigation wells may be converted to domestic uses. Such wells should be protected from lagoon pathogens just like any other domestic well.

COMMENT NO. 8: Two commenters stated that water from wells is necessary for cleaning and maintaining sewage lagoons and, in the case of

agricultural lagoons, for animal care. The default 1,000-foot setback is excessive for this required maintenance and care.

RESPONSE: The department disagrees that the 1,000-foot default setback is excessive. As discussed in response to Comment No. 7, the department generally does not regulate stock or irrigation wells, so New Rule I would not apply to agricultural lagoons and wells unless department review was otherwise required under the subdivision, public water supply, or CAFO rules. Accordingly, New Rule I will not apply to many of the agricultural wells referenced by the commenters. Furthermore, the 1,000-foot setback is a maximum distance that in many situations can be reduced using site-specific information. Where necessary, the 1,000-foot setback minimizes the potential that contaminated water will be used for purposes other than sewage lagoon maintenance.

COMMENT NO. 9: The methods in New Rule I to reduce the default setback are cost prohibitive for stock and irrigation wells.

RESPONSE: The department disagrees. As discussed above in the response to Comment No. 7, New Rule I will only apply to those wells and lagoons that are otherwise subject to department jurisdiction (i.e., under the subdivision, public water supply, or CAFO rules), so New Rule I will not apply to many stock and irrigation wells. For those stock and irrigation wells that need to comply with New Rule I, the rule was written with multiple methods to determine most of the parameters needed to reduce the setback. Multiple methods were included specifically to make lower cost methods available where they are applicable, as discussed in the statement of reasonable necessity.

COMMENT NO. 10: Well drillers can tell the best place to locate a well when they are onsite, which might be closer than 1,000 feet from a lagoon.

RESPONSE: The department disagrees. While a well driller may be able to determine the best location of a well based on logistical considerations (e.g., power sources, pumping distances, elevation issues, adequate water supply, etc.), neither a well driller nor any other professional can determine the subsurface vulnerability of a water well to wastewater contamination without looking at site-specific geologic, hydrologic, and soil conditions.

COMMENT NO. 11: The default 1,000-foot setback would lead to inefficient land uses in populous counties because a significant amount of property would be used up to satisfy the 1,000-foot setback.

RESPONSE: HB 368 required the department to adopt setbacks "to prevent water well contamination." As discussed in the statement of reasonable necessity and these responses to comments, the 1,000-foot default setback was determined to be necessary to protect water wells from lagoon contamination in vulnerable geologic settings. Nevertheless, as discussed throughout these responses, the default 1,000-foot setback may be reduced to as little as 100 feet, depending on site-specific factors. This ability to shorten the default setback provides significant flexibility that did not exist under the previous statutory requirement of 500 feet and would allow denser development where conditions are appropriate. Additionally, the 1,000-foot setback only restricts the location of water wells and sewage lagoons, not

other development or other land uses that do not require a water well. Other required setbacks to the water well do not change based on whether the well is closer to the sewage lagoon, so no additional land acreage is restricted by placing the well further from the sewage lagoon (it only changes the location of the restriction).

COMMENT NO. 12: One commenter stated that this rulemaking should more closely resemble the purpose for which HB 368 was introduced and passed, stating that the purpose of HB 368 was to align department setback requirements with the requirements adopted by the Department of Natural Resources and Conservation (DNRC) Board of Water Well Contractors. The commenter believed that the original draft of the bill would have established a 100-foot setback for both but stated that the department had morphed that idea into a 1,000-foot default setback.

RESPONSE: The department disagrees. The version of HB 368 passed by the legislature removed the statutory 500-foot setback and required the department "to adopt rules establishing setback area requirements between sewage lagoons and water wells to prevent water well contamination." As discussed in the statement of reasonable necessity and throughout these responses, the 1,000-foot default setback was determined to be necessary to prevent water well contamination from lagoon pathogens in vulnerable geologic settings. The department also has communicated with the bill's sponsor throughout the rulemaking process and has received no negative comments from the sponsor. The department notes that New Rule I has also been developed in coordination with similar revisions to DNRC rules to provide consistent setbacks between the two agencies.

COMMENT NO. 13: The toe of a lagoon berm/slope should not be allowed in a flood plain. Even better, there should be several feet separating the toe of the slope and the 100 or even 500-year flood plain.

RESPONSE: Thank you for your comment. Setbacks between lagoons and flood plains are outside the scope of this rulemaking, but the department and board may consider this issue in a future rulemaking. Nevertheless, Standard 51.2 of Department Circular DEQ-2 requires that treatment works structures and electrical and mechanical equipment must be protected from physical damage by the 100-year flood and that flood plain regulations of local, state, and federal agencies must be followed.

COMMENT NO. 14: Although not addressed by HB 368, the same separation rules should apply to lagoons and waterways, creeks, rivers, etc.

RESPONSE: Thank you for your comment. As noted by the commenter, setbacks between lagoons and waterways are outside the scope of HB 368 and this rulemaking. The department and board may consider this issue in a future rulemaking.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State June 11, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.29.1611 pertaining to)
medical utilization and treatment)
guidelines for workers' compensation)
purposes)

TO: All Concerned Persons

1. On March 29, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-29-343 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 317 of the 2019 Montana Administrative Register, Issue Number 6.

2. The department held a public hearing in Helena on April 19, 2019, at which no members of the public commented on the proposed rule action. One written comment was submitted to the department during the public comment period.

3. The department has thoroughly considered the comment received. A summary of the comment and the department's response are as follows:

COMMENT 1: A commenter questioned why the department did not include coaching as part of the chronic pain and complex regional pain syndrome portions of the utilization and treatment guidelines. The commenter submitted references to demonstrate that there is good evidence that coaching is an effective tool in the treatment of chronic pain.

RESPONSE 1: The department has reviewed the references submitted by the commenter and discussed the issue with a physician who consults with the department on such matters. The department concludes that there is suitable evidence to conclude that coaching is an additional tool that can be appropriate in the management of chronic pain, and has amended the utilization and treatment guideline publication accordingly. The text of the added material is shown below:

"Based on the biopsychosocial model for chronic pain and on the distributed learning model for knowledge acquisition and skills development, the Comprehensive Telephonic Pain Self-Management Coaching Program (CTPSCP) is designed to help patients develop the skills necessary to effectively manage their pain and to increase their level of function. The program includes components of pain education and pain self-management skills training along with stress management and emotional coping skills training. In addition, CTPSCP also provides health education and health behavior change guidance and support, goal-setting guidance, and self-monitoring tools. Problem-solving, assertiveness skills training, social and emotional support, accountability, and career guidance are also provided and integrated. All CTPSCP services are delivered telephonically in a synchronous (i.e., teleclasses,

support groups, group coaching, and individual coaching) and asynchronous manner (i.e., confidential voicemail, e-mail, and texting with supportive messages and reminders). This allows participants to receive assistance at home without a need for expensive equipment, a substantial time commitment, or travel. The goal of a CTPSCP is to foster patient empowerment by encouraging participants to progressively and efficiently assume an active role in their own pain management and self-care. All CTPSCP's "Pain-to-Wellness Coaches" (P2WCs) must be credentialed by a coach training program accredited by the National Board for Health and Wellness Coaches. CTPSCP is not designed to diagnose or treat any medical conditions. It is meant only to function as an adjunctive intervention, concurrent with the treatments delivered by the patient's medical providers. Prior to participation in a CTPSCP, medical approval of the care plan by the authorized treating physician and authorization by the insurer are required. CTPSCP Participant Criteria are included below:

- A diagnosis of chronic pain.
- Basic level of literacy to understand educational presentations and written materials, and to effectively engage in goal-setting.
- Basic motivation to increase the level of functioning and engage in productive work-related activities.
- Access to a telephone line and ability to interact telephonically.
- Ability to interact socially in a respectful, positive, and constructive manner (i.e., anger issues under control and avoidance of inappropriate language, insults, or threats).
- No active psychosis, active suicidality, or moderate cognitive impairment.
- Participation in an initial assessment and agreement to sign the participation agreement."

The added text shown above will be inserted into the guideline's chapters on chronic pain and complex regional pain.

4. The department has amended ARM 24.29.1611 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 11, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.29.1433, 24.29.1534, and)
24.29.1538, pertaining to medical fee)
schedules for workers' compensation)
purposes)

TO: All Concerned Persons

1. On April 12, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-29-345 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 390 of the 2019 Montana Administrative Register, Issue Number 7.

2. The department held a public hearing in Helena on May 6, 2019, at which no members of the public commented on the proposed rule actions. No written comments were submitted to the department during the public comment period.

3. The department has amended ARM 24.29.1433, 24.29.1534, and 24.29.1538 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 11, 2019.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.30.102 and the repeal of	)	REPEAL
ARM 24.30.105, 24.30.106, and)	
24.30.107 pertaining to occupational)	
safety and health rules for public)	
sector employers)	

TO: All Concerned Persons

1. On March 29, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-30-344 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 320 of the 2019 Montana Administrative Register, Issue Number 6.

2. The department held a public hearing in Helena on April 19, 2019, at which no members of the public commented on the proposed rule actions. No written comments were submitted to the department during the public comment period.

3. The department has amended ARM 24.30.102 as proposed.

4. The department has repealed ARM 24.30.105, 24.30.106, and 24.30.107 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 11, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.171.401 fees, 24.171.408)
outfitter records, 24.171.412 safety)
and first aid provisions, 24.171.509)
insurance for outfitters, and)
24.171.602 guide license)

TO: All Concerned Persons

1. On March 15, 2019, the Board of Outfitters (board) published MAR Notice No. 24-171-39 regarding the public hearing on the proposed amendment of the above-stated rules, at page 280 of the 2019 Montana Administrative Register, Issue No. 5.

2. On April 9, 2019, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the April 12, 2019 deadline.

3. The board has amended ARM 24.171.401, 24.171.408, 24.171.412, 24.171.509, and 24.171.602 exactly as proposed.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 11, 2019.

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) NOTICE OF AMENDMENT
ARM 36.21.634 and 36.21.638)
regarding the Location of Wells)

TO: All Concerned Persons

1. On December 21, 2018, the Board of Water Well Contractors (board) of the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-194 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2494 of the 2018 Montana Administrative Register, Issue Number 24. On January 25, 2019, the board published a notice of change of hearing date and extension of comment period on the proposed amendment at page 111 of the 2019 Montana Administrative Register, Issue Number 2.

2. The department has amended ARM 36.21.634 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.21.638 LOCATION OF WELLS (1) remains as proposed.

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

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

(c) 1,000 feet of regulated sewage ~~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 as proposed.

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

COMMENT 1: The commenter understands the need for setback rules, but believes the proposed rules to be excessive, especially where zero-discharge permits such as animal stockwater or dairy feedlots are concerned. The commenter cited setback distances in other states with different hydrogeology and recommended reducing the distance to those of comparable neighboring states.

COMMENT 2: The commenter noted that the bill hearings precipitating this proposed amendment discussed setbacks between 100 and 500 feet, and the

commenter's organization would not have supported the bill had it been their understanding that the new setbacks would be 1,000 feet. The commenter understands the need for consistency between DNRC and Department of Environmental Quality (DEQ) rules where applicable. The commenter proposed changing the language to distinguish between regulated and unregulated sewage lagoons.

COMMENT 3: The commenter expressed concern that the 1,000 ft. setback is far too large an area to be reasonable in many cases.

RESPONSE TO COMMENTS 1-3: The board and the department agree with the comments insofar as the concern for the setback distance being greater than necessary in some cases. The language has been amended as suggested by Commenter 2 to distinguish between sewage lagoons regulated by DEQ and unregulated sewage lagoons, to allow greater flexibility in determining setback distance.

/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 June 11, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.36.604 pertaining to)
updating the federal poverty index)
guidelines for the Montana)
telecommunications access program)
(MTAP))

TO: All Concerned Persons

1. On May 10, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-883 pertaining to the proposed amendment of the above-stated rule at page 529 of the 2019 Montana Administrative Register, Issue Number 9.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. The department will apply the rule amendment retroactively to February 1, 2019. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2019.

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 December 31, 2018. This table includes notices in which those rules adopted during the period December 21, 2018, through June 7, 2019, 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 December 31, 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 or 2019 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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Nonsteroidal Anti-Inflammatory Agents Protocols - Antispasmodic
Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol
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(Board of Outfitters)

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(Board of Professional Engineers and Professional Land Surveyors)

24-183-43 Definitions - Fee Schedule - Teaching of Advanced Engineering
Subjects in Montana - Certificate of Authorization - Applications -
Exhibits of Land Surveying Projects - Comity for Professional
Engineers and for Professional Land Surveyors - Classification of
Land Surveying Experience - Continuing Professional Competence-
Continuing Education - Unprofessional Conduct, p. 13, 635

(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
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(Board of Realty Regulation)

- 24-210-45 Fee Schedule - Applications for Examination and License in General–
Broker and Salesperson - New Licensee Mandatory Continuing
Education–Salespersons - Continuing Real Estate Education -
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(Board of Respiratory Care Practitioners)

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(Board of Behavioral Health)

- 24-219-32 Renewal Dates and Requirements - Military Training or Experience -
Continuing Education Procedures and Documentation - Procedural
Rules - Fee Schedules - Continuing Education Requirements -
Accreditation and Standards - Reporting Requirements - Continuing
Education Noncompliance, p. 20, 339
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Clinic, p. 112, 343
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37-879 Low Income Weatherization Assistance Program (LIWAP), p. 331, 545

- 37-881 Healthy Montana Kids (HMK) Dental Benefits, p. 335, 546
- 37-882 Nursing Facility Reimbursement, p. 631
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(Commissioner of Political Practices)

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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 May 2019 appear. Potential vacancies from July 1, 2019 through September 30, 2019, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2019.

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 MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Aeronautics			
Mr. John Maxness	Governor	Edwards	5/31/2019
Helena			1/1/2023
Qualifications (if required): Active fixed base operator			
Board of County Printing			
Commissioner Carol Brooker	Governor	Reappointed	5/31/2019
Thompson Falls			4/1/2021
Qualifications (if required): County Commissioner			
Mr. David McCumber	Governor	Reappointed	5/31/2019
Butte			4/1/2021
Qualifications (if required): Member of the printing industry			
Commissioner Laura Obert	Governor	Reappointed	5/31/2019
Townsend			4/1/2021
Qualifications (if required): County Commissioner			
Mr. Roger Wagner	Governor	Reappointed	5/31/2019
Nashua			4/1/2021
Qualifications (if required): Member of the general public			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hail Insurance			
Mr. James Schillinger	Governor	Reappointed	5/1/2019
Circle			5/1/2022
Qualifications (if required):	Member		
Board of Medical Examiners			
Dr. Gina Painter	Governor	Thomas	5/31/2019
Great Falls			9/1/2022
Qualifications (if required):	Podiatrist Doctor of Medicine		
Board of Private Security			
Mr. Darren Bayliss	Governor	None Stated	5/31/2019
Billings			8/1/2021
Qualifications (if required):	Contract Security Company		
Mr. Charles Pesola	Governor	Mangan	5/31/2019
Somers			8/1/2021
Qualifications (if required):	Licensed private investigator		
Coal Board			
Mr. Sean Smith	Governor	Frederickson	5/31/2019
Anaconda			1/1/2021
Qualifications (if required):	District 1		

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Equal Pay for Equal Work Task Force			
Director Tara Rice Helena	Governor	Haxby-Cote	5/31/2019 4/1/2020
Qualifications (if required): Co-Chair			
Dr. Susan Wolff Great Falls	Governor	Bodner	5/31/2019 4/1/2020
Qualifications (if required): Higher Education			
Montana Forest Action Advisory Council			
Mr. Mark Aagenes Helena	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Conservation Organizations			
Mr. Fred Bicha Kalispell	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Other relevant partners			
Commissioner Carol Brooker Thompson Falls	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local and tribal governments			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Forest Action Advisory Council Cont.			
Ms. Jodi Bush	Governor	None Stated	5/20/2019
Helena			9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Mr. Tony Colter	Governor	None Stated	5/20/2019
Deer Lodge			9/15/2020
Qualifications (if required): Forest products industry			
Mr. Tom DeLuca	Governor	None Stated	5/20/2019
Missoula			9/15/2020
Qualifications (if required): Other relevant partners			
Mr. Jim Durglo	Governor	None Stated	5/20/2019
Saint Ignatius			9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Ms. Erin Farris-Olsen	Governor	None Stated	5/20/2019
Helena			9/15/2020
Qualifications (if required): Collaborative and Watershed Councils			
Ms. Sonya Germann	Governor	None Stated	5/20/2019
Missoula			9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Forest Action Advisory Council Cont.			
Mr. Tony Harwood Polson	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Other relevant partners			
Mr. Steve Hedstrom Raynesford	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Conservation Districts			
Mr. Blake Henning Missoula	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Conservation organizations			
Mr. Donato Judice Billings	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Mr. Tim Love Missoula	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Collaborative and Watershed Councils			
Ms. Leanne Marten Missoula	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Forest Action Advisory Council Cont.			
Director Shaun McGrath Helena	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Ms. Holly McKenzie Columbia Falls	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Private landowners			
Mr. Jeff Mow West Glacier	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Mr. Pete Nelson Bozeman	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Conservation organization			
Commissioner Mark Peck Libby	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Mr. Jack Rich Seeley Lake	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Other relevant partners			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Forest Action Advisory Council Cont.			
Mr. Gordy Sanders	Governor	None Stated	5/20/2019
Seeley Lake			9/15/2020
Qualifications (if required):	Forest products industry		
Mr. Jeff Schmidt	Governor	None Stated	5/20/2019
Red Lodge			9/15/2020
Qualifications (if required):	Recreation and tourism members		
Mr. Tom Schultz	Governor	None Stated	5/20/2019
Coeur d'Alene, ID			9/15/2020
Qualifications (if required):	Forest products industry		
Mr. Cameron Sholly	Governor	None Stated	5/20/2019
Yellowstone National Park			9/15/2020
Qualifications (if required):	Federal, state, local, and tribal governments		
Mr. Land Tawney	Governor	None Stated	5/20/2019
Missoula			9/15/2020
Qualifications (if required):	Conservation organizations		
Mr. John Todd	Governor	None Stated	5/20/2019
Bozeman			9/15/2020
Qualifications (if required):	Conservation organizations		

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Forest Action Advisory Council Cont.			
Mr. Jason Todhunter Harlowton	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Forest products industry			
Ms. Darcie Warden Bozeman	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Conservation Organizations			
Mr. Tom Watson Bozeman	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Director Martha Williams Helena	Governor	None Stated	5/20/2019 9/15/2020
Qualifications (if required): Federal, state, local, and tribal governments			
Petroleum Tank Release Compensation Board			
Ms. Gretchen Rupp Bozeman	Governor	Corson	5/31/2019 7/1/2021
Qualifications (if required): General public			

EXECUTIVE BRANCH APPOINTEES FOR MAY 2019

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Compensation Fund Board of Directors			
Mr. Jack Edward Owens	Governor	Reappointed	5/1/2019
Missoula			5/1/2023
Qualifications (if required): Private Enterprise			
Ms. Janice S. VanRiper	Governor	Reappointed	5/1/2019
Helena			5/1/2023
Qualifications (if required): Policy Holder and Private Enterprise			
Statewide Public Safety Communications System Advisory Council			
Mr. Raph Graybill	Governor	Smillie	5/31/2019
Helena			7/1/2019
Qualifications (if required): Representative of the Governor's Office			

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
9-1-1 Advisory Council		
Mr. Geoffrey Feiss, Helena Qualifications (if required): Representative of Montana Telecommunications Providers	Governor	9/1/2019
Chief Mike Doto, Butte Qualifications (if required): Representative of the Montana State Volunteer Firefighter 's Assoc.	Governor	9/1/2019
Administrator Delila Bruno, Fort Harrison Qualifications (if required): Representative of the Department of Military Affairs	Governor	9/1/2019
Captain Curtis Stinson, Helena Qualifications (if required): Representative of the Montana Association of Chiefs of Police	Governor	9/1/2019
Col. Thomas Butler, Helena Qualifications (if required): Representative of the Dept. of Justice, Montana Highway Patrol	Governor	9/1/2019
Ms. Lisa Kelly, Kalispell Qualifications (if required): Representative of Montana Telecommunications Providers	Governor	9/1/2019
Commissioner Gary A. Macdonald, Wolf Point Qualifications (if required): Representative of the Montana Assoc. of Counties	Governor	9/1/2019
Mr. Timothy Bottenfield, Helena Qualifications (if required): Dept. of Administration Director or Designee, Presiding Officer	Governor	9/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Achieving a Better Life Experience (ABLE) Program Oversight Committee		
Ms. Theresa Louise Baldry, Miles City Qualifications (if required): Experience working on behalf of disabled individuals	Governor	9/1/2019
Director Sheila Hogan, Helena Qualifications (if required): Director of the Department of Administration or designee	Governor	9/1/2019
Ms. Novelene Martin, Miles City Qualifications (if required): Director of the Department of Public Health and Human Services or designee	Governor	9/1/2019
Alternative Health Care Board		
Dr. Sandy Shepherd, Missoula Qualifications (if required): Montana physician whose practice includes obstetrics	Governor	9/1/2019
Board of Funeral Service		
Ms. Donna Amaro, Helena Qualifications (if required): Licensed Mortician	Governor	7/1/2019
Board of Hearing Aid Dispensers		
Ms. Helen Hallenbeck, Missoula Qualifications (if required): Licensed Hearing Aid Dispenser	Governor	7/1/2019
Board of Nursing		
Ms. Joyce C. Dombrowski, Missoula Qualifications (if required): Registered nurse	Governor	7/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Nursing Cont.		
Ms. Laureli Scribner, Roundup Qualifications (if required): Advanced practice registered nurse	Governor	7/1/2019
Ms. Sarah M. Spangler, Havre Qualifications (if required): Registered Nurse	Governor	7/1/2019
Board of Pharmacy		
Ms. Rebecca H. Deschamps, Missoula Qualifications (if required): Licensed Pharmacist	Governor	7/1/2019
Ms. Starla Blank, Helena Qualifications (if required): Licensed Pharmacist	Governor	7/1/2019
Dr. Paul Brand, Florence Qualifications (if required): Licensed Pharmacist	Governor	7/1/2019
Board of Physical Therapy Examiners		
Ms. Jennifer Lynn Lorengo, Deer Lodge Qualifications (if required): Physical Therapist	Governor	7/1/2019
Board of Private Security		
Mr. Dirk Bauwens, Billings Qualifications (if required): Electronic security company	Governor	8/10/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Professional Engineers and Professional Land Surveyors		
Mr. M. Ruhul Amin, Bozeman Qualifications (if required): Instructor Professional Engineer (Mechanical)	Governor	7/1/2019
Mr. Raymond Gross, Dillon Qualifications (if required): Professional and Practicing Land Surveyor	Governor	7/1/2019
Mr. Thomas D. Pankratz, Clancy Qualifications (if required): Professional Engineer (Electric)	Governor	7/1/2019
Board of Psychologists		
Dr. James Murphey, Bozeman Qualifications (if required): Licensed Psychologist	Governor	9/1/2019
Dr. Paul Silverman, Missoula Qualifications (if required): Licensed Psychologist	Governor	9/1/2019
Board of Radiologic Technologists		
Mr. Mike Nielsen, Billings Qualifications (if required): Radiologic Assistant or Radiologic Practitioner Assistance	Governor	7/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Review		
Commissioner Galen Hollenbaugh, Helena	Governor	7/27/2019
Qualifications (if required): Commissioner of the Department of Labor and Industry		
Board of Sanitarians		
Mrs. Stephanie Jean Ler, Sidney	Governor	7/1/2019
Qualifications (if required): Registered sanitarian		
Board of Veterans Affairs		
Mr. David E. Boyd Sr, Poplar	Governor	8/1/2019
Qualifications (if required): Tribal member honorably discharged veteran		
Mr. William Willing, Anaconda	Governor	8/1/2019
Qualifications (if required): Training education or experience related to veterans' issues		
Mr. Shawn Backbone, Crow Agency	Governor	8/1/2019
Qualifications (if required): Tribal government representative		
Mr. Richard A. Juvik, Helena	Governor	8/1/2019
Qualifications (if required): Honorably discharged veteran who serves as a representative of veterans at large		

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Veterinary Medicine		
Mr. Paul W. McCann, Havre Qualifications (if required): Licensed Veterinarian	Governor	8/1/2019
Burial Preservation Board		
Mr. Tom Escarcega, Poplar Qualifications (if required): Representative of the Fort Peck Assiniboine & Sioux Tribes	Governor	9/1/2019
Ms. Skye Gilham, Cut Bank Qualifications (if required): Physical anthropologist	Governor	9/1/2019
Dr. Stan Wilmoth, Helena Qualifications (if required): Representative of the Montana state historical preservation officer	Governor	9/1/2019
Commission on Community Service		
Mr. Kevin Myhre, Lewistown Qualifications (if required): Business representative	Governor	7/1/2019
Ms. Heather Margolis, Helena Qualifications (if required): National Service Program	Governor	7/1/2019
Ms. Wendy Nicolai, Helena Qualifications (if required): Public member	Governor	7/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Committee on Telecommunications Access Services for Persons with Disabilities		
Ms. Chanda Hermanson-Dudley, Helena Qualifications (if required): Representative of the Dept. of Public Health and Human Services	Governor	7/1/2019
Mr. Ron Bibler, Great Falls Qualifications (if required): Person with disability, deaf, or hard-of-hearing	Governor	7/1/2019
Mr. Jim Marks, Helena Qualifications (if required): Member from the Department of Public Health and Human Services	Governor	7/1/2019
Mr. John Pavao, Helena Qualifications (if required): Member from the Department of Administration	Governor	7/1/2019
Mr. Thomas Henry Thompson, Missoula Qualifications (if required): Person with disability	Governor	7/1/2019
Community Service Commission		
Ms. Julia Bryant, Helena Qualifications (if required): Public Representative	Governor	7/1/2019
Ms. Amy Unsworth, Helena Qualifications (if required): State Agency Representative	Governor	7/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Criminal Justice Oversight Council		
Ms. Melissa Kelly, Bozeman Qualifications (if required): Represents a prerelease center	Governor	8/2/2019
Ms. Majel Russell, Billings Qualifications (if required): Montana Tribal Member with expertise in criminal justice	Governor	8/2/2019
Ms. Robin Turner, Helena Qualifications (if required): Representative of crime victims	Governor	8/2/2019
Ms. Amy Tenney, Helena Qualifications (if required): Representative of crime victims	Governor	8/2/2019
Economic Development Advisory Council		
Mr. Paul Tuss, Havre Qualifications (if required): Bear Paw Development Corporation Region Representative	Governor	7/1/2019
Mr. Mike Henning, Fairfield Qualifications (if required): Sweetgrass Development Region Representative	Governor	7/1/2019
Mr. Joseph J. Willauer, Butte Qualifications (if required): Headwaters Resources Conservation & Development Region	Governor	7/1/2019
Director Pam Haxby-Cote, Helena Qualifications (if required): Headwaters Resource Conservation and Development Region Representative	Governor	7/1/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Education Savings Program Oversight Committee		
Mr. Tony Ennenga, Missoula	Governor	7/1/2019
Qualifications (if required): Member of the general public		
Future Fisheries Review Panel		
Mr. Terry Chute, Helena	Governor	7/1/2019
Qualifications (if required): Member with expertise in silviculture		
Mr. Clinton Frederick Peck, Billings	Governor	7/1/2019
Qualifications (if required): Representative of conservation districts		
Mr. Michael Paul Johns, Bozeman	Governor	7/1/2019
Qualifications (if required): Member who is a licensed angler		
Mr. William Frank Wichers, Hamilton	Governor	7/1/2019
Qualifications (if required): Member with expertise in fisheries		
Ms. Karin Fischer Boyd, Bozeman	Governor	7/1/2019
Qualifications (if required): Private sector member who is a fisheries restoration professional		
Mr. Charles E. Dalby, Helena	Governor	7/1/2019
Qualifications (if required): Public member		
Mr. Bill Semmens, Helena	Governor	7/1/2019
Qualifications (if required): Ex-officio member MDT with experience in highway impacts mitigation		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Future Fisheries Review Panel Cont.		
Mr. Joseph Willauer, Butte Qualifications (if required): Member who is a licensed Montana angler	Governor	7/1/2019
Ms. Meriwether Schroeer-Smith, Helena Qualifications (if required): Montana High School Student	Governor	7/11/2019
Governor's Advisory Council on Aging		
Ms. Joan Taylor, Helena Qualifications (if required): Public Member	Governor	7/1/2019
Ms. Marianne Roose, Eureka Qualifications (if required): Public Member	Governor	7/1/2019
Ms. Connie Bremner, Browning Qualifications (if required): Public Member	Governor	7/1/2019
Mr. Alex Ward, Helena Qualifications (if required): Public Member	Governor	7/1/2019
Governor's Postsecondary Scholarship Advisory Council		
Ms. Connie Wittak, Flaxville Qualifications (if required): Experience in secondary or postsecondary education	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Groundwater Assessment Steering Committee		
Representative Walt Sales, Manhattan	Governor	7/1/2019
Qualifications (if required): Agriculture Water User		
Mr. Mark Thompson, Butte	Governor	7/1/2019
Qualifications (if required): Industrial Water User		
Historical Society Board of Trustees		
Mr. Michael Gerard Shields, Helena	Governor	7/1/2019
Qualifications (if required): Public Representative		
Interstate Commission on Educational Opportunity for Military Children		
Colonel Harold Stearns, Missoula	Governor	7/1/2019
Qualifications (if required): Compact Commissioner		
Ms. Tammy Lacey, Fairfield	Governor	7/1/2019
Qualifications (if required): Superintendent of School District that includes High Concentration of Military Children		
Superintendent Denise Juneau, Helena	Governor	7/1/2019
Qualifications (if required): Superintendent of Public Instruction		
Master Sergeant Benjamin Aylward, Great Falls	Governor	7/1/2019
Qualifications (if required): Representative of a Military Installation		
Major Renea Dorvall, Fort Harrison	Governor	7/1/2019
Qualifications (if required): Representative of the Executive Branch of Government		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Judicial Standards Commission		
Brianne Dugan, Bozeman	Governor	7/1/2019
Qualifications (if required): Citizen who is not an attorney or judge of any court		
Ms. Jenny Eck, Helena	Governor	7/1/2019
Qualifications (if required): Citizen		
Libby Asbestos Superfund Advisory Team		
Mr. George Frank Jamison, Libby	Governor	7/1/2019
Qualifications (if required): Citizen of Lincoln County nominated by the Lincoln County Commission		
Mental Health Ombudsman		
Mr. Dennis Nyland, Helena	Governor	8/1/2019
Qualifications (if required): Mental Health Ombudsman		
Montana Achieving a Better Life Experience (ABLE) Program Oversight Committee		
Director John Lewis, Helena	Governor	9/1/2019
Qualifications (if required): Director of the Department of Administration		
Montana Agriculture Development Council		
Commissioner Greg Jergeson, Chinook	Governor	7/1/2019
Qualifications (if required): Public representative who is or was actively engaged in agriculture		
Ms. Amy Kellogg, Kalispell	Governor	7/1/2019
Qualifications (if required): Public representative who is or was actively engaged in agriculture		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Criminal Justice Oversight Council Ms. Annette Carter Farley, Helena Qualifications (if required): Member of the Board of Pardons and Parole	Governor	8/2/2019
Montana Historical Society Board of Trustees Mr. Jim Court, Billings Qualifications (if required): Public Representative	Governor	7/1/2019
Mr. Jim Utterback, Helena Qualifications (if required): Public Representative	Governor	7/1/2019
Mr. A. Christopher Edwards, Billings Qualifications (if required): Public Representative	Governor	7/1/2019
Montana Poet Laureate Mr. Lowell Jaeger, Bigfork Qualifications (if required): Poet Laureate	Governor	8/1/2019
Montana State Workforce Innovation Board Director Sheila Hogan, Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	7/27/2019
Mr. Alan Daniel Ekblad, Great Falls Qualifications (if required): Workforce Representative	Governor	7/27/2019

EXECUTIVE BRANCH VACANCIES – JULY 1, 2019 THROUGH SEPTEMBER 30, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana State Workforce Innovation Board Cont.		
Ms. Vicky Rae Byrd, Clancy Qualifications (if required): Workforce Representative	Governor	7/27/2019
Mr. Paul Hopfauf, Glendive Qualifications (if required): Business Representative	Governor	7/27/2019
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Commissioner of the Department of Labor and Industry	Governor	7/27/2019
Ms. Karen Baumgart, Billings Qualifications (if required): Community Organization	Governor	7/27/2019
Ms. Jacquie Helt, Helena Qualifications (if required): Workforce Representative	Governor	7/27/2019
Mr. Miles McCarvel, Missoula Qualifications (if required): Workforce Representative	Governor	7/27/2019
Mr. Barry Reddick, Helena Qualifications (if required): Business Representative	Governor	7/27/2019
Ms. Rebecca Morgan, Missoula Qualifications (if required): Business Representative	Governor	7/27/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Motorcycle Safety Advisory Committee		
Mrs. Lori Ann Balcer, Shepherd Qualifications (if required): Motorcycle rider representing motorcycle riding groups	Governor	7/1/2019
Ms. Kristin Kennedy, Sidney Qualifications (if required): Motorcycle riders representing motorcycle riding groups	Governor	7/1/2019
Sergeant Richard Dean Musson Jr., Bozeman Qualifications (if required): Peace officer	Governor	7/1/2019
Noxious Weed Management Advisory Council		
Mr. Jack Eddie, Dillon Qualifications (if required): Representative of the Montana Weed Control Association	Governor	7/1/2019
Mr. Todd Wagner, Glasgow Qualifications (if required): Agriculture Crop Production	Governor	7/1/2019
Mr. Jim Gordon, Huntley Qualifications (if required): Herbicide Dealer or Applicator	Governor	7/1/2019
Ms. Linda Eklund, Shawmut Qualifications (if required): Livestock Production	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Noxious Weed Management Advisory Council Cont.		
Mr. Joel Farkell, Brady Qualifications (if required): Consumer Group	Governor	7/1/2019
Ms. Jeannette Nordahl, Lincoln Qualifications (if required): Recreationist/Wildlife Group	Governor	7/1/2019
Mr. Brian Ostwald, Joliet Qualifications (if required): Eastern County Representative	Governor	7/1/2019
Director Ben Thomas, Helena Qualifications (if required): Director of the Department of Agriculture and Presiding Officer	Governor	7/1/2019
Ms. Margie Edsall, Alder Qualifications (if required): At-Large Member from the Agriculture Community	Governor	7/1/2019
Mr. Kenny Kever, Havre Qualifications (if required): Biological Research and Control Interests	Governor	7/1/2019
Ms. Kellieann Morris, Stevensville Qualifications (if required): Western County Representative	Governor	7/1/2019
Noxious Weed Seed Free Forage Advisory Council		
Mr. David Wichman, Moccasin Qualifications (if required): MSU Agriculture Research Center	Governor	9/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Noxious Weed Seed Free Forage Advisory Council Cont.		
Mr. James Melin, Livingston Qualifications (if required): Forage Producer Representative	Governor	9/1/2019
Mr. Carter Butori, Dillon Qualifications (if required): Forage Producer	Governor	9/1/2019
Mr. Bob Rangitsch, Ovando Qualifications (if required): Livestock/Agriculture	Governor	9/1/2019
Director Ben Thomas, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	9/1/2019
Ms. Margie Edsall, Virginia City Qualifications (if required): Rep. cty weed dist forage cert.	Governor	9/1/2019
Mr. Joe Lockwood, Billings Qualifications (if required): Rep. cty weed dist forage cert., MT Weed Control Assn and from diff. areas of state	Governor	9/1/2019
Ms. Jane Mangold, Bozeman Qualifications (if required): Montana State University-Bozeman Extension Service	Governor	9/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Noxious Weed Seed Free Forage Advisory Council Cont.		
Mr. Vince Muggli, Miles City Qualifications (if required): Feed/Pellet/Cube Representative	Governor	9/1/2019
Mr. Chuck Miller, Hamilton Qualifications (if required): Forage Producer Representative	Governor	9/1/2019
Mr. Larry Dorn, Hardin Qualifications (if required): Forage Producer Representative	Governor	9/17/2019
Mr. Wade Durham, Cameron Qualifications (if required): Outfitter/Guide	Governor	9/17/2019
Petroleum Tank Release Board		
Mr. Jerry M. Breen, Choteau Qualifications (if required): Representative of Independent Petroleum Marketers and Chain Retailers	Governor	7/1/2019
Mr. Keith Schnider, Great Falls Qualifications (if required): Insurance Industry Representative	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Petroleum Tank Release Board Cont.		
Mr. Mark Allen Johnson, Bozeman	Governor	7/1/2019
Qualifications (if required): Representative of the Petroleum Release Remediation Consultant Industry		
Private Land Public Wildlife Committee		
Representative Duane Ankney, Colstrip	Governor	8/1/2019
Qualifications (if required): Landowner and Legislator		
Mr. Richard Louis Stuker, Chinook	Governor	8/1/2019
Qualifications (if required): Landowner		
Representative Denley Loge, St. Regis	Governor	8/1/2019
Qualifications (if required): Landowner and Legislator		
Representative Zach Brown, Bozeman	Governor	8/1/2019
Qualifications (if required): Sportsperson and Legislator		
Mr. Edward Beall, Helena	Governor	8/1/2019
Qualifications (if required): Sportsperson		
Mr. Ralph E. Bukoskey, Rosebud	Governor	8/1/2019
Qualifications (if required): Sportsperson		
Ms. Cynthia Cohan, Butte	Governor	8/1/2019
Qualifications (if required): Sportsperson		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Private Land Public Wildlife Committee Cont.		
Mr. M. Lee Cornwell, Glasgow Qualifications (if required): Landowner	Governor	8/1/2019
Mr. Dusty Crary, Choteau Qualifications (if required): Outfitter	Governor	8/1/2019
Mr. Daniel R. Fiehrer, Helena Qualifications (if required): Sportsperson	Governor	8/1/2019
Mr. William Geer, Lolo Qualifications (if required): Sportsperson	Governor	8/1/2019
Mr. Joe L. Perry, Brady Qualifications (if required): Sportsperson	Governor	8/1/2019
Mr. Carl Zabrocki, Billings Qualifications (if required): Sportsperson	Governor	8/1/2019
Public Defender Commission		
Mr. Richard Gillespie, Helena Qualifications (if required): Attorney nominated by the State Bar Association who represents criminal defense lawyers	Governor	7/1/2019
Ms. Margaret Novak, Chester Qualifications (if required): Member of an organization that advocates on behalf of indigent persons	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Public Defender Commission Cont.		
Mr. Michael Metzger, Billings	Governor	7/1/2019
Qualifications (if required): Member employed by an organization that provides addictive behavior counseling		
Mr. Brian Gallik, Bozeman	Governor	7/1/2019
Qualifications (if required): Attorney nominated by the Supreme Court		
State Banking Board		
Mr. Bart Langemeier, Red Lodge	Governor	7/1/2019
Qualifications (if required): Active officer of a national bank doing business in Montana		
Ms. Amy Rapp, Great Falls	Governor	7/1/2019
Qualifications (if required): Member of the public		
State Electrical Board		
Mr. Rick Hutchinson, Black Eagle	Governor	7/1/2019
Qualifications (if required): Licensed Electrician		
State Tribal Economic Development Commission		
Mr. Carl Kipp, Browning	Governor	7/1/2019
Qualifications (if required): Blackfeet National Alternate Member		
State Workforce Innovation Board		
Ms. Asta So, Missoula	Governor	7/1/2019
Qualifications (if required): Business Representative		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board Cont.		
Commissioner Michael McGinley, Dillon Qualifications (if required): Local government elected official	Governor	7/27/2019
Commissioner Pam Bucy, Helena Qualifications (if required): Representative of the Department of Labor and Industry	Governor	7/27/2019
Mr. Kevin Phillip Joseph Poulin, Helena Qualifications (if required): Business Representative	Governor	7/27/2019
Superintendent Elsie Arntzen, Helena Qualifications (if required): Superintendent of Public Instruction or designee	Governor	7/27/2019
Mr. Clayton Christian, Helena Qualifications (if required): Representative of the Office of the Commissioner of Higher Education	Governor	7/27/2019
Ms. Jennifer Kobza, Billings Qualifications (if required): Business representative	Governor	7/27/2019
Mr. Loren Rose, Seeley Lake Qualifications (if required): Business representative	Governor	7/27/2019
Mr. Loren Rose, Seeley Lake Qualifications (if required): None Stated	Governor	7/27/2019
Mr. Scott Trent, Missoula Qualifications (if required): Business representative	Governor	7/27/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board Cont.		
Ms. Jane Weber, Great Falls Qualifications (if required): Local government elected official	Governor	7/27/2019
Mr. Ken Fichtler, Helena Qualifications (if required): Governor or designee	Governor	7/27/2019
Mrs. Rebecca Jenice Bey, Billings Qualifications (if required): Business Representative	Governor	7/27/2019
Ms. Jillian Jaye Daniels, Great Falls Qualifications (if required): Business Representative	Governor	7/27/2019
State-Tribal Economic Development Commission		
Mr. Carl Kipp, Browning Qualifications (if required): Blackfeet National Alternate Member	Governor	7/1/2019
Chairman Harry Barnes, Browning Qualifications (if required): Blackfeet Nation Representative	Governor	7/1/2019
Statewide Public Safety Communications System Advisory Council		
Atty. Gen. Tim Fox, Helena Qualifications (if required): Attorney General	Governor	7/1/2019
Commissioner Joe Briggs, Great Falls Qualifications (if required): Representative of county government	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Statewide Public Safety Communications System Advisory Council Cont.		
Ms. Siri Smillie, Helena Qualifications (if required): Representative of the Governor's Office	Governor	7/1/2019
Mr. Robert DesRosier, Browning Qualifications (if required): Representative of tribal governments	Governor	7/1/2019
Mr. Clinton Loss, Helena Qualifications (if required): Representative of the emergency medical community	Governor	7/1/2019
Mr. Tim Burton, Helena Qualifications (if required): Rep. of a municipality, designated by the Montana league of cities and towns	Governor	7/1/2019
Sheriff Chuck Curry, Kalispell Qualifications (if required): Representative of the law enforcement community	Governor	7/1/2019
Ms. Marjean Penny, Bozeman Qualifications (if required): Rep. of the assoc. of pub-safety communications officials, designated by the MT chapter	Governor	7/1/2019
Chief Joshua Lee Waldo, Bozeman Qualifications (if required): Representative of the fire protection community	Governor	7/1/2019
Mr. Raph Graybill, Helena Qualifications (if required): Representative of the Governor's Office	Governor	7/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Teachers' Retirement Board		
Mr. Daniel Trost, Helena	Governor	7/1/2019
Qualifications (if required): Representative of the Public		
Tourism Advisory Council		
Ms. Rhonda Fitzgerald, Whitefish	Governor	7/1/2019
Qualifications (if required): Glacier Country Region Representative		
Mr. Bill McGladdery, Butte	Governor	7/1/2019
Qualifications (if required): Southwest Montana Region Representative		
Ms. Katie Marie Grice, Big Sky	Governor	7/1/2019
Qualifications (if required): Yellowstone Country Region Representative		
Ms. Patricia McGlynn, Kalispell	Governor	7/1/2019
Qualifications (if required): Glacier Country Region Representative		
Ms. Rachel Elizabeth Gregg, Missoula	Governor	7/1/2019
Qualifications (if required): Glacier Country Region Representative		
Ms. Lindsey Roth, Kalispell	Governor	7/1/2019
Qualifications (if required): Glacier Country Region Representative		
Underground Facility Protection Advisory Council		
Mr. Douglas Hansen, Billings	Governor	7/1/2019
Qualifications (if required): Owns a MT underground facility that is an electric distribution or transmission line		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Underground Facility Protection Advisory Council Cont.		
Ms. Mandy Nay, Circle	Governor	7/1/2019
Qualifications (if required): Member representing a regional water, wastewater or both authority		
Mr. Nicholas Pericich, Bozeman	Governor	7/1/2019
Qualifications (if required): Member representing a municipal sewer or water system or a municipal water supply system		
Mr. Dale Schultz, Butte	Governor	7/1/2019
Qualifications (if required): Member rep public utility that owns a MT underground facility that is a juris. pipeline		
Mr. John Bemis, Helena	Governor	7/1/2019
Qualifications (if required): Member representing a telecommunications provider		
Upper Clark Fork River Basin Remediation and Restoration Advisory Council		
Mr. James J. Kambich, Butte	Governor	9/1/2019
Qualifications (if required): Citizen voting member		
Director Tom Livers, Helena	Governor	9/1/2019
Qualifications (if required): State government non-voting member		
Mr. William Rossbach, Missoula	Governor	9/1/2019
Qualifications (if required): Citizen voting member		
Director John Tubbs, Helena	Governor	9/1/2019
Qualifications (if required): State government non-voting member		

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council Cont.		
Ms. Katherine Stromberg Eccleston, Anaconda Qualifications (if required): Citizen voting member	Governor	9/1/2019
Ms. Maureen Connor, Philipsburg Qualifications (if required): Citizens voting member	Governor	9/1/2019
Mr. James H. Davison, Anaconda Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Jon Krutar, Ovando Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Mick Ringsak, Butte Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Mark Sweeney, Philipsburg Qualifications (if required): Citizen voting member	Governor	9/1/2019
Director Martha Williams, Helena Qualifications (if required): State government non-voting member	Governor	9/1/2019
Ms. Susan Peterson, Drummond Qualifications (if required): Citizen voting member	Governor	9/1/2019
Mr. Shaun McGrath, Helena Qualifications (if required): None Stated	Governor	9/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Western Interstate Commission on Higher Education		
Mr. Pat Williams, Missoula	Governor	7/1/2019
Qualifications (if required): Engaged in professional occupation		
Ms. Sheila Stearns, Missoula	Governor	7/1/2019
Qualifications (if required): Member who is engaged in a professional occupation		

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SECRETARY OF STATE

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