

# MONTANA ADMINISTRATIVE REGISTER

2019 ISSUE NO. 22  
NOVEMBER 22, 2019  
PAGES 2075-2181



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 ARM ) NOTICE OF PUBLIC HEARING ON  
2.13.407, pertaining to applicant priority ) PROPOSED AMENDMENT  
and criteria for awarding 9-1-1 grants )

TO: All Concerned Persons

1. On December 23, 2019, at 11:30 a.m., the Department of Administration will hold a public hearing in Room 7 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 December 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; Montana Relay Service 711; or e-mail rsullivan@mt.gov.

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

2.13.407 APPLICANT PRIORITY AND CRITERIA FOR AWARDING GRANTS (1) remains the same.

(2) The ~~When evaluating eligible applications for grant funding, after applying the preference in 10-4-306(3), MCA, the department, in consultation with the 9-1-1 Advisory Council, shall evaluate all eligible applications using the following criteria may consider:~~

(a) completeness and effectiveness of the application ~~(20 points maximum)~~. The application must be complete and fully address the requirements in the application form and clearly describe the fulfillment of grant award criteria;

(b) the extent to which the application supports planning, implementation, operation, or maintenance of 9-1-1 systems, 9-1-1 services, or both as provided by 10-4-306(2), MCA, ~~(50 points maximum); and~~

(c) support for the project demonstrated by letters of support from private telecommunications providers, local governments, public safety answering points, and emergency services agencies ~~(30 points maximum);~~

(d) project duration. The department may prioritize projects that require two years or less to complete;

(e) number of applications submitted. The department may prioritize applicants that submit one application over applicants that submit multiple applications in a single grant application cycle;

(f) cost estimate detail. The department may prioritize applications that include a detailed cost estimate, with supporting documentation, that provide a clear justification for the grant funds requested;

(g) equipment and system life cycle. The department may prioritize applications to replace equipment and systems that are at or near end of life or support;

(h) proportion of grant funding requested. The department may prioritize applications that request less than 33% of the total amount of grant funding available during the grant cycle; and

(i) support in the statewide 9-1-1 plan. The department may prioritize applications that address needs identified in the statewide 9-1-1 plan.

(3) The 9-1-1 Advisory Council shall provide grant award recommendations to the department utilizing the criteria provided listed in (2). All grant determinations are made in the department's discretion, in consultation with the 9-1-1 Advisory Council, subject to the statutory preference in 10-4-306(3), MCA. A grant award may be made even if the applicant does not meet all of the criteria listed in (2).

(4) and (5) remain the same.

AUTH: 10-4-108, MCA

IMP: 10-4-106, 10-4-306, MCA

**STATEMENT OF REASONABLE NECESSITY:** The department proposes amending this rule based on input received from the 9-1-1 Advisory Council and stakeholders after completion of the first annual grant cycle implementing the 9-1-1 grant program. During the first grant cycle, the department and 9-1-1 Advisory Council found it challenging to distinguish between applications using the current criteria. It was difficult to identify substantive reasons for reducing an applicant's point total based on the criteria; therefore, many applications received the same number of points. The department and the 9-1-1 Advisory Council also observed that some projects, which may have been more effective in terms of meeting local and statewide 9-1-1 needs, received fewer points than other projects that happened to better fit the current application criteria. This led to concern that the existing criteria did not adequately address the legislative goal to use the grants to improve emergency telecommunications throughout the state.

The department earlier proposed amending ARM 2.13.407 to address these concerns in MAR Notice No. 2-13-592. Due to objections from the State Administration and Veterans' Affairs Interim Committee, the department decided not to proceed with that proposal and to replace it with this rulemaking.

It is necessary to amend the rule to ensure grant criteria are not overly rigid, which could lead to arbitrary decisions and reduce the effectiveness of the grant program. Therefore, the department proposes to remove the numerical point system from the current rule. The department is adding criteria in (2) based on factors the 9-1-1 Advisory Council determined significant after reviewing grant applications during the first grant cycle. The 9-1-1 Advisory Council recommended that these factors be considered in future grant cycles. The department agrees with the 9-1-1 Advisory Council.

The criteria may or may not apply to all applications. An applicant may be awarded a grant even if all the criteria are not met. This flexibility is necessary to allow the 9-1-1 Advisory Council and the department to exercise discretion in awarding grants to achieve the grant program objectives in 10-4-306, MCA. For example, assume a case where the department is reviewing two applications for the last \$10,000 in funding. One applicant meets all criteria while the second satisfies five, but the council believes a greater need would be met for a community or the state if the second applicant received the grant award. The department has proposed the flexibility to address a situation like this.

In addition, the department proposes to add flexibility by amending (3) to allow the department to make an award to a project that will have a significant impact although the project may not meet all criteria adopted in rule. For example, if a major infrastructure improvement project would greatly enhance the 9-1-1 system but required more time than allowed by the criteria, the department could approve the application because it met other criteria and advanced the legislative goal of improving emergency telecommunications. This flexibility will allow the department and 9-1-1 Advisory Council to direct limited grant funds to areas and projects where the grants will have the greatest impact.

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 Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail [rsullivan@mt.gov](mailto:rsullivan@mt.gov), and must be received no later than 5:00 p.m., December 23, 2019.

5. Don Harris, Department of Administration, has been designated to preside over and conduct this hearing.

6. The division 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 Public Safety Communications Bureau 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 listed in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's website at [doa.mt.gov/administrativerules](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.

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

9. The department has determined that under 2-4-111, MCA, the proposed amendment of ARM 2.13.407 will not significantly and directly affect small businesses.

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

By: /s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 12, 2019.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 10.54.1010 pertaining to ) AMENDMENT  
deadlines for applications and annual )  
reports ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. The Board of Public Education (board) proposes to amend 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 December 6, 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 amended provides as follows, new matter underlined, deleted matter interlined:

10.54.1010 DEADLINES FOR APPLICATIONS AND ANNUAL REPORTS

(1) For applications submitted for transformational learning aid ~~in 2019~~, the following deadlines apply:

(a) for fiscal year 2020 annual report submission: February 3 – February 21, 2020;

(b) for fiscal year 2021 opening date for applications: February 3, 2020;

(c) for fiscal year 2021 closing date for applications: February 21, 2020;

(d) for all other fiscal years, the opening date for applications and for submission of annual reports is ~~October 1, 2019~~ the first Monday of December each year; and

(e) the closing date for applications and for submission of annual reports is ~~November 1, 2019~~ the second Monday of January each year following the opening date.

(2) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-1506, 20-7-1602, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-7-1506, 20-7-1602, MCA

REASON: The board proposes to amend the rule to standardize the application and annual report deadlines for both aid programs. 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 annual reports. The deadlines provide a reasonable time for review and qualification of the applications and annual reports 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](mailto:pdonovan@mt.gov), and must be received no later than 5:00 p.m., December 20, 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., December 20, 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, do not apply.

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

/s/ Pete Donovan  
Pete Donovan  
Executive Director  
Board of Public Education

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

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.101 model procedural	)	AMENDMENT
rules	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on December 13, 2019, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.2.101 MODEL PROCEDURAL RULES (1) The Department of Livestock hereby adopts the attorney general's model procedural rules as contained in ARM Title 1, ~~Administrative Rules of Montana and as they may from time to time be~~ amended.

AUTH: 2-4-201, MCA  
IMP: 2-4-201, 2-4-202, MCA

REASON: The department proposes to amend this rule to ensure its compliance with the most current Attorney General's model rules.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., December 20, 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 a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., December 20, 2019.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 based upon the number of individuals interested in rule making by the department.

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.

BY: /s/ Michael S. Honeycutt

Michael S. Honeycutt

Executive Officer

Board of Livestock

Department of Livestock

Certified to the Secretary of State November 12, 2019.

BY: /s/ Cinda Young-Eichenfels

Cinda Young-Eichenfels

Rule Reviewer

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 37.85.204 pertaining to member ) PROPOSED AMENDMENT  
copayment )

TO: All Concerned Persons

1. On December 12, 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 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 December 9, 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:

37.85.204 MEMBER REQUIREMENTS, COST SHARING (1) ~~Except as provided in this rule each member must pay cost share to the provider of service as described below.~~ Effective for claims paid on or after January 1, 2020, members covered under Medicaid or Medicaid Expansion will not be assessed a copayment, as defined in ARM 37.84.102, for any covered service.

~~(2) The cost share applied to a service or item is not to exceed the Medicaid allowed amount.~~

~~(3) A member with income at or below 100% of the federal poverty level (FPL) is responsible for the following copayments:~~

- ~~(a) inpatient hospital—\$75 per discharge;~~
- ~~(b) pharmacy preferred brand drugs—\$4 per prescription;~~
- ~~(c) pharmacy nonpreferred brand drugs—\$8 per prescription;~~
- ~~(d) outpatient hospital services—\$4 per visit;~~
- ~~(e) podiatry services—\$4 per visit;~~
- ~~(f) physical therapy services—\$4 per visit;~~
- ~~(g) speech therapy services—\$4 per visit;~~
- ~~(h) audiology services—\$4 per visit;~~
- ~~(i) hearing aid services—\$4 per visit;~~
- ~~(j) occupational therapy services—\$4 per visit;~~

- ~~(k) home health services—\$4 per visit;~~
- ~~(l) ambulatory surgical center services—\$4 per visit;~~
- ~~(m) public health center services—\$4 per visit;~~
- ~~(n) dental treatment services—\$4 per visit;~~
- ~~(o) denturist services—\$4 per visit;~~
- ~~(p) durable medical equipment—\$4 per visit;~~
- ~~(q) optometric and optician services—\$4 per visit;~~
- ~~(r) professional services—\$4 per visit;~~
- ~~(s) federally qualified health center services—\$4 per visit;~~
- ~~(t) rural health clinic services—\$4 per visit;~~
- ~~(u) dialysis clinic services—\$4 per visit;~~
- ~~(v) independent diagnostic testing facility services—\$4 per visit;~~
- ~~(w) home infusion therapy services—\$4 per therapy;~~
- ~~(x) mental health clinic services—\$4 per visit; and~~
- ~~(y) chemical dependency services—\$4 per visit~~
- ~~(4) A member with income above 100 percent of the FPL, except as noted in (a) and (b) is responsible for cost share of 10% of the provider reimbursed amount. A member is responsible for cost share for outpatient pharmacy services as follows:~~
  - ~~(a) preferred brand drugs—\$4 per prescription;~~
  - ~~(b) nonpreferred brand drugs—\$8 per prescription.~~
- ~~(5) Members with the following statuses are exempt from cost sharing:~~
  - ~~(a) persons under 21 years of age;~~
  - ~~(b) pregnant women;~~
  - ~~(c) American Indians/Alaska Natives who are eligible for, currently receiving, or have ever received an item or service furnished by:~~
    - ~~(i) an Indian Health Service (IHS) provider;~~
    - ~~(ii) a Tribal 638 provider;~~
    - ~~(iii) an IHS Tribal or Urban Indian Health provider; or~~
    - ~~(iv) through referral under contract health services.~~
  - ~~(d) persons who are terminally ill receiving hospice services;~~
  - ~~(e) persons who are receiving services under the Medicaid breast and cervical cancer treatment category;~~
  - ~~(f) institutionalized persons who are inpatients in a skilled nursing facility, intermediate care facility, or other medical institution if the person is required to spend for the cost of care all but their personal needs allowance, as defined in ARM 37.82.1320.~~
- ~~(6) Cost sharing may not be charged to members for the following services:~~
  - ~~(a) emergency services;~~
  - ~~(b) family planning services;~~
  - ~~(c) hospice services;~~
  - ~~(d) home and community based waiver services;~~
  - ~~(e) transportation services;~~
  - ~~(f) eyeglasses purchased by the Medicaid program under a volume purchasing arrangement;~~
  - ~~(g) early and periodic screening, diagnostic and treatment (EPSDT) services;~~
  - ~~(h) provider preventable health care acquired conditions as provided for in 42 CFR 447.26(b);~~

- ~~(i) generic drugs;~~
- ~~(j) preventive services as approved by CMS through the Health and Economic Livelihood Partnership (HELP) Medicaid 1115 waiver;~~
- ~~(k) services for Medicare crossover claims where Medicaid is the secondary payer under ARM 37.85.406(18). If a service is not covered by Medicare but is covered by Medicaid, cost sharing will be applied; and~~
- ~~(l) services for third party liability (TPL) claims where Medicaid is the secondary payer under ARM 37.85.407. If a service is not covered by the TPL but is covered by Medicaid, cost sharing will be applied.~~
- ~~(7) Cost share may not be charged to the member until the claim has been processed through the claims adjudication process and the provider has been notified of payment and amount owing.~~
- ~~(8) (2) The total of Medicaid or Medicaid Expansion cost share, as defined in ARM 37.84.102, premiums and cost sharing incurred by a Medicaid or Medicaid Expansion household may not exceed an aggregate limit of five percent of the family's income applied quarterly. There may not be further cost sharing applied to the household members in a quarter once a household has met the quarterly aggregate cap.~~
- ~~(9) remains the same but is renumbered (3).~~

AUTH: 53-2-201, 53-6-113, MCA  
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.204, pertaining to member copayment, effective January 1, 2020.

The following introductory explanation represents the reasonable necessity for the proposed amendments. The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The rule amendments are necessary to implement the elimination of copayment for Medicaid Expansion members in accordance with House Bill 658, which was passed by the 2019 Legislature and explicitly prohibits the department from requiring Medicaid Expansion members to make a copayment. The department is proposing to expand the elimination of copayment to Medicaid members to keep reimbursement policies consistent. Copayments for Medicaid members account for less than 10% of yearly copayment assessment. Applying the same copayment methodology to Medicaid and Medicaid expansion members is anticipated to reduce the administrative burden placed on providers, while increasing access to healthcare services and prescription drugs for Medicaid members. The rule amendments are proposed to be effective for all claims paid on or after January 1, 2020.



ARM 37.85.204(1)

The proposed amendments in ARM 37.85.204(1) implement House Bill (HB) 658 by revising rule language to state effective January 1, 2020, all paid claims will not have a copayment assessed and refer to the definition of "copayment" in ARM 37.84.102.

ARM 37.85.204(2) through (7)

ARM 37.85.204(2) through (7) are proposed to be removed to implement HB 658 and eliminate copayments for Medicaid members.

ARM 37.85.204(8)

ARM 37.85.204(8) is proposed to be renumbered ARM 37.85.204(2). In addition, a reference to the definition of "cost sharing" has been added.

ARM 37.85.204(9)

ARM 37.85.204(9) is proposed to be renumbered ARM 37.85204(3).

Fiscal Impact

The following table displays the fiscal impact of State general funds for State Fiscal Year (SFY) 2020 and SFY 2021 for the proposed amendments

State Fiscal Year	State General Fund Impact	Federal Funds Impact	Total Impact
2020	\$167,051	\$1,164,598	\$1,331,649
2021	\$341,547	\$2,381,050	\$2,722,597

The department intends to apply the rule amendments retroactively to January 1, 2020. A retroactive application does not result in a negative impact to any affected party.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 20, 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, apply and have been fulfilled. The primary bill sponsor was notified by email on November 12, 2019.

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.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

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

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 38.5.2202 and 38.5.2302 ) AMENDMENT  
pertaining to pipeline safety )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On December 30, 2019, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation 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 Service Regulation no later than 5:00 p.m. on December 16, 2019, to advise us of the nature of the accommodation that you need. Please contact Vicki LaFond-Smith, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail vicki.lafond-smith@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~November 20, 2018~~ October 30, 2019. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2018~~ 2019. A copy of the referenced CFRs is

available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at <https://www.phmsa.dot.gov/pipeline/annotated-regulations/49-cfr-199>.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail [vicki.lafond-smith@mt.gov](mailto:vicki.lafond-smith@mt.gov) and must be received no later than 5:00 p.m., December 23, 2019.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Vicki LaFond-Smith, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, or e-mail [vicki.lafond-smith@mt.gov](mailto:vicki.lafond-smith@mt.gov) to be received no later than 5:00 p.m., December 23, 2019.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons 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 2 entities based on the 27 entities affected.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities,

providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to Vicki LaFond-Smith at (406) 444-7618, e-mailed to [vicki.lafond-smith@mt.gov](mailto:vicki.lafond-smith@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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.

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

/s/ JUSTIN KRASKE

Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON

Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.20.173 pertaining to ) PROPOSED AMENDMENT  
statutory deadlines for request for )  
informal classification and appraisal )  
reviews )

TO: All Concerned Persons

1. On December 13, 2019, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 29, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

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

42.20.173 STATUTORY DEADLINES FOR REQUESTS FOR INFORMAL CLASSIFICATION AND APPRAISAL REVIEWS, FORM AB-26 (1) remains the same.

(2) Class three and four property taxpayers dissatisfied with the department's appraised value of their property may submit a Form AB-26 one time per valuation cycle. To be considered for both years of the two-year valuation cycle, the Form AB-26 must be submitted to the local department field office ~~in the county in which the property is located~~ within 30 days from the date on the classification and appraisal notice.

(3) remains the same.

(4) Class ten property taxpayers dissatisfied with the department's appraised value of their property may submit a Form AB-26 one time per valuation cycle. To be considered for all years of the six-year valuation cycle, the Form AB-26 must be submitted to the local department field office ~~in the county in which the property is located~~ within 30 days from the date on the classification and appraisal notice.

(5) remains the same.

(6) As provided in 15-7-102, MCA, taxpayers may also request an informal review by checking a box found on their classification and appraisal notice and returning the request to the department. For this purpose, the department has

incorporated the check box request into a detachable coupon on the classification and appraisal notice. Upon receipt of the taxpayer's returned coupon, the department will mail a Form AB-26 to the taxpayer with a cover letter stating the Form AB-26 must be postmarked or hand-delivered to the department within 15 business days of the date on the letter or within 30 days of the date shown on the taxpayer's classification and appraisal notice, whichever is later.

(6) through (8) remain the same but are renumbered (7) through (9).

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-110, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.173 to implement amendments to 15-7-102, MCA, made under House Bill 514 (HB 514) by the 2019 Montana Legislature. HB 514 provides taxpayers with an additional means of requesting an informal classification and appraisal review (informal review) with the department over disputes in taxpayer property valuation through a "check the box" request option. Currently, all informal review requests are made through the department's Form AB-26, Request for Informal Classification and Appraisal Review (Form AB-26).

Based on the "check the box" request option, the department proposes (6) which is necessary to incorporate the request option into rule and provide a means of requesting the informal review. The department proposes using a detachable coupon on the classification and appraisal notice which is returned by the taxpayer to the department.

Proposed (6) also implements submission deadlines that define the department's timely receipt of a taxpayer's "check the box" request, within existing department processes and in conjunction with Form AB-26, and within the 30-day informal review request deadline provided in 15-7-102, MCA. Since HB 514 only created the alternate informal request option, it is necessary for the department to establish deadlines and a process to consider the taxpayer's "check the box" request option and to correspond with the taxpayer regarding the basis for the informal review request. If the department does not have an additional process and deadlines, it is likely that the department cannot timely complete any "check the box" requested informal review determinations because the department will only know that a taxpayer desires an informal review; all other necessary taxpayer and property information that is described on the Form AB-26 and is integral in the informal review process will not be provided by the taxpayer.

Lastly, the department proposes housekeeping amendments in (2) and (4) to reflect that the department no longer has offices in each of Montana's 56 counties. Taxpayers may submit a Form AB-26 to the field office servicing their county using the mailing address provided on their classification and appraisal notice.

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696;

or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than December 20, 2019.

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

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at [www.mtrevenue.gov](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on September 16, 2019 and November 7, 2019.

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/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State November 12, 2019.



BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF DECISION ON  
ARM 2.13.407, pertaining to applicant ) PROPOSED AMENDMENT  
priority and criteria for awarding 9-1-1 )  
grants )

TO: All Concerned Persons

1. On October 18, 2019, the Department of Administration published MAR Notice No. 2-13-592 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1759 of the 2019 Montana Administrative Register, Issue Number 20.

2. The department held the public hearing on the proposed amendment of the above-stated rule as scheduled on November 13, at 10:00 a.m., because the department was unable to provide public notice in the Montana Administrative Register of its intention not to proceed with the rulemaking before the date of the hearing.

3. The department has decided not to amend ARM 2.13.407 due to objections from the State Administration and Veterans' Affairs Interim Committee. The department is proposing to amend ARM 2.13.407 in a new rulemaking filed separately.

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

By: /s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rule I pertaining to the deadline for     )  
the second cycle for the Community     )  
Development Block Grant (CDBG) –     )  
Planning Grants     )

TO: All Concerned Persons

1. On October 4, 2019, the Department of Commerce published MAR Notice No. 8-94-172 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1705 of the 2019 Montana Administrative Register, Issue Number 19.

2. No comments or testimony were received.

3. The department has adopted NEW RULE I (8.94.3732) as proposed.

/s/ Garrett Norcott

Garrett Norcott  
Rule Reviewer

/s/ Tara Rice

Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State November 12, 2019.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 10.54.1010 pertaining to )  
deadlines for applications and annual )  
reports )

TO: All Concerned Persons

1. On October 4, 2019, the Board of Public Education (board) published MAR Notice No. 10-54-289 pertaining to the proposed amendment of the above-stated rule at page 1716 of the 2019 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

/s/ Pete Donovan  
Pete Donovan  
Executive Director  
Board of Public Education

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

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
17.50.213 and 17.50.216 pertaining to )  
junk vehicles ) (JUNK VEHICLES)

TO: All Concerned Persons

1. On September 6, 2019, the Department of Environmental Quality published MAR Notice No. 17-407, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1439 of the 2019 Montana Administrative Register, Issue No. 17.

2. The department has amended ARM 17.50.216 exactly as proposed.

3. The department has amended ARM 17.50.213 as proposed but with the following changes, stricken matter interlined, new matter underlined:

17.50.213 PAYMENT REQUESTS (1) and (2) remain as proposed.

(3) The department shall pay each claim at the flat rate of ~~\$115~~ \$125 per vehicle removed.

(4) through (8) remain as proposed.

4. The department has thoroughly considered the comments received. A summary of the comments received and the department's response is as follows:

COMMENT NO. 1: Several commenters requested that the abandoned vehicle reimbursement be increased to \$125 to better align with the costs incurred by tow truck operators for removing abandoned vehicles from public highways. These commenters noted that, since the department last increased the reimbursement rate in 2011, operational costs for tow truck operators have increased, including rising minimum wage, oil prices, fuel tax, tires, and insurance premiums. One commenter stated that it costs around \$20 per hour for a tow truck driver plus \$85 per hour to operate a tow truck. In addition, tow truck operators incur additional costs related to storing the removed abandoned vehicle for the required 45 days, draining the fluids from the vehicle, and re-towing the vehicle to a salvage yard for scrap value. Several commenters stated that the amount of reimbursement from the department, together with the scrap value received from the salvage yard, is often less than the costs incurred by the tow truck operators for providing this public service.

RESPONSE: The department agrees with the commenters and has amended ARM 17.50.213 in accordance with the comments received. Due to inflation and the rising operational costs incurred by tow truck operators, the department has determined that a reimbursement rate of \$125 per vehicle removed is more appropriate than the \$115 reimbursement rate initially proposed by the department. The department agrees that increases in the cost of doing business for tow truck operators, such as increases in minimum wages, oil prices, fuel, tire prices,

and vehicle maintenance justify increasing the reimbursement rate to \$125. The department also acknowledges that tow truck operators face increasing costs related to storing removed abandoned vehicles for 45 days, draining fluids, and disposing of the vehicles.

The department acknowledges that tow truck operators work hard to keep Montana highways safe by removing abandoned vehicles in inclement weather and at all hours of day and night. Public safety is enhanced by removing abandoned vehicles, which can be difficult to see and may pose a roadside danger.

The department estimates that increasing the reimbursement payment to \$125 from the current reimbursement rate of \$100 per abandoned vehicle would provide each tow truck operator on average \$36 per year in additional reimbursement payments. Increasing the reimbursement rate to \$125 per abandoned vehicle removed would cost the fund a total increase of approximately \$10,700 per year. This is \$4,280 more than the originally proposed reimbursement rate of \$115, which would have cost the fund a total increase of approximately \$6,420 per year. Sufficient funds are available in the junk vehicle fund authorized under 15-1-122(2), MCA, to increase the reimbursement amount to \$125 per abandoned vehicle removed.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ Edward Hayes  
EDWARD HAYES  
Rule Reviewer

BY: /s/ Shaun McGrath  
SHAUN McGRATH  
Director

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
17.30.660 pertaining to nutrient )  
standards variances ) (WATER QUALITY)

TO: All Concerned Persons

1. On September 6, 2019, the Department of Environmental Quality published MAR Notice No. 17-408, pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1443 of the 2019 Montana Administrative Register, Issue No. 17.

2. The department has amended ARM 17.30.660 as proposed but with the following changes, stricken matter interlined, new matter underlined:

17.30.660 NUTRIENT STANDARDS VARIANCES (1) through (8) remain as proposed.

(9) If a court of competent jurisdiction determines that the United States Environmental Protection Agency's October 31, 2017 approval of the general variance is valid and lawful, then the incorporations by reference of the November 2019 edition of Department Circular DEQ-12B contained in this rule shall be void, and the May 2018 edition of Department Circular DEQ-12B shall contain the applicable general variance. If such contingency occurs, all references to the November 2019 edition of Department Circular DEQ-12B contained in this rule shall be stricken and shall be considered as replaced with the May 2018 edition.

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

IMP: 75-5-313, MCA

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

COMMENT NO. 1: The proposed revisions seem in some cases to modify things outside of what Judge Morris required in his ruling. Is MDEQ looking to change other aspects of this circular outside of the judge's ruling? If so, why?

RESPONSE: The department disagrees that the proposed revisions to the rule go outside the rulings of the federal district court. The Court Order requires the department to clarify the following two timelines: (1) the time to meet the treatment requirements in Table 12B-1 of Department Circular DEQ-12B, and (2) the time to meet the base numeric nutrient standards in Department Circular DEQ-12A. In addition to specific timeframes, the department identified steps for permittees to achieve the Table 12B-1 treatment requirements (e.g., steps towards meeting highest attainable condition (HAC), pollutant minimization programs (PMPs)). No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 2: Please describe how Section 2.3.1 is required under Judge Morris' ruling. The current Department Circular DEQ-12B language already provides mechanisms outlining continual progress to attain the basic numeric nutrient standards. These extra additions to the Department Circular and guidance manual place additional financial burdens on permittees and simply are not necessary.

RESPONSE: The department does not believe the amendment to Section 2.3.1 adds additional financial burdens on permittees, and agrees with the commenter that the current version of Department Circular DEQ-12B does provide mechanisms for continual progress towards attaining basic numeric nutrient standards in Department Circular DEQ-12A. Section 2.3.1 is to clarify how specific components of the general variance (future updates to the general variance treatment requirements, and PMPs) will ensure progress towards achieving the base numeric nutrient standards. Section 2.3.1 requires permittees to make all reasonable progress toward attainment of the base numeric nutrient standards in consideration of the district court's ruling. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 3: The proposed revisions modify and add substantive language outside of what Judge Morris required in his ruling. Further, we fail to find justification in the MAR notice detailing the proposed language outside of the judge's ruling. We are asking the department to provide justification showing why the proposed language in Department Circular DEQ-12B is reasonable and necessary and why the proposed language is required by the judge's ruling.

RESPONSE: The department disagrees that the proposed revisions to Department Circular DEQ-12B go beyond the ruling of the federal district court. The statement of reasonable necessity for the rule amendment is set forth in the Notice of the Public Hearing on Proposed Amendment, MAR Notice No. 17-408. See 17 Mont. Admin. Register 1443, 1444-1446 (Sept. 6, 2019). See *a/so* responses to Comments No. 1 and 2. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 4: Phosphorus is the priority nutrient to manage for control of nuisance algal growth in streams that receive wastewater discharge.

RESPONSE: This rulemaking addresses only the specific concerns of the federal district court. The commenter's asserted concern is outside the scope of this rulemaking. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 5: In Section 2.0 of Department Circular DEQ-12B, page two third paragraph, it states that DEQ will use the 95th percentile of monthly average discharge concentration data to determine if the effluent was (before 7/1/2017) attained or did better than the values in Table 12B-1. We recommend DEQ use the maximum concentration instead.

RESPONSE: This rulemaking is only intended to address the specific concerns of the federal district court. The commenter's suggestion is outside the

scope of this rulemaking. No changes have been made to Department Circular DEQ-12B in response to this comment. See *also* response to Comment No. 54.

COMMENT NO. 6: Department Circular DEQ-12B, Section 2.2.1.1, bullet point paragraph one, sentence two: replace "shall" with "may."

RESPONSE: See response to Comment 49.

COMMENT NO. 7: Department Circular DEQ-12B, Section 2.2.1.2, paragraph one, sentence three: replace "shall" with "may."

RESPONSE: See response to Comment 49.

COMMENT NO. 8: Department Circular DEQ-12B, Section 2.0, paragraph one, sentence eight: revise the sentence to say, "A compliance schedule to meet the treatment requirements shown in Table 12B-1 may also be granted on a case-by-case basis, provided that permittees are not immediately able to achieve the HAC. The compliance schedule shall take into account the loading of the facility and if the average facility influent flow rates are not at or near design flow rates."

RESPONSE: Loading of a facility and average influent flow rates are matters outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 9: Department Circular DEQ-12B, Section 2.3, paragraph four, sentence three: replace "may" with "will."

RESPONSE: The purpose of the nutrient variances is to provide time for nitrogen and phosphorus removal technologies to improve and become less costly and for nonpoint sources of nitrogen and phosphorus pollution to be better addressed. Because a permanent downgrading of uses precludes the possibility of achieving the base numeric nutrient standards, the department must ensure it maintains flexibility to evaluate potential alternatives. No changes have been made to Department Circular DEQ-12B in response to this comment. See *also* response to Comment No. 20.

COMMENT NO. 10: The MAR notice states: "The Court did not vacate EPA's approval of the department's findings concerning widespread economic and social impacts, nor did it vacate approval of the treatment requirements found in Table 12B-1 of Department Circular DEQ-12B (what the court refers to as the "Current Variance Standard" or "highest attainable condition")." We agree with the department's conclusion and feel it is appropriate to include in DEQ-12B a direct tie to the variance numbers in Table 12B-1 to the May 2018 edition. Without a citation to the year of the document, which the court had no concern regarding Table 12B-1, the triennial review process may change the HAC numbers in Table 12B-1. If the HAC is lowered during a triennial review, additional facilities will be impacted and the dates for compliance should be extended to allow time for planning and capital improvements. We recommend adding language to clearly state all modifications in Table-12B-1 will include a review and reconsideration of the time necessary to spend enough money to comply with HAC Table 12B-1.



RESPONSE: The department agrees with the comment that there is a direct tie with the variance numbers in Table 12B-1 May 2018 edition (identical to the values in the November 2019 edition). Through a triennial review process, should those values be revised in the future, the department will review, and reconsider the time necessary to meet the revised values. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 11: The proposed revision in Department Circular 12B November 2019 edition at Section 2.0 states that a compliance schedule may be granted by the department, provided that permittees are not immediately able to achieve the HAC. The phrase "immediately able to achieve the HAC" needs to be further defined and clarified. A definition should be provided that ties achievement of the HAC to the operation of a POTW with a DEQ-approved design HAC nutrient effluent performance at its DEQ-approved design capacity.

RESPONSE: The department disagrees with the comment. The plain meaning of the words "immediately able to achieve the HAC" is sufficiently clear. The referenced sentence affords the department discretion to grant a compliance schedule on a case-by-case basis if a permittee is not immediately able to achieve the HAC. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 12: DEQ must consider a process for dealing with unforeseen delays in capital project delivery to ensure a permittee is protected from non-compliance situations caused by events that are out of the permittee's control.

RESPONSE: The department has taken into account unforeseen delays in capital projects in establishing the 2027 deadline for meeting HAC. See HAC Compliance Schedule Memo (Aug. 13, 2019). The department will also consider potential delays in capital project delivery in establishing future compliance schedules to ensure they are achievable. This consideration will occur on a case-by-case basis during the MPDES permit process.

COMMENT NO. 13: The proposed addition to Department Circular DEQ-12B (November 2019 edition) at Section 2.1 states that [All] facilities in the  $\geq 1$ MGD and  $< 1$ MGD discharge categories must meet the treatment requirements in Table 12B-1 as soon as possible, but in no case later than July 1, 2027. (emphasis added). The phrase "as soon as possible" is highly subjective, yet remains undefined in the rule.

RESPONSE: In its March 2019 Order (CV-16-52-GF-BMM), the federal court ordered all parties to confer in good faith on remedies "that include a timeline to achieve *prompt* compliance with the Current Variance Standard" (emphasis added). In its July 2019 Order (CV-16-GF-BMM), the court also recognized that dischargers currently stand at different levels of attainment of the treatment requirements in Table 12B-1 of Department Circular DEQ-12B. The highest attainable condition is the temporarily applicable water quality standard. If a permittee is not immediately able to achieve the HAC, a compliance schedule may be granted. Any compliance schedule must require compliance as soon as possible. See ARM 17.30.1350. The department does not believe a definition for the term "as soon as possible" is needed. No changes have been made to Department Circular DEQ-12B in

response to this comment.

COMMENT NO. 14: We request changing "Should substantial and widespread economic and social impacts continue to be unavoidable at the end of the variance term the department ***may consider revising*** to ***will revise*** the aquatic life, recreation or both designated uses to reflect achievable uses and criteria where eventual attainment is very unlikely."

RESPONSE: See responses to Comments No. 9 and 20.

COMMENT NO. 15: In Section 2.0, there is reference to the DEQ Water Quality Standards webpage for a list of permittees likely to need a general variance. Presently there is no list there that we can find. The commenter suggests that DEQ put the current list in Department Circular DEQ-12B and then reference the webpage (giving a specific URL address) for updates to the list.

RESPONSE: The department is presently considering how to best document which facilities are eligible for a general variance under EPA's October 31, 2017 Action Letter (8WP-C). The department's website will be updated with the appropriate information once that determination is made.

COMMENT NO. 16: Throughout the draft rule amendment there are several references to "subchapter 13." References should instead give full reference to Title 17, Chapter 30, Subchapter 13, ARM.

RESPONSE: The department identified two locations (Section 2.2.1.1 bullet two, and Section 2.2.1.2, last bullet) where the comment applies. At this time, the commenter's suggestion is outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment. However, the department will consider the recommended wording change during the upcoming triennial review of Department Circular DEQ-12B in 2020.

COMMENT NO. 17: The commenter suggests that the sentence "If the department fails to conduct the triennial review as specified at Section 75-5-313(8), MCA, or if the results of the triennial review are not submitted to EPA within 30 days of the completion of the review, the variance will not be applicable for purposes of the Federal Clean Water Act until such time as the review is completed and submitted to EPA" be deleted.

RESPONSE: This requirement is based upon federal requirements at 40 C.F.R. § 131.14(b)(v). Nevertheless, the commenter's suggestion is outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 18: In Guidance, Section 2.2 Pollutant Minimization Program, the first sentence states "A pollutant minimization program (PMP) is defined in Department Circular DEQ-12B as "a structured set of activities to improve processes and pollution controls that will prevent and reduce nutrient loadings." To

match DEQ-12B the word "pollutant" should replace "pollution."

RESPONSE: The department agrees that there is a mismatch in wording between the two documents and will make the recommended change to the Guidance Document.

COMMENT NO. 19: In Guidance, Section 7 References, the reference to Department Circular DEQ-12B should be updated to November 2019.

RESPONSE: The department will update the citation and complete the Guidance Document at the time that the rulemaking is complete.

COMMENT NO. 20: The department is proposing the addition of the following language in New Section 2.3: "Should substantial and widespread economic and social impacts continue to be unavoidable at the end of a variance term, the department may consider revising the aquatic life, recreation, or both designated uses to reflect achievable uses and criteria where eventual attainment is very unlikely." We recommend modifying this sentence to state: "Should substantial and widespread economic and social impacts continue to be unavoidable at the end of a variance term, the department may recommend the Board of Environmental Review to consider revising the aquatic life, recreation, or both designated uses to reflect achievable uses and criteria where eventual attainment is unlikely." The Montana Water Quality Act and the CWA provide clear access to revise uses and associated criteria. Neither the State or Federal act support the additional requirement to wait 20 years. Adding a requirement to wait to the end of the 20-year variance term is an unnecessary length of time for some communities to gain certainty in their permitting decisions. Additionally, adding the word "very" adds an unnecessary level of subjectivity. Finally, we recommended a correction as the department does not have the statutory authority to revise uses or criteria as this responsibility lies with the Board of Environmental Review.

RESPONSE: The department agrees that the Montana Water Quality Act and Federal Clean Water Act allow for changes to beneficial uses of state waters. Montana's Water Quality Act also allows that variances from base numeric nutrient standards be given a twenty-year period to operate (75-5-313, MCA). The purpose of the nutrient variances is to provide time for nitrogen and phosphorus removal technologies to improve and become less costly and for nonpoint sources of nitrogen and phosphorus pollution to be better addressed. A permanent downgrading of uses precludes this possibility, and contradicts the purpose of 75-5-313, MCA. The department is aware that authority to change uses and criteria lies with the board, and would seek board approval for any changes recommended by the department. To provide additional clarity, the department agrees to modify the sentence in Section 2.3 of Amended Department Circular DEQ-12B to the following: "Should substantial and widespread economic and social impacts continue to be unavoidable at the end of the variance term, the department may recommend the Board of Environmental Review consider revising the aquatic life, recreation, or both designated uses to reflect achievable uses and criteria where eventual attainment is unlikely."

COMMENT NO. 21: The 2018 Table 12B-2 provided in rule approximates

timeframes the department anticipated would be necessary to reach the HAC. As proposed in response to the judge's ruling, Table 12B-2 removes the anticipated timeframes. In the absence of timeframes this table is no longer providing value to permittees or the public. Further, if a permittee elects to not proceed in the process as described in rule would there be non-compliance ramifications for not following the rule? We recommend Section 2.1 and Table 12B-2 be removed from the Department Circular and instead be placed into the department's guidance document.

**RESPONSE:** Changes to Section 2.1 of the Department Circular were made in direct response to the Court Order. Table 12B-2 has been simplified to reflect the basic steps a permittee usually undertakes to upgrade and optimize a wastewater facility; these steps closely correspond to those outlined by department engineers in their August 13, 2019 memo (throughout the public comment period, the memo was provided on the department's website alongside other materials related to this rulemaking). The department believes Table 12B-2 continues to provide value in the circular; and the circular makes clear that it is not necessary to proceed through the activities in the order shown in the Table. No changes have been made to Department Circular DEQ-12B in response to this comment.

**COMMENT NO. 22:** The commenter suggests that "currently achieving 12B-1 treatment requirements" be defined as an operating POTW having a DEQ-approved design nutrient effluent performance meeting the 12B-1 requirements at its DEQ-approved design capacity.

**RESPONSE:** The comment discusses requirements which are outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment.

**COMMENT NO. 23:** DEQ is signaling a heavily prescriptive approach to development of a PMP, which is unnecessary and unfounded at present. A permittee should be allowed flexibility to develop and update its PMP to operate within permit limits and not be limited by a prescriptive form for a program that the nutrient workgroup has not reviewed.

**RESPONSE:** The department does not agree that the PMP development process will be heavily prescriptive; it is designed to be flexible. If the department had intended for the requirement to be heavily prescriptive, PMP-related text currently included in the draft guidance document would have been included in the draft circular. The guidance document is not a binding regulatory requirement; rather, it is a useful guide for permittees.

**COMMENT NO. 24:** What is to happen to municipalities that can currently comply with the HAC because their facilities are currently underloaded (i.e., the treatment facility was designed for more connections than are currently being served)? The effluent quality from these facilities may decrease as connections increase. If this is within the original design capacity, these municipalities should be accommodated and eligible for the same long-term compliance tools as other municipalities (compliance schedule, variances).

RESPONSE: This rulemaking is only intended to address the specific concerns of the federal district court and the comment is outside the scope of the rulemaking. Regarding the topic of effluent quality as a function of loading and design capacity, the department understands there are differing engineering opinions as to whether or not a specific wastewater facility will see a deterioration in its effluent quality as it moves closer to design capacity. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 25: Achievement of the HAC by 2027 is not reasonable. DEQ's correspondence on this matter has focused on just the planning, funding procurement, design, construction, and startup of wastewater treatment infrastructure (see DEQ's August 13, 2019 letter titled "HAC Compliance Schedule"). This is only a portion of the work that will need to be completed for successful achievement of the timeline.

RESPONSE: The department does not agree with the comment. As was detailed in the August 13, 2019 memo prepared by department wastewater engineers, HAC can be accomplished by July 1, 2027 even if a permittee pursues public funding (via grant and loan application) which is available next in 2022. Department engineers included all the necessary steps to meet HAC, including the possibility of an application in 2022, as well as a full year to operate and optimize the facility.

COMMENT NO. 26: Inability to comply with 12B-1 by 2027 will push some dischargers to eliminate surface water discharges in favor of groundwater discharge and/or effluent reuse projects. Has DEQ considered the impact of other dischargers shifting from surface water to groundwater discharge, or reuse, on surface water flows? Is anyone coordinating this issue with Fish, Wildlife and Parks?

RESPONSE: This rulemaking is only intended to address the specific concerns of the federal district court and the comment is outside the scope of the rulemaking. However, the commenter's concern has been discussed on a number of occasions during the five-year period the department consulted with the Nutrient Work Group prior to the 2014 adoption of the nutrient standards and the variance procedures (i.e., circulars DEQ-12A and DEQ-12B). To the department's knowledge, the outcomes expressed in the comment have not occurred.

COMMENT NO. 27: The edits to 12B and 12A will require new drafts of permits, many with compliance schedules; reviews of general and individual variances; review and monitoring of pollutant minimization programs; treatment plant performance evaluations; review of affordability analyses as well as participating in and leading the triennial review process - between now and 2027. Turnaround time of these impact the ability of communities to execute capital improvement and financial plans. Has a budget for additional DEQ staff time and hiring been evaluated?

RESPONSE: This rulemaking only concerns limited portions of Department Circular DEQ-12B. Department Circular DEQ-12A is outside the scope of this rulemaking. The department is cognizant of the court ordered workload; facilities that will be affected by Department Circular DEQ-12B changes were discussed in

the rule amendment notice. The department does not anticipate additional staff will be needed to address an increase in workload.

COMMENT NO. 28: Revised Department Circular DEQ-12B must provide a transparent accountability framework capable of ensuring existing dischargers covered by a general nutrient variance attain the HAC, which represents the Current Variance Standard, as soon as possible.

RESPONSE: The department believes a transparent and accountable framework is set forth in the revised Department Circular DEQ-12B. Department Circular DEQ-12A establishes the water quality standards, and Department Circular DEQ-12B establishes the HAC treatment requirements and timelines to meet HAC as soon as possible, as well as a triennially occurring process to review the HAC. Implementation of the standards and variances (including documentation of reasonable potential analysis, inclusion of variances where necessary, etc.) is documented in the MPDES permit process on a case-by-case basis. Any decision to grant a variance must be reflected in the MPDES permit and supporting Fact Sheet that is made available for public comment.

COMMENT NO. 29: Revised Department Circular DEQ-12B must provide a timeline of actions and activities that require dischargers to make meaningful progress towards attainment of base water quality standards, within the timeframe of the variance.

RESPONSE: The department agrees. The draft circular provides both timelines and potential steps to achieve HAC and the base numeric nutrient standards, and organizes these elements according to discharge group ( $\geq 1$  million gallons per day,  $< 1$  million gallons per day, lagoons). By providing a timeline and identifying potential steps for achieving the HAC, the specific concerns of the federal district court are being met.

COMMENT NO. 30: Revised Department Circular DEQ-12B fails to lay out a regulatory path capable of ensuring dischargers continue to ratchet down their pollution controls and improve water quality *above and beyond* the HAC/Current Variance Standard. Therefore, it fails to provide a "feasible" path towards ultimately attaining base WQS criteria.

RESPONSE: The department does not agree. The department must review the HAC every three years and update the HAC requirements if a new pollutant control technology for treating nitrogen and phosphorus has become feasible (i.e., the cost of such pollutant control technology would not cause substantial and widespread social and economic impacts). For those meeting current HAC, permittees must implement a pollutant minimization program as terms and conditions of their permit, the details of which vary by facility. The PMP process, including necessary PMP updates, will assure water quality improvements above and beyond HAC. This combined process creates steps that will be taken to ensure permittees make progress towards the numeric nutrient criteria.

COMMENT NO. 31: DEQ must reconsider its proposed addition to Section 2.0 of Department Circular DEQ-12B and provide further detail. DEQ must make the

following changes (text recommended to be deleted shown as strikethrough, new additions as underline). [Note: Text that is shown as both strikethrough and underline is new text appearing in proposed Department Circular DEQ-12B that the commenter wishes to delete.]

A person may apply for a general variance for either total phosphorus (TP) or total nitrogen (TN), or both. ~~§ 75-5-313(8), MCA, authorizes the general variance for a period not to exceed 20 years.~~ Through the permitting process and the specific details of each facility, the time required must be as short as possible to meet the highest attainable condition (HAC). ~~A compliance schedule to meet the treatment requirements shown in Table 12B-1 may also be granted on a case-by-case basis, provided that permittees are not immediately able to achieve the HAC. If the department determines a compliance schedule is necessary, it will be granted upon permit renewal.~~ Any permittee that is not presently attaining the HAC at its facilities shall submit a request to the department for a compliance plan within 30 days of this rule's effective date. DEQ will work with the permittee to develop an appropriate compliance plan leading to attainment of HAC and approve the compliance plan within 60 days of submission of the request required herein. The compliance plan shall set forth specific actions, approvals, timetables and deadlines for securing authority and funding necessary to implementing applicable wastewater treatment optimization and/or structural improvements and to achieving the HAC on or before January 1, 2023.

**RESPONSE:** The department disagrees with the comment. The department stated in the rule amendment notice it would incorporate Table 12B-1 treatment requirements or compliance schedules into permits for all permittees not meeting HAC by July 31, 2020. The additional request to reopen a series of permits within 30 days of the rule amendment is beyond the scope of the federal court orders. In its July 16, 2019 Order, the federal district court directed the department to set forth a reasonable timeline that begins with the relaxed criteria for the Current Variance Standard and leads to compliance with Montana's based numeric nutrient standards; the department has done this. No changes have been made to Department Circular DEQ-12B in response to this comment.

**COMMENT NO. 32:** To comply with the letter and intent of Order 2, DEQ must make the following changes (text recommended to be deleted shown as strikethrough, new or acceptable additions as underline) to its proposed Circular DEQ-12B amendments. ~~Through the MPDES permitting process for each facility,~~ The department shall immediately reopen MPDES permits and establish use a compliance plan to ensure any permittee not presently attaining HAC takes the time steps necessary to meeting the treatment requirements in Table 12B-1. ~~The time for the general variance must only be as long as necessary to meet the treatment requirements in Table 12B-1, but could take up to 17 years from the date of approval of the general variances in this circular. All facilities in the ≥1MGD and <1MGD discharge categories must meet the treatment requirements in Table 12B-1 as soon as possible, but in no case later than July 1, 2027.~~ January 1, 2023.

The department has identified up to five ~~nine~~ steps for facilities in the ≥1MGD and <1MGD discharge categories to achieve the Table 12B-1 treatment requirements.

~~the department estimates that most of these facilities will achieve the Table 12B-1 treatment requirements well before July 1, 2027. These five steps are shown in Table 12B-2. The steps outline both are a combination of advanced operational strategies using existing facility infrastructure and capital improvements; approximate times (in years) for each step are shown. If a facility were to achieve the Table 12B-1 treatment requirements using a subset of the steps in Table 12B-2, the department would expect the discharger to need less time to complete that subset of steps.~~ The purpose of Table 12B-2 is to provide an outline of potential steps needed to achieve the Table 12B-1 treatment requirements. The actual time period for individual steps may vary between each facility but in all cases variance recipients must attain HAC in their effluent streams by January 1, 2023. however, the total time necessary to meet the treatment requirements in Table 12B-1 may not exceed the remaining variance period. These steps do not necessarily need to be completed in the order shown.

RESPONSE: The department does not agree with the comment. MPDES permitting is a separate process and current permittees are at different stages in their individual permit cycles. Department engineers, who have expertise in both the engineering and financing aspects of the activities outlined in the table, concluded that it will take a facility until at least 2025 to complete the full set of activities. This is assuming funding application (and subsequent work) occurs right now. It is not possible for those facilities who need to secure funding from the Montana legislature to fund capital improvements necessary to achieve HAC, to go back in time to seek legislative approval from prior legislative sessions. The Montana legislature meets on odd years, the next session being 2021. See HAC Compliance Schedule Memo (Aug. 13, 2019). Due to the biennial timing of public funding cycles, 2027 is now a much more realistic completion point, which is why the department incorporated July 1, 2027 in the circular. The department has also concluded that not all facilities that still need to achieve HAC will need until 2027 to do so, which is why "as soon as possible" was included with the completion date of July 1, 2027. No changes have been made to Department Circular DEQ-12B in response to this comment. See *also* response to Comment No. 31.

COMMENT NO. 33: Revised Department Circular DEQ-12B should reflect the timelines that the court described: the 2023 deadline for HAC compliance articulated by Waterkeeper's remedy brief and expert analysis. We again urge DEQ to revise Department Circular 12B to mirror the timelines described in Waterkeeper's brief and expert report as required by the court.

RESPONSE: The department disagrees the federal district court described a 2023 deadline for HAC compliance. Revised Department Circular DEQ-12B complies with the court's orders. See *also* responses to Comments No. 31 and 32.

COMMENT NO. 34: In order to comply with Order 2, DEQ should use the language originally provided in Waterkeeper's remedies brief to develop appropriate rule requirements that ensure lagoons take concrete, near-term steps towards meeting respective HAC in a feasible, transparent, and accountable manner.

RESPONSE: The work referenced in the comment is already occurring. From 2017 onward, the department has had a program to review wastewater lagoon



performance (Section 2.2.1.2, Department Circular DEQ-12B). Through that work, the department evaluates effective operational methods and identifies those lagoons that require additional improvements. For each facility, within one year of completing the review of operational methods, the department begins requiring implementation of the improvements at those facilities as terms and conditions of their next permit renewal that do not require substantial investment or additional study. As part of this rulemaking, the department has moved up the completion of the wastewater lagoon reviews by two years, from 2022 to 2020. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 35: Section 2.1 of Department Circular DEQ-12B is not compliant with Orders 1 and 2 and must be revised to contemplate iteratively more stringent HACs leading to ultimate compliance with WQS nutrient criteria. In turn, other requirements of Amended 12-B should lay out a transparent path for permittees towards making smart investments that allow for successively more stringent nutrient pollutant control results at their facilities.

RESPONSE: The department does not agree with the comment. The federal district court did not vacate approval of the department's findings concerning widespread economic and social impacts and also did not vacate approval of the Current Variance Standard (or HAC). The iterative reevaluation (and potential update) of HAC every three years is a statutory requirement (75-5-313, MCA) and has been carried out on schedule by the department since the initial adoption of Department Circular DEQ-12B in 2014. Regarding transparency, the department has made this process as transparent as possible by adopting the numeric nutrient standards—which are the ultimate goal. Interim treatment requirements going forward cannot be identified today, as they depend on cost and technology changes of the future. Permittees know that the department evaluates HAC triennially and that HAC may become more stringent in the future. In totality, today's HAC, the triennial reevaluation process, the opportunity for involvement and public notice, and the base numeric nutrient standards provide permittees as much information as the department can reasonably put forward to allow them to make the smart investments.

COMMENT NO. 36: We urge DEQ to require permittees to develop and submit a PMP within 90 days of any EPA approval of amended Circular DEQ-12B. Edits to the circular are provided here (text recommended to be deleted shown as strikethrough, new additions as underline).

For either a general or an individual variance, a permittee shall submit a PMP to the department ~~once the permittee achieves the identified HAC treatment requirements~~ within 90 days of this rule's approval by EPA. The department, following review and approval of the PMP, shall reopen and incorporate the PMP into the permittee's next MPDES permit ~~as further set forth in Sections 2.2.1.1 and 2.2.1.2~~ within 90 days of receiving the PMP. ~~If a permittee achieves the HAC treatment requirement for only one nutrient parameter (i.e., either TN or TP), but not both, then the permittee shall develop and implement a PMP for the~~

achieved nutrient parameter (while continuing to work toward the HAC treatment requirement for the other nutrient parameter).

RESPONSE: The department does not agree with the comment. As currently found in Department Circular DEQ-12B, the text in Section 2.2.1 makes clear that PMPs are to be submitted and incorporated into a permit after HAC is achieved—consistent with federal regulations on the subject. The edits provided by the commenter confuse this straight-forward linear process, and could potentially require a PMP submittal even when a permittee has yet to achieve HAC. No changes have been made to Department Circular DEQ-12B in response to this comment. See *also* responses to Comments No. 31 and 32.

COMMENT NO. 37: We strongly encourage DEQ to revise Amended-12B to include a list of minimum activities for a PMP.

RESPONSE: Pollution minimization programs (PMPs) are highly case-specific and are best developed by the permittees, who are aware of the types of activities that are most likely to be successful for them. The department has provided a framework and guidance on the subject in the draft guidance document, including reference to the department's detailed compendium of optimization and best management practices for lagoons. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 38: We urge DEQ to use this rulemaking to provide clear direction to permittees encouraging possible beneficial reuse, reclamation, and potential seasonally optimized discharges (only discharging to surface waters during certain times of year). Potential activities could include water conservation; irrigation of public works and private properties; biosolids compositing; snowmaking; biomass production.

RESPONSE: The department has been encouraging permittees to consider the activities listed in the comment, and many others related to nutrient reduction, for many years, even well before the requirement to do so was codified at 75-5-313(11), MCA. The department will continue to do so in the future. Furthermore, the department may not unnecessarily repeat statutory language in rule. No changes have been made to Department Circular DEQ-12B or ARM 17.30.660 in response to this comment.

COMMENT NO. 39: MAR Notice 17-408 simply revises ARM 17.30.660 to incorporate by reference Department Circular 12B (November 2019 edition). Section 75-5-313, MCA, is a temporary water quality standard as defined under federal regulations, as are all department rulemaking elements constructed to implement this statute, including Department Circular 12B (November 2019 edition). Section 75-5-312, MCA, vests authority with the Board of Environmental Review (BER) to adopt temporary water quality standards. Rulemaking under MAR Notice No. 17-408 is occurring exclusively by the department and thus appears to suffer from a fundamentally flawed procedural process. The City of Bozeman requests DEQ address how this rulemaking process comports with all necessary requirements of state law since MAR Notice No. 17-408 cites its authority for rulemaking as 75-5-201 and 75-5-301, MCA.

RESPONSE: In most instances, the rulemaking authority for the adoption of standards for water quality is vested in the Board of Environmental Review. However, 75-5-313, MCA, provides the department with rulemaking authority to adopt nutrient standards variances. The department disagrees with the commenter that the rulemaking process must proceed through the Board of Environmental Review. The statutory authority for this rulemaking is 75-5-313, MCA, and was incorrectly listed as 75-5-201 and 75-5-301, MCA, in the notice of the proposed amendment. The department has made the necessary changes, incorporating 75-5-313, MCA, as the statutory authority for the rule.

COMMENT NO. 40: The statement of reasonable necessity for the rulemaking under MAR Notice No. 17-408 directly ties the proposed rulemaking to the July 17, 2019 Order. Given that the rulemaking is inextricably linked to the Order, we request clarification from the department as to how the appeal to the 9th Circuit will affect the legal effectiveness of the MAR Notice No. 17-408 rulemaking process.

RESPONSE: Provided the July 16, 2019 Order from the federal district court remains in effect, the department will proceed in compliance with the same. The effect of any appeal of the federal district court's decision upon this rulemaking is unknown at this time. See *a/so* response to Comment No. 46.

COMMENT NO. 41: The department contemplates revisions to the Implementation Guidance without expressly notifying interested parties of these changes within its notice. One reference is made in Department Circular 12B (November 2019 edition) to PMP guidance for mechanical plants (addition to first bullet of Section 2.2.1.1). This reference is made to [current] guidance developed by the department and the Nutrient Work Group. Revisions to the Implementation Guidance (November 2019) have not been developed through consultation with the nutrient workgroup and without notice. The department must consult with the nutrient workgroup prior to, or during, the MAR Notice No. 17-408 rulemaking process. To our knowledge, such consultation has not occurred.

RESPONSE: For purposes of the general nutrient standards variance, the department must consult with the nutrient workgroup to revisit and update concentration levels in Table 12B-1 of Department Circular DEQ-12B. However, any changes to these concentration levels are outside the scope of this rulemaking. Nevertheless, the department has discussed the department's guidance document (i.e., guidelines) with the workgroup on various occasions over the years. The exigency of this rulemaking precluded the department from completing updates to the guidance document (which pertained to the general variance) in time for the Nutrient Work Group meeting held August 6, 2019. The draft guidance document has been available on the department's website alongside the draft circular, draft rule, and other documents since the start of the public comment period on September 6, 2019. All interested parties were informed of the website. Please note that the guidance document is provided to help permittees with technical aspects of the variance and standards, and now includes reference to other department documents which detail a whole host of optimization and best management practices for wastewater lagoons. However, it is a guidance document

and is not binding. See *also* response to Comment No. 49.

COMMENT NO. 42: Section 2.0 of Department Circular 12B (November 2019 edition) requires the department to review, before July 1, 2020, the highest attainable condition (HAC) treatment requirements contained in Table 12B-1. How the review will be affected by the expected appeal to the 9th Circuit of the July 16, 2019 Order under Case No. CV-16-52-GF-BMM is an issue that needs further clarification.

RESPONSE: The foundational requirement to revisit and update the concentration levels contained within the general nutrient standards variance is found at 75-5-313(7), MCA, and the consideration of any update is outside the scope of the present rulemaking. The ultimate effect of any appeal of the federal district court's decision is unknown at this time; however, the department anticipates the scheduled review will occur as required. See *also* response to Comment No. 46.

COMMENT NO. 43: It is my understanding that the U.S. District Court for the District of Montana's Order in *Upper Missouri Waterkeeper v. U.S. EPA*, Case No. CV-16-52-GF-BMM (July 16, 2019) will be appealed. Please explain how the 12B and 12A changes will be handled pending the outcome of the appeals process (e.g., will the edits not be made final until the appeals process is complete?).

RESPONSE: Provided the July 16, 2019 Order from the federal district court remains in effect, the department will proceed in compliance with the same. Any changes to Circular DEQ-12A are outside of the scope of this rulemaking. See *also* response to Comment No. 46.

COMMENT NO. 44: Lack of Review by the Board of Environmental Review for a Temporary Water Quality Standard as required by 75-5-312, MCA. The rulemaking notice pertains exclusively to ARM 17.30.660. MAR Notice No. 17-408 lists statutory authority for this rulemaking as 75-5-201 and 75-5-301, MCA, to implement 75-5-313, MCA, Nutrient Standards Variances.

RESPONSE: See response to Comment No. 39.

COMMENT NO. 45: This timeline also does not mirror the Order entered July 16, 2019 under *Upper Missouri Waterkeeper v. EPA*, CV-16-52-GF-BMM. The Order timeline indicates 2023, which is less reasonable, but it still appears problematic that the two timelines differ.

RESPONSE: The department disagrees with the commenter that the federal district court's order requires a specific timeline of 2023. No changes have been made to Department Circular DEQ-12B in response to this comment. See *also* response to Comment No. 32.

COMMENT NO. 46: The current rules should acknowledge that should EPA or an intervenor prevail on appeal, the rule and any ancillary documents revert to the prior version adopted and approved prior to the July 2019 summary judgment order. In essence, given EPA's Rule 59 motion, and the likelihood of appeals in that matter, the current rulemaking effort may not be necessary at all.

RESPONSE: Provided the July 16, 2019 Order from the federal district court

remains in effect, the department will proceed in compliance with the same. However, in consideration of EPA's recently filed Motion to Alter or Amend Judgment, as well as the National Association of Clean Water Agencies' recently filed appeal of the federal district court's decision, the department agrees with the commenter and has added a contingency provision to ARM 17.30.660. Provided a court of competent jurisdiction upholds EPA's October 31, 2017 approval of the general nutrient standards variance, the contingency provision would void the November 2019 edition of revised Department Circular DEQ-12B and the previous version of the general nutrient standards variance, as set forth in the May 2018 edition of Department Circular DEQ-12B, would be applicable and effective.

**COMMENT NO. 47:** DEQ must revise its individual variance sections to also comply with Judge Morris' orders in terms of requiring HAC be a starting point for the variance period, and so too incorporate a transparent accountability framework that ensures measurable progress will be made by any individual variance discharger towards ultimately meeting base water quality standards.

**RESPONSE:** The department disagrees with the commenter. The individual variance sections of Department Circular DEQ-12B are outside the scope of this rulemaking. Furthermore, EPA's approval of the individual variance sections of Department Circular DEQ-12B were not the subject of the federal litigation in *Waterkeeper v. EPA et al.*, CV-16-52-GF-BMM (D. Mont). No changes have been made to Department Circular DEQ-12B in response to this comment.

**COMMENT NO. 48:** DEQ must revise Department Circular 12-B to include the following timelines for implementation of HAC at lagoons as part of enforceable NPDES permits (*i.e.*, immediately reopen MPDES permits for amendment post-rulemaking/EPA approval and use compliance plans to ensure timely progress). Again, years are from "Year Zero," which Waterkeeper considers January 1, 2018, a date which the Court found acceptable. See Order 2 at 6; Report at pp. 10-11.

For the lagoon discharge category, the department ~~and shall complete~~ [sic] reopen the MPDES permits for any permittee not presently attaining HAC and impose a compliance plan that includes, among other items, the pollutant minimization program requirements described in **Section 2.2** and **Section 2.2.1.2** as soon as possible but in no case later than July 1, 2027. These actions and activities must be completed on or before seven years have elapsed from Amended 12-B approval as laid out in the Table below.

**RESPONSE:** The department disagrees with the commenter. The table referenced by the commenter at the end of the comment suggests a series of activities and timeframes for lagoons to carry out various activities. The federal district court's order does not incorporate the deadlines or specific actions listed in the comment. No changes have been made to Department Circular DEQ-12B in response to this comment.

**COMMENT NO. 49:** Revised Department Circular 12-B references requirements and procedures outlined in a separate Guidance document several

times and appears to treat such requirements as binding in nature. If DEQ intends for such "guidance" to in fact reflect regulatory requirements that must be incorporated in MPDES permits, DEQ must rename its Guidance document as an Appendix or like document and attach it to revised Department Circular 12-B and in so doing properly make it binding through proper administrative procedures.

RESPONSE: The guidance referenced in the proposed revisions to Department Circular DEQ-12B are not binding regulatory requirements. However, permittees are encouraged to consider any current department guidance in developing Pollutant Minimization Programs (PMPs) for both mechanical and lagoon-based treatment systems. For purposes of clarity, and to avoid similar misinterpretations in the future, DEQ has amended the language "shall consider any current guidance" to "are advised to consider any current guidance" in the two locations the language appears in Section 2.2 of Department Circular DEQ-12B.

COMMENT NO. 50: Section 2.0 of Department Circular 12B (November 2019 edition) in its third paragraph states [For] permittees whose effluent concentrations were, before July 1, 2017, lower than the concentrations in Table 12B-1, the general variance must be based on the actual total N and/or total P concentrations of their effluent. This language is impractical and has the effect of depriving a POTW of capacity in which it has invested significant amounts of public monies and is relying on to repay bonds for improvements to a water reclamation facility. DEQ could also consider revising the performance cap language in this rulemaking to allow for a showing that a permittee's performance in excess of HAC is related to underutilized plant capacity, thereby allowing a pathway for permitting loads in excess of current performance.

RESPONSE: The comment discusses requirements which are outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 51: There is still no justification offered for excluding private dischargers from the general variance. DEQ submitted its nutrient regulation variance program to EPA for approval pursuant to 40 C.F.R. § 131. EPA approved Montana's rule for 36 municipal dischargers but inexplicably excluded private dischargers. EPA did not attempt to justify its decision, leaving private dischargers without a key means of maintaining compliance with Montana's water quality standards for nutrients that are otherwise unrealistically stringent. The proposed rule amendment does nothing to remedy the artificial distinction in the variance regulations between public and private dischargers.

RESPONSE: The department agrees that EPA's October 31, 2017 approval of Montana's general nutrient standards variance did not extend to private dischargers. However, this rulemaking is only intended to address the specific concerns of the federal district court. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 52: The proposed rule amendment perpetuates EPA's arbitrary treatment of private dischargers. EPA's response to DEQ's submission of

the rule for individual variances stated, summarily, that the information submitted for private dischargers did not constitute a sufficient economic demonstration. The proposed rule amendment simply carries forward EPA's categorical and disparate treatment of private dischargers, essentially eliminating any benefit from individual variances without justification.

RESPONSE: The department disagrees that individual variances are not available for private dischargers. However, individual variances are outside the scope of this rulemaking. This rulemaking is only intended to address the specific concerns of the federal district court related to Montana general nutrient standards variance. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 53: The proposed rule amendment should apply equally to private dischargers. The proposed rule amendment merely codifies arbitrary treatment of private dischargers in Montana. No rational justification exists for this disparate treatment, and the proposed rule should be amended to apply equally to both, together with the information necessary to require EPA to address this issue head-on.

RESPONSE: The department agrees that EPA's October 31, 2017 approval of Montana's general nutrient standards variance did not extend to private dischargers and was limited to 36 municipal dischargers. Nonetheless, this rulemaking is only intended to address the specific concerns of the federal district court related to EPA's October 31, 2017 approval of the general nutrient standards variance. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 54: Under section 2.0 General Nutrient Standards Variances, on Page 2, third paragraph, it says that DEQ will use the 95th percentile of actual monthly average concentrations to determine if the effluent attains or does better than Table 12B values and, if better than 12B values, then actual concentrations will be end of pipe limits. If the 95th percentile estimate is valid, then it would seem that this approach would lead to noncompliance as about 5 percent of the effluent concentrations would exceed the actual concentration as defined by the 95th percentile. Commenters suggest that instead, DEQ compare maximum monthly concentrations to DEQ Department Circular 12B values.

RESPONSE: This rulemaking is only intended to address the specific concerns of the federal district court. The commenter's suggestion is outside the scope of this rulemaking. No changes have been made to Department Circular DEQ-12B in response to this comment.

COMMENT NO. 55: Guidance Document: request that the text listed "It should also be noted that some facilities do not qualify for the general variance for Clean Water Act purposes (see EPA Region 8 action letter 8WP-C, October 31, 2017)" be changed to "It is EPA's position that some facilities "are outside of the scope" of the general variance for Clean Water Act purposes.

RESPONSE: The department agrees with the comment and will reword as proposed by the commenter. The text was added to the Guidance Document to

reflect EPA's 2017 approval decision.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ Edward Hayes  
EDWARD HAYES  
Rule Reviewer

BY: /s/ Shaun McGrath  
SHAUN McGRATH, Director

Certified to the Secretary of State November 12, 2019.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through III, the amendment of	)	AMENDMENT, AND REPEAL
ARM 24.29.804, 24.29.813,	)	
24.29.821, 24.29.824, 24.29.831,	)	
24.29.834, 24.29.837, and 24.29.847,	)	
and the repeal of ARM 24.29.811,	)	
24.29.817, and 24.29.827, pertaining	)	
to certification of workers'	)	
compensation claims examiners	)	

TO: All Concerned Persons

1. On September 20, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-29-347 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 1550 of the 2019 Montana Administrative Register, Issue Number 18.

2. On October 11, 2019, the department conducted a public hearing in Helena at which it received an oral comment. No written comments were received during the public comment period.

3. The department has thoroughly considered the comment made. A summary of the comment and the department's response are as follows:

Comment: The commenter suggested that for the purposes of consistency of timelines, new hires be allowed to work as a claims examiner for up to 180 days without having to complete certification.

Response: The department agrees and has amended NEW RULE II accordingly.

4. The department has adopted New Rules I (24.29.816) and III (24.29.826) as proposed.

5. The department has adopted New Rule II as proposed, but with the following changes, deleted material interlined, new material underlined:

NEW RULE II (24.29.818) NEW HIRES AND CLAIMS EXAMINER  
TRAINEES – DESIGNATION OF CERTIFIED CLAIMS EXAMINER TO BE  
ACCOUNTABLE FOR DECISIONS (1) ~~A new hire may, for a period of not more than 60 days, perform tasks otherwise required to be performed by a certified claims examiner, if the employer has designated a certified claims examiner as being accountable for the decisions made by the new hire.~~

(2) A new hire or claims examiner trainee may, for a period of not more than 180 days, perform tasks otherwise required to be performed by a certified claims

examiner, if the employer has designated a certified claims examiner as being accountable for the decisions made by the new hire or claims examiner trainee. (3) and (4) remain as proposed but are renumbered (2) and (3).

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

6. The department has amended ARM 24.29.804, 24.29.813, 24.29.821, 24.29.824, 24.29.831, 24.29.834, 24.29.837, and 24.29.847 as proposed.

7. The department has repealed ARM 24.29.811, 24.29.817, and 24.29.827 as proposed.

8. The adoptions, amendments, and repeals are effective on December 1, 2019, and apply to new and renewal certified claims examiner applications received by the department on or after December 1, 2019.

/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 November 12, 2019.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the adoption of New        ) NOTICE OF ADOPTION  
Rules I through XII pertaining to        )  
registration of home inspectors        )

TO: All Concerned Persons

1. On October 4, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-35-349 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1721 of the 2019 Montana Administrative Register, Issue Number 19.

2. On October 25, 2019, the department conducted a public hearing in Helena. Written comments were received during the public comment period.

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

Comment 1: A commenter stated that they believe the proposed distinction between a home inspection worker and a home inspection business was confusing and unnecessary, and that only individuals performing home inspection work should be registered under the law.

Response 1: The department concludes that while some home inspection workers in Montana will operate as a sole proprietorship with no employees, many home inspection workers will form a business entity structure, such as an LLC, a partnership, or corporation, by which to conduct business. Because of the distinction between the legal identity of a sole proprietorship and legal identity of those recognized business entities, the department has determined that it is necessary to recognize that distinction within its rules. As an example, if the registration applicant is an LLC, the LLC is not going to demonstrate that it (as an entity) has the education or has passed an examination to qualify to perform home inspection work. Likewise, a partnership is only required to provide one set of insurance coverages applicable to the partnership, rather than each member of the partnership having to obtain coverages in her or his individual capacity. Additionally, the department recognizes the possibility that a home inspection business (regardless of entity form) might hire qualified home inspection workers as employees. The business would obtain the required insurance coverages for its operations; a qualified home inspector working as an employee would not need to pay for individual liability insurance, errors and omission insurance, and would be covered by the workers' compensation insurance coverage of the employer. The department notes that to the extent that an individual qualified as a home inspector wishes to provide services as an "independent contractor" to another home inspection business, the independent contractor will need to be personally registered

as a home inspection business and carry his or her own insurance and own national association membership.

In order to accommodate the range of likely forms of business entities and types of operations, the department concludes that it is necessary to maintain the distinction between a home inspection business and a home inspection worker in the rules.

Comment 2: A commenter stated that home inspectors rely on building codes to identify shortcomings in homes and that New Rule VI(1) through (3) should be amended to include familiarity with applicable building codes to the minimum qualifications, organizational examinations, and educational programs.

Response 2: As part of its rule-drafting process the department met with a variety of stakeholders regarding home inspection registration. Several individuals who currently provide home inspection services advised the department that home inspectors do not perform the functions of a building code inspector, and that the nationally accepted professional standards for home inspection do not include determining compliance with building code standards. The department further notes that national building inspector examinations do not test for knowledge of building code standards. Accordingly, the department concludes that requiring formal training in building code standards as a prerequisite for qualification as a home inspection worker or for continuing education purposes is neither necessary or appropriate. Nothing in the rules will prevent a home inspection worker from obtaining either initial training or continuing education regarding building code requirements, however.

4. The department has adopted New Rules I (24.33.401), II (24.33.406), III (24.33.411), IV (24.33.416), V (24.33.421), VI (24.33.431), VII (24.33.441), VIII (24.33.445), IX (24.33.461), X (24.33.471), XI (24.33.475), and XII (24.33.486) as proposed.

5. The new rules are effective November 23, 2019.

/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 November 12, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 32.2.403 pertaining to                    )  
diagnostic laboratory fees                    )

TO: All Concerned Persons

1. On September 20, 2019, the Department of Livestock published MAR Notice No. 32-18-292 pertaining to the proposed amendment of the above-stated rule at page 1573 of the 2019 Montana Administrative Register, Issue Number 18.

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

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

COMMENT #1: Montana FWP finds proposed adjustments to be comparable to pricing for the same or similar tests at other laboratories that offer wildlife testing. The proposed price for immunohistochemistry (IHC), which is currently used as a confirmatory test for any sample that tests positive on the screening ELISA test at an out-of-state laboratory, is priced lower than at the lab currently used. Because MVDL is not currently offering CWD testing, it is unknown if the IHC pricing proposed in this rule will be the same price that will be offered for CWD IHC.

RESPONSE #1: The department thanks FWP for their interest in the fees associated with chronic wasting disease testing. It is the intention of the MVDL to charge test fees for chronic wasting disease that are consistent with the fees proposed in ARM 32.2.403 for both the IHC and ELISA test methods when they become available.

COMMENT #2: The Montana Veterinary Medical Association (MVMA) expressed its support for the changes called for in the proposed amendments of ARM 32.2.403 pertaining to diagnostic laboratory fees.

RESPONSE #2: The department thanks the Montana Veterinary Medical Association for its support of the proposed amendments to ARM 32.2.403.

4. This rule amendment will be effective January 6, 2020.

/s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 32.3.202 requirements for	)	
importation, 32.3.203 importation of	)	
diseased animals, 32.3.206, official	)	
health certificate documents for	)	
importation, 32.3.207 permits, and	)	
32.3.214 special requirements for	)	
goats	)	

TO: All Concerned Persons

1. On September 20, 2019, the Department of Livestock published MAR Notice No. 32-19-299 regarding the proposed amendment of the above-stated rules at page 1597 of the 2019 Montana Administrative Register, Issue Number 18.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

BY: /s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State November 12, 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 ADOPTION,
Rules I through VI, the amendment of	)	AMENDMENT, AND REPEAL
ARM 37.110.101, and the repeal of	)	
ARM 37.110.301, 37.110.302,	)	
37.110.303, 37.110.310, 37.110.311,	)	
37.110.312, 37.110.318, 37.110.319,	)	
37.110.320, 37.110.321, 37.110.323,	)	
37.110.330, 37.110.331, 37.110.332,	)	
37.110.333, 37.110.340, 37.110.341,	)	
37.110.342, 37.110.347, 37.110.348,	)	
37.110.350, 37.110.351, 37.110.352,	)	
37.110.353, 37.110.354, 37.110.355,	)	
37.110.360, 37.110.361, 37.110.362,	)	
37.110.363, 37.110.364, 37.110.370,	)	
37.110.371, 37.110.801, 37.110.802,	)	
37.110.805, and 37.110.810	)	
pertaining to wholesale foods and	)	
food standards	)	

TO: All Concerned Persons

1. On May 24, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-847 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 598 of the 2019 Montana Administrative Register, Issue Number 10.

2. The department has adopted the following rules as proposed: New Rules I (37.110.304), II (37.110.305), III (37.110.306), IV (37.110.307), V (37.110.313), and VI (37.110.315).

The department has repealed the following rules as proposed: ARM 37.110.301, 37.110.302, 37.110.303, 37.110.310, 37.110.311, 37.110.312, 37.110.318, 37.110.319, 37.110.320, 37.110.321, 37.110.323, 37.110.330, 37.110.331, 37.110.332, 37.110.333, 37.110.340, 37.110.341, 37.110.342, 37.110.347, 37.110.348, 37.110.350, 37.110.351, 37.110.352, 37.110.353, 37.110.354, 37.110.355, 37.110.360, 37.110.361, 37.110.362, 37.110.363, 37.110.364, 37.110.370, 37.110.371, 37.110.801, 37.110.802, 37.110.805, and 37.110.810.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, and has corrected a statutory citation of authority, that was typed incorrectly in the Notice of Public Hearing on Proposed



Adoption, Amendment, and Repeal, new matter underlined, deleted matter interlined:

37.110.101 FOOD STANDARDS (1) The department adopts by reference the following federal regulations establishing food definitions and standards promulgated by the United States Food and Drug Administration that are found in the corresponding parts of Title 21 of the Code of Federal Regulations (CFR) as of April 1, 2017 and 2018. These standards apply to all food as the term is defined in 50-31-103~~(15)~~(16), MCA.

(a) through (ae) remain as proposed.		
(af)	Cereal <del>flours</del> <u>flours</u> and related products	21 CFR 137
(ag) through (bm) remain as proposed.		

(2) remains as proposed.

AUTH: 50-31-104, 50-31-108, ~~51-31-201~~, 50-31-201, MCA  
IMP: 50-31-101, 50-31-104, 50-31-203, MCA

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

COMMENT #1: A commenter asked whether training provided to local sanitarians under New Rule V(2)(a) will be different from retail food standardized field training.

RESPONSE #1: Since nearly all routine inspections conducted by local sanitarians entail checking compliance with conventional risk factors and good manufacturing practices, training should be identical, or nearly identical, to retail food standardized field training. Training is dependent on time and resources available for both state and local staff but was placed in rule to emphasize the importance of making training a priority for both parties and to establish obligations that ultimately help ensure food products are safe for consumers.

COMMENT #2: A commenter asked the department to explain why alternative livestock as defined in 87-6-106(1), MCA, is relevant to the wild game section of the circular.

RESPONSE #2: Because wild game meats in specifically small percentages fall under jurisdictional authority of the department, section 3-201.11 of the circular clarifies that alternative livestock could be used as an approved food source.

COMMENT #3: A commenter asked if a rule should be created to require out-of-state exotic and game meat processing plants to meet the same legal standards as Montana facilities, if the product enters commerce in Montana.

RESPONSE #3: In the opinion of the department, no additional rule is needed since section 3-201.11 of the circular requires Montana establishments to obtain food "from sources that comply with law," which is broad in scope and scale in the food supply chain network. This means Montana, like other states, relies on federal and other state agencies to enforce regulations that apply to harvesting, processing, storage, and sanitary transport of wild and exotic game meats. If findings show there was a violation of law regarding sourcing, Montana has current regulations to render the product adulterated or misbranded to not only protect consumers from unsafe or questionable food under the Montana Food, Drug, and Cosmetic Act, but stop illegally harvested game from entering or continuing further into interstate or intrastate commerce.

COMMENT #4: A commenter asked if section 3-403.11 "reheating for hot holding" food is needed in the wholesale food circular. The commenter states a manufacturer most likely will not package hot-held foods to be supplied to a retailer.

RESPONSE #4: While the department agrees with the commenter, this situation will likely not be encountered during most inspections or investigations. The situation may occur in rare circumstances, such as offering offsite food samples as the commenter mentioned. This same rationale applies to why section 5-101.14, regarding natural snow and ice, was added as a regulation, as well as section 8-102.10. These rare and unique circumstances need to be addressed to ensure safe food for consumers.

COMMENT #5: A commenter requests the department clarify the apparent conflict between sections 4-301.12 and 4-501.16 regarding food preparation sinks and warewashing sinks used for washing or thawing foods.

RESPONSE #5: The department is of the opinion there is no conflict. The department believes newly licensed establishments will be required to have separate food preparation sinks when needed, unless a variance is warranted in the opinion of the local authority under section 8-103.10. In such cases, and for current and continuing licensees absent an existing and separate food preparation sink, the sanitizing compartment of a multiple-compartment warewashing sink may continue to be used under section 4-501.16, unless the local authority finds conditions that require an immediate or phased-in upgrade. This might be the case if the absence of a food preparation sink was significantly linked to an outbreak, recall, major allergen cross-contact condition, or other observed adverse conditions.

COMMENT #6: A commenter stated the terms "regulatory authority" and "local regulatory authority" used in the circular and rule should be reviewed for clarity.

RESPONSE #6: The department has reviewed the circular to ensure the terms are properly used.

COMMENT #7: A commenter requests the department review and remove all retail references from the circular, such as "temporary food establishments."

RESPONSE #7: The department has reviewed the circular and removed extraneous and irrelevant retail food references that inadvertently remained, such as "temporary" and "vending."

COMMENT #8: A commenter suggested the "f" in "federal" on page one of the circular be capitalized.

RESPONSE #8: The department has reviewed the circular and believes use of the noncapitalized letters is correct.

COMMENT #9: A commenter stated the department should consider removing the terms "critical" and "non-critical" violations in favor of "priority," "priority-foundation," and "core" inspection items.

RESPONSE #9: The department has long been in favor of using the terms "high," "medium," and "low" or alternatively "critical," "major," and "minor" to describe inspection findings to assign regulatory significance to the violation. These terms are carefully defined by the FDA for internal use to assist officers in establishing priorities and communicating findings to operators. However, assigning some observation to a specific severity category in all situations is not always possible or even advisable, and is best left to the professional judgment of the sanitarian. For example, a leaky roof in an establishment warehouse where all the food is packaged and sealed might be a minor violation, but a leaky roof above the production line in a manufacturing plant where there is exposed food might be a critical violation. The department has reviewed and revised the circular to better use terminology to categorize findings with the hope it will facilitate increased communications between regulators and operators.

COMMENT #10: A commenter suggests the department recheck the circular for spelling errors such as "potential hazardous food" in the preface table.

RESPONSE #10: The department agrees and has corrected all spelling errors identified.

COMMENT #11: A commenter states one term should be used to describe food that needs to be controlled for safety reasons (i.e., potentially hazardous food, time-temperature for safety food, condition control food). The commenter likes the concept of condition control food.

RESPONSE #11: The department partially agrees and plans to phase-in "condition control food" in the state and at the national retail food conference for consideration by all parties.

COMMENT #12: A commenter asked the department to define the term "honey" in rule.

RESPONSE #12: The department has revised the circular to define "honey" in the same manner as it is defined under 50-31-103(20), MCA.

COMMENT #13: A commenter asks the department to include "warehouse" in rule definitions regarding license subtypes.

RESPONSE #13: The department partially agrees, but believes the issue is better addressed when an updated licensing database is procured and implemented. However, the department has included in the circular a warehouse subtype.

COMMENT #14: A commenter stated the term "regulated carrier" is not defined and needs to be regarding transport of food.

RESPONSE #14: The department partially agrees and plans, through future rulemaking, to formally adopt applicable sections of 21 CFR 1.900-934 for the sanitary transport of human foods, which are currently in effect for vehicles engaged in transporting food in commerce. Specifically, the term "Carrier" is defined in 21 CFR 1.904, and has many exemptions and waivers. Also, use of the term as proposed in the circular is consistent with 21 CFR 1.227 regarding FDA registration of food facilities. In addition to using section 3-202.11 of the circular, and until a future circular update is adopted, departmental policy and guidance will resemble applicable portions of 21 CFR 1.900-934 for the sanitary transport of human foods.

COMMENT #15: A commenter suggests revising the definition of "packaged" under section 1-201.10(73) of the circular by removing language the commenter believes is not relevant to wholesale food.

RESPONSE #15: The department disagrees because the language provides clarity about what the term does not include.

COMMENT #16: A commenter suggests removing from the definition of "Potentially hazardous food" duplicative abbreviations already in the preface for the table of the circular.

RESPONSE #16: The department disagrees because the abbreviations provide clarity about the terms.

COMMENT #17: A commenter suggests defining the term "process authority."

RESPONSE #17: The department disagrees. New Rule III(6), now ARM 37.110.306(6) addresses who is qualified as a process authority to perform assessments and studies.

COMMENT #18: A commenter suggests changing the definition of "Sealed" in the circular to match the model retail code.

RESPONSE #18: The department agrees, and the current definition matches the current model retail code.

COMMENT #19: A commenter suggests exempting certain specialized processors from the certified food management training requirement, such as juice and acidified processors, who are required to take specialized training. The commenter also asks which administrative rule contains the establishment categories.

RESPONSE #19: The department agrees and has revised the circular accordingly. Establishment categories are contained in Table 1 of New Rule III and section 2-102.12 of the circular.

COMMENT #20: A commenter suggests changing the title of section 2-201.11 to read "Responsibility to report illness" for section clarification.

RESPONSE #20: The department partially agrees and has revised the title to read "RESPONSIBILITY, ILLNESS."

COMMENT #21: A commenter suggests removing paragraph 2 from section 2-402.11, since this applies to retail establishments.

RESPONSE #21: The department disagrees because the paragraph provides detail about when hair restraints are not required at retail establishments, which has logical application to wholesale establishments while adhering to the legal requirements in 50-57-103(2), MCA.

COMMENT #22: A commenter requests the department denote which parts of section 3-201.16 regarding wild plants and mushrooms are priority and priority foundation items.

RESPONSE #22: The department agrees and has revised the circular to include the recommendations.

COMMENT #23: A commenter suggests revising section 3-201.16 of the circular regarding wild plants and wild mushrooms to remove "or other persons involved in providing food directly to consumers."

RESPONSE #23: The department partially agrees and has revised the circular to clarify this section and to more closely correspond with the statutory definition of "wholesale."

COMMENT #24: A commenter asks if an online course would qualify as academic coursework for identifying wild mushrooms.

RESPONSE #24: An online course could qualify depending upon the institution and coursework content, but this determination is best decided on a case-by-case basis by local and state officials.

COMMENT #25: A commenter states the reference to paragraph (4)(h) in section 3-201.16(6)(l) needs clarification.

RESPONSE #25: The department agrees and has revised the section so that it now references (5)(a) through (h).

COMMENT #26: A commenter suggests the title of 3-202.11 be changed to "Food transport and receipt."

RESPONSE #26: The department partially agrees and has revised the title to read: "FOOD TRANSPORT, RECEIPT."

COMMENT #27: A commenter asks what would happen if a local jurisdiction disagreed with the requirement to transport certain foods under mechanical refrigeration in section 3-202.11.

RESPONSE #27: Variances can be granted under section 8-103.10, and other legal disputes between regulatory authorities can be settled under differing sections of state law.

COMMENT #28: A commenter suggests changing "will" to "must" in section 3-202.11 of the circular.

RESPONSE #28: The department believes this part of the circular is sufficiently written.

COMMENT #29: A commenter states that section 3-202.110 contains a reference to 3-404.11(3)(a), but that no such section exists in the circular.

RESPONSE #29: The department believes this part of the circular is sufficiently written because the circular does contain section 3-404.11(3)(a).

COMMENT #30: A commenter states decisions about whether to allow bare-hand contact with ready-to-eat foods should be up to local jurisdictions in section 3-301.11.

RESPONSE #30: The department agrees but no wording change is needed for this section because the term "regulatory authority" includes a local authority.

COMMENT #31: A commenter states that section 3-302.110 of the circular regarding major food allergen cross-contact issues is unworkable as written and suggests the department revise the section.

RESPONSE #31: The department has revised the section to better correspond with 21 CFR 117 Subpart B.

COMMENT #32: A commenter requests clarification of section 3-304.17 regarding when refillable containers may be reused that are returned to the manufacturer by the retailer/consumer.

RESPONSE #32: The department has revised the section to provide greater clarity.

COMMENT #33: A commenter asks whether the state or local regulatory authority is the party responsible for approving food reuse under section 3-306.14 regarding food returned to the wholesaler.

RESPONSE #33: The state and local regulatory authority share joint responsibility in making such decisions.

COMMENT #34: A commenter requests clarification as to plant treatment processes for fruit and vegetables in section 3-401.13 to provide more specificity in the rule.

RESPONSE #34: The department partially agrees and has made revisions to the circular.

COMMENT #35: A commenter suggests section 3-404.11 "specialized processing" be revised to include fermentations, using additives to get around time-temperature control and curing. The commenter also asks whether the section should be revised so all processors should simply comply with all applicable sections of ARM 37.110.101.

RESPONSE #35: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #36: A commenter seeks clarification of the use-by dates in section 3-501.17 of the circular.

RESPONSE #36: The department believes this part of the circular is sufficiently written to address this topic. A primary purpose of this section is to ensure that leftover ingredients dispensed from opened containers are used within the prescribed time period.

COMMENT #37: A commenter suggests section 3-502.12 be revised to clarify use-by dates for reduced oxygen packaging, especially for sous vide and cook-chill techniques.

RESPONSE #37: The department has revised the circular to clarify actions, such as "consumed" and "discarded." In certain processes, required specialized training is a substitute for a Hazard Analysis of Critical Control Points (HACCP) plan. At the retail level, specialized food safety training is not a requirement; hence the HACCP plan regulation for some processes and packaging.

COMMENT #38: A commenter stated section 3-502.12 for fish in reduced oxygen packaging is not consistent with section 3-501.13.

RESPONSE #38: The department believes both these sections of the circular are sufficiently written to address these two separate topics regarding proper thawing and processing/packaging.

COMMENT #39: A commenter suggests section 3-601.11 regarding the new standard of identity for sandwiches and fishery products be revised to provide greater clarity.

RESPONSE #39: The department believes this part of the circular is sufficiently written to address this topic and is consistent with wording in other federal standards of identity. This part of the circular will likely be addressed during the pre-licensing stage by the department and was prompted by the absence of a federal standard of identity.

COMMENT #40: A commenter suggests section 3-601.13 regarding offsite food sampling be revised to provide simplification and clarity.

RESPONSE #40: The department believes this part of the circular is sufficiently written to address this topic, but has added the statutory citation.

COMMENT #41: A commenter suggests language in section 3-601.13 regarding customer bulk food dispensing be removed.

RESPONSE #41: The department believes this part of the circular is sufficiently written to address this topic. A customer is not necessarily a consumer.

COMMENT #42: A commenter states the warning language in section 3-602.11(6) needs to be more flexible.

RESPONSE #42: The department believes this part of the circular is sufficiently written to address this topic. This entire subsection is voluntary.

COMMENT #43: A commenter suggests adding warning language to section 3-602.11 to include products such as sushi and shellfish.

RESPONSE #43: The department believes this part of the circular is sufficiently written to address this topic. For example, raw fish included in certain types of sushi must be treated for parasite destruction as indicated in their HACCP plan during the pre-licensing process.

COMMENT #44: A commenter notes "bowels" in the section 4-101.13 chart should read "bowls."



RESPONSE #44: The department has revised the circular to correct this typographical error.

COMMENT #45: A commenter states stronger language is needed in section 4-201.11 regarding food equipment and utensils to support the requirement for commercial equipment designed for the intended use.

RESPONSE #45: The department believes this part of the circular is sufficiently written to address this topic and has revised the language in the circular to refer the reader to section 4-205.10 to specifically address the topic of commercial-grade equipment.

COMMENT #46: A commenter states section 4-301.12 is wordy and confusing, especially if a wholesale facility is using detergent-sanitizers.

RESPONSE #46: The department believes this part of the circular is sufficiently written to address this topic. For example, detergent-sanitizers that have an EPA registration number are effective in sanitizing if used in accordance with written product label instructions.

COMMENT #47: A commenter suggests changing the title of section 4-501.14.

RESPONSE #47: The department believes the title is sufficiently written to describe the content of this section.

COMMENT #48: A commenter seeks clarification of section 4-501.16(2) and states the language is confusing.

RESPONSE #48: The department believes this part of the circular is sufficiently written to address the topic.

COMMENT #49: A commenter seeks removal of extra commas in section 4-501.114.

RESPONSE #49: The department agrees and has revised the circular accordingly.

COMMENT #50: A commenter suggests deleting section 4-501.115 because detergent-sanitizers will not meet the needs of wholesalers.

RESPONSE #50: The department believes this part of the circular is sufficiently written to address this topic. For example, detergent-sanitizers that have an EPA registration number are effective in sanitizing if used in accordance with written product label instructions. In the past, states like Wisconsin had their own sanitizer verification programs, but this service is now conducted by the EPA.

COMMENT #51: A commenter states they are unclear on why sections 3-503.12, 4-401.11, and 4-903.12 repeat the same storage conditions in three separate sections of the circular.

RESPONSE #51: There is no section 3-503.12 in the circular or model Food Code. The department believes these parts of the circular are sufficiently written to address this topic.

COMMENT #52: A commenter states section 4-904.11 as written only applies to retail food for single-use and multiple-use article and utensils. The commenter suggests the section be removed or revised.

RESPONSE #52: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #53: A commenter seeks correction of the numbering system relating to section 5-101.11.01.

RESPONSE #53: The department agrees and has revised the section to correct the numbering errors.

COMMENT #54: A commenter requests section 5-101.12 be revised to include water flushing for seasonable establishments using public and non-public water systems.

RESPONSE #54: The department agrees and has revised the circular accordingly. Seasonable establishment water flushing is also addressed in the non-public water circular.

COMMENT #55: A commenter states section 5-102.12 should be revised to remove awkward wording and require labeling of pipes.

RESPONSE #55: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #56: A commenter states section 5-102.14 regarding records retention conflicts with Nonpublic Water Supply Circular FCS 1-2016.

RESPONSE #56: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #57: A commenter states section 5-103.11(3)(a) and (b) should be removed for retail mobile units.

RESPONSE #57: The department agrees and has revised the circular accordingly.

COMMENT #58: A commenter states section 5-103.12 regarding food sampling sites should be revised to reference food sampling establishments.

RESPONSE #58: The department agrees and has revised the circular accordingly.

COMMENT #59: A commenter asks why the mobile establishment water capacity determination in section 5-103.11 is a joint function of both the department and the local regulatory authority.

RESPONSE #59: The wording of this section was clarified to be a joint decision between the local authority and department and likely will be addressed during the pre-licensing stage.

COMMENT #60: A commenter suggests changing the reference to "water transport vehicles" in section 5-104.11(2)(b) to read: "water hauler licensed in the state of Montana or regulated as part of a public water supply as provided in Title 75, Chapter 6."

RESPONSE #60: The department partially agrees and has revised the language to include a water hauler.

COMMENT #61: A commenter suggests changing the reference to "temporary" in section 5-104.12 to read "wholesale food sampling site" or similar language.

RESPONSE #61: The department agrees and has revised the language to read "food sampling establishment."

COMMENT #62: A commenter suggests section 5-203.11 be revised to remove reference to "temporary" and "vending."

RESPONSE #62: The department agrees and has revised the circular to remove extraneous and irrelevant retail food references, such as "temporary" and "vending."

COMMENT #63: A commenter suggests section 5-402.14 be revised to clarify who is authorized to haul wastewater.

RESPONSE #63: The department agrees and has revised this section to provide greater clarity.

COMMENT #64: A commenter suggests changing the reference to "temporary" in section 6-101.11 to read "wholesale food sampling site" or similar language.

RESPONSE #64: The department agrees and has revised the language to read "food sampling establishment."

COMMENT #65: A commenter suggests changing the reference to "temporary" in section 6-202.15 to read "wholesale food sampling site" or similar language.

RESPONSE #65: The department agrees and has revised the language to read "food sampling establishment."

COMMENT #66: A commenter suggests the word "flowing" in section 6-501.115 be changed to "running."

RESPONSE #66: The department agrees and has revised the section to remove the term "flowing."

COMMENT #67: A commenter suggests the department review whether section 6-501.115(3) applies to wholesale.

RESPONSE #67: The department has reviewed the section and believes it is sufficiently written to address the topic.

COMMENT #68: A commenter suggests revising the language of section 7-207.11 to eliminate the retail reference.

RESPONSE #68: The department believes this part of the circular is sufficiently written to address this topic. For example, some wholesale operations also offer retail sales of medicines.

COMMENT #69: A commenter suggests revising the language of section 7-207.12 to eliminate the retail and childcare references.

RESPONSE #69: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #70: A commenter suggests revising the language of section 7-301.11 to eliminate retail reference.

RESPONSE #70: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #71: A commenter states section 8-101.10 should be revised to replace "7" with "g."

RESPONSE #71: The department agrees and has revised the circular accordingly.

COMMENT #72: A commenter suggests the department revise section 8-102.10 to provide more clarity and flexibility.

RESPONSE #72: The department believes this part of the circular is sufficiently written to address this topic.

COMMENT #73: A commenter suggests section 8-401.20 be revised to clarify inspection frequency.

RESPONSE #73: The department agrees and has revised the section to provide greater clarity.

COMMENT #74: A commenter suggests revising section 8-402.10 to include sanitarians in-training.

RESPONSE #74: The department agrees and has revised the circular accordingly.

COMMENT #75: A commenter suggests changing the number for section 8-402.11 to end in .10 or .20.

RESPONSE #75: The department believes this section is numbered appropriately, but has added terms to clarify the requirements and has added the new rule number.

COMMENT #76: A commenter suggests changing numbering for sections 8-402.15 through 8-402.40 to match convention.

RESPONSE #76: The department believes these sections are appropriately numbered.

COMMENT #77: A commenter suggests revising section 8-501.20 regarding license suspensions to remove language allowing licenses to be summarily suspended. The commenter states that law does not allow for suspending a license and suspension would need to be done through the health officer's authority.

RESPONSE #77: The department believes this part of the circular is sufficiently written to address this topic and complies with Montana law.

COMMENT #78: A commenter suggests all definitions from the circular be moved to administrative rule.

RESPONSE #78: The circular is adopted and incorporated by reference under New Rule II, now ARM 37.110.305. The definitions apply to both the circular and the administrative rules.

COMMENT #79: A commenter states New Rule III(8), now ARM 37.110.306(8), is too stringent and suggests it be revised to allow a local regulatory authority to waive the no-violation requirement regarding final pre-licensing inspections.

RESPONSE #79: The department believes this part of the rule is sufficiently written to address this topic. An establishment must not commence operations in a state of non-compliance. Obtaining compliance after issuance of a license may be difficult, if not realistically impossible.

COMMENT #80: A commenter suggests New Rule IV, now ARM 37.110.307, be revised to allow more inspection flexibility.

RESPONSE #80: The department believes this part of the rule is sufficiently written to address this topic. This rule corresponds with existing retail food rule in ARM 37.110.239.

COMMENT #81: A commenter suggests revising ARM 37.110.101(1)(af) so that the term "fours" reads "flours."

RESPONSE #81: The department agrees and has revised the rule accordingly.

COMMENT #82: A commenter states all references to "sewage" in the circular should be changed to "wastewater" to fit terminology used in applicable regulations across the state. Alternatively, the commenter suggests the definition of sewage be revised to include wastewater.

RESPONSE #82: The department believes the terms are used correctly in the circular, since both terms are used in the model Food Code.

COMMENT #83: A commenter indicates the term "regulatory authority" defined in the circular is inconsistent with the definition provided for under 50-57-102(8), MCA.

RESPONSE #83: The department has revised the definition to conform with 50-57-102(8), MCA.

5. The department intends these rules to be effective January 1, 2020.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State November 12, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF DECISION ON
ARM 42.12.222 and 42.13.101	)	PROPOSED AMENDMENT
pertaining to implementation of a	)	
point-based penalty system and	)	
revising procedures relating to	)	
revocation, lapse, or suspension of	)	
alcoholic beverage licenses	)	

TO: All Concerned Persons

1. On September 6, 2019, the Department of Revenue published MAR Notice No. 42-1003 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1505 of the 2019 Montana Administrative Register, Issue Number 17.

2. A public hearing on the notice of proposed amendment of the above-stated rules was held on September 30, 2019. The deadline for public comment was also extended in a notice that was published on October 18 at page 1837 of the 2019 Montana Administrative Register, Issue Number 20. The deadline was extended from October 4, 2019 through 5:00 p.m., November 1, 2019, to allow interested persons additional time to comment on the proposed amendment of the above-referenced rules.

3. After receiving public comment on the proposal, the department is withdrawing MAR Notice No. 42-1003 from consideration.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State November 12, 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 June 30, 2019. This table includes notices in which those rules adopted during the period May 24, 2019, through November 8, 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 June 30, 2019, 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 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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24-138-76 Definitions - Fees - Mandatory Certification - Dental Auxiliary Functions - Dental Hygienist Limited Prescriptive Authority - Dentist License by Examination - Dental Hygienists License by Examination - Dentist License by Credentials - Dental Hygienist by Credentials - Dentist Specialist by Credentials - Dental Hygiene Local Anesthetic Certification - Dental Hygiene Limited Access Permit - Denturist License Requirements - Denturist Internship - Converting Inactive to Active Status - Reactivation of Expired License - Reporting Procedures - Dentist and Dental Hygienist Unprofessional Conduct - Denturist Unprofessional Conduct - Anesthesia Standards and Continuing Education - Approved Clinical Exam Criteria for Dentists and Dental Hygienists - Denturist Scope of Practice—Dentures Over Implants - Denturist Examination, p. 1461

(Board of Funeral Service)

24-147-40 Definitions - Fee Schedule - Name Change, Closure, Transfer, or Change of Ownership—Mortuary, Branch Establishment, Crematory, or Cemetery - Mortician Licenses - Crematory Records - Cremation Authorizations - Integrity of Identification of Human Remains - Cremation Procedures - Crematory Prohibitions - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Continuing Education Requirements—Morticians - Unprofessional Conduct - Preneed Arrangements—Notification of Closure or Change of Ownership—Mortuary, Branch Establishment, or Crematory, p. 1769

(Board of Hearing Aid Dispensers)

24-150-41 Fees - Record Retention - Fee Abatement - Traineeship Requirements and Standards - Minimum Testing - Transactional Document Requirements—Form and Content - Continuing Education Requirements - Unprofessional Conduct - Standards for Approval, p. 582, 1862

(Board of Nursing)

24-159-87 Definitions - Nonroutine Applications - Educational Facilities for Programs - Program Annual Report - Program Faculty - Curriculum Goals and General Requirements for Programs - Renewals - Alternative Monitoring Track - Biennial Continuing Education Requirements - Auditing of Contact Hours, p. 706, 1055



24-159-88 Use of Clinical Resource Licensed Practical Nurses, p. 1270

(Board of Occupational Therapy Practice)

24-165-24 Definitions - Fees - Military Training or Experience - Examinations - Supervision - Deep Modality Endorsement - Recognized Education Programs - Standards of Practice - Approved Modality Instruction - Approved Training - Endorsement to Apply Topical Medications - Use of Topical Medications - Protocols for Use of Topical Medications - Debriding Agents Protocols - Anesthetic Agents Protocols - Nonsteroidal Anti-Inflammatory Agents Protocols - Antispasmodic Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol for Use of an Approved Medication as a Neuropathic Pain Agent - Temporary Practice Permit - Inactive Status - Continuing Education - Continuing Education–Exemption - Unprofessional Conduct - Bactericidal Agents Protocols - Applications for Licensure - Pass-Fail Criteria - Supervision–Methods - Documentation of Instruction and Training - Approval to Use Sound and Electrical Physical Agent Modalities Endorsement - Documenting Education and Competence to Perform Sound and Electrical Physical Agent Modalities–Out-of-State Practitioners, p. 509, 1743

(Board of Outfitters)

24-171-39 Fees - Outfitter Records - Safety and First Aid Provisions - Insurance for Outfitters - Guide License, p. 280, 850

(Board of Pharmacy)

24-174-71 Fee Schedule - Military Training or Experience - Collaborative Practice Agreement Requirements - Internship Requirements - Preceptor Requirements - Required Forms and Reports - Registration Requirements - Use of Pharmacy Technician - Ratio of Pharmacy Technicians to Supervising Pharmacists - Transfer of Prescriptions - Registered Pharmacist Continuing Education–Requirements - Qualifications of Pharmacy Technician - Pharmacies–Annual Renewal - Pharmacy Technician–Renewal - Renewals - Registered Pharmacist Continuing Education–Noncompliance, p. 935, 1633

24-174-72 Administration of Vaccines by Pharmacists - Prescription Drug Registry Fee, p. 1731

24-174-73 Positive Identification for Controlled Substance Prescriptions, p. 1954

(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 Psychologists)

- 24-189-40 Definitions - Required Supervised Experience - Continuing Education Implementation - Requirements for Licensees Providing Telehealth Services - Licensees From Other States or Canadian Jurisdictions, p. 1567

(Board of Public Accountants)

- 24-201-52 Alternatives and Exemptions - Verification - Exercise of Practice Privilege in Other Jurisdictions - Enforcement Against License Holders and Practice Privilege Holders, p. 1151, 1863

(Board of Real Estate Appraisers)

- 24-207-42 Appraisal Review - USPAP Exemption - Definitions - Examination - Application Requirements - Approval of Qualifying and Continuing Education Courses - Ad Valorem Appraisal Experience - Qualifying Experience - Inactive License/Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Registration and Renewal of Appraisal Management Companies - Continuing Education-Compliance and Auditing - Unprofessional Conduct for Appraisers - Unprofessional Conduct for Appraisal Management Companies - Incorporation by Reference of the Real Property Appraiser Qualification Criteria - Appraiser Reporting Obligations to the Board - Appraisal Management Company Reporting Obligations to the Board - Regulatory Reviews - Experience-Number of Hours Required - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Scope of Practice - Continuing Education Noncompliance, p. 2166, 53, 636
- 24-207-43 Ad Valorem Tax Appraisal Experience, p. 420, 1382

(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 - Continuing Property Management Education - Waiver of Experience Requirement for Broker Licensing Prohibited - Board Approval of Courses, Providers, and Instructors, p. 588, 1056

(Board of Respiratory Care Practitioners)

- 24-213-21 Abatement of Renewal Fees - Continuing Education Requirements, p. 106, 749
- 24-213-22 Continuing Education Requirements - Acceptable Continuing Education - Waiver of Continuing Education Requirement - Traditional Education by Nonsponsored Organizations - Teaching - Papers, Publications, Journals, Exhibits, Videos, Independent Study, and College Course Work, p. 1007

(Board of Behavioral Health)

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(Board of Water Well Contractors)

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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 October 2019 appear. Potential vacancies from December 1, 2019 through February 29, 2020, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 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 OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Achieving a Better Life Experience Program Oversight Committee</b>			
Director John Lewis Helena	Governor	Reappointed	10/30/2019 1/1/2021
Qualifications (if required): Dept. of Administration Director or Designee			
Ms. Catherine Murphy Helena	Governor	Martin	10/30/2019 1/1/2021
Qualifications (if required): Director of DPHHS			
<b>Advisory Council on Aging</b>			
Ms. Roberta Bigback Lame Deer	Governor	Bremner	10/30/2019 7/1/2022
Qualifications (if required): Public Representative			
<b>Alternative Health Care Board</b>			
Dr. Alisun Bonville Bozeman	Governor	Patterson	10/4/2019 9/1/2023
Qualifications (if required): Naturopath			
Dr. Sandra Shepherd Missoula	Governor	Reappointed	10/4/2019 9/1/2023
Qualifications (if required): Montana physician			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Medical Examiners</b>			
Dr. James N. Burkholder Helena Qualifications (if required): Doctor of Medicine (MD)	Governor	Reappointed	10/1/2019 9/1/2023
Dr. Ashleigh Marie Magill Whitefish Qualifications (if required): Doctor of Medicine (MD)	Governor	None Stated	10/1/2019 9/1/2023
Mr. Douglas Keith Womack Missoula Qualifications (if required): Licensed Acupuncturist	Governor	Brekke	10/1/2019 9/1/2023
<b>Board of Nursing</b>			
Ms. Sarah M. Spangler Havre Qualifications (if required): Registered Nurse	Governor	Reappointed	10/9/2019 7/1/2023
Ms. Lisa Stricker Billings Qualifications (if required): Advanced Practice Registered Nurse	Governor	Scribner	10/9/2019 7/1/2023



**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Plumbers</b>			
Mr. Denver Fraser Helena	Governor	Reappointed	10/4/2019 5/1/2023
Qualifications (if required): Department of Environmental Quality Representative			
Mr. Craig Gilchrest Glasgow	Governor	Henry	10/4/2019 5/1/2023
Qualifications (if required): Representative of the public			
Mr. Mykal D. Jorgenson Billings	Governor	Carey	10/4/2019 5/1/2023
Qualifications (if required): Journeyman Plumber			
Mr. Scott Eugene Lemert Livingston	Governor	Reappointed	10/4/2019 5/1/2023
Qualifications (if required): Master Plumber			
Senator Trudi Schmidt Great Falls	Governor	Friede	10/4/2019 5/1/2023
Qualifications (if required): Representative of the public			
Mr. Brandon Shaw Butte	Governor	Schrapps	10/4/2019 5/1/2022
Qualifications (if required): Journeyman Plumber			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Sanitarians</b>			
Mrs. Stephanie Jean Ler Sidney Qualifications (if required): Registered sanitarian	Governor	Reappointed	10/30/2019 7/1/2022
Mrs. Tracy Nielsen Billings Qualifications (if required): Member from the public	Governor	None Stated	10/30/2019 7/1/2020
<b>Criminal Justice Oversight Council</b>			
Ms. Annette Carter Farley Helena Qualifications (if required): Member of the board of pardons and parole	Governor	Reappointed	10/11/2019 8/1/2021
Mr. Andrew Imansees Huff Helena Qualifications (if required): Member of a state or federally recognized Indian tribe	Governor	Russell	10/11/2019 8/1/2021
Ms. Melissa Kelly Bozeman Qualifications (if required): Representative of community corrections providers	Governor	Reappointed	10/30/2019 8/1/2021

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Criminal Justice Oversight Council Cont.</b>			
Mr. Peter B. Ohman Bozeman	Governor	None Stated	10/11/2019 8/1/2021
Qualifications (if required): Member who represents the office of state public defender			
Ms. Sarah Kathryn Rossi Helena	Governor	None Stated	10/11/2019 8/1/2021
Qualifications (if required): Representative of civil rights advocates			
Ms. Amy Tenney Helena	Governor	Reappointed	10/11/2019 8/1/2021
Qualifications (if required): Representative of community corrections providers			
Ms. Kelsen Emily Young Helena	Governor	None Stated	10/11/2019 8/1/2021
Qualifications (if required): Representative of Crime Victims			
<b>Flathead Basin Commission</b>			
Ms. Jasmine Courville-Brown Ronan	Governor	Reappointed	10/30/2019 6/30/2023
Qualifications (if required): Industrial, environmental, and other interests			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Flathead Basin Commission Cont.</b>			
Ms. Casey Lewis Kalispell	Governor	Hunt	10/30/2019 6/30/2023
Qualifications (if required): Industrial, environmental, and other interests			
Mr. Charles J. Potter Columbia Falls	Governor	Reappointed	10/30/2019 6/30/2023
Qualifications (if required): Industrial, environmental, and other interests			
<b>Information Technology Board</b>			
Director Martha Williams Helena	Governor	Tubbs	10/4/2019 1/1/2021
Qualifications (if required): State Agency Director			
<b>Interstate Commission on Educational Opportunities for Military Children</b>			
Captain Michelle Bogden Fort Harrison	Governor	Reappointed	10/4/2019 7/1/2021
Qualifications (if required): Executive Branch Representative			
BG (Ret.) Harold Joseph Stearns Missoula	Governor	Reappointed	10/4/2019 7/1/2021
Qualifications (if required): Compact Commissioner-Ex-Officio			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Mental Disabilities Board of Visitors</b>			
Mrs. Melissa Ancell Poplar	Governor	Reappointed	10/4/2019 6/30/2021
Qualifications (if required): Consumer or family of consumer of developmental disability services			
Ms. Andrea Joe Mary Daniel Havre	Governor	Clark	10/4/2019 6/30/2021
Qualifications (if required): Consumer or family of consumer of mental health services			
Mr. Daniel Timothy Laughlin Anaconda	Governor	Reappointed	10/4/2019 6/30/2021
Qualifications (if required): Skills, knowledge, and experience relative of adults with developmental disabilities			
Ms. Sicily Nicole Morris Billings	Governor	Reappointed	10/4/2019 6/30/2021
Qualifications (if required): Professional person in the field of mental health treatment			
<b>Motorcycle Safety Advisory Committee</b>			
Mrs. Lori Ann Balcer Shepherd	Governor	Reappointed	10/30/2019 7/1/2023
Qualifications (if required): Motorcycle rider representing motorcycle riding groups			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Motorcycle Safety Advisory Committee Cont.</b>			
Sergeant Richard Dean Musson Jr. Bozeman Qualifications (if required): Peace Officer	Governor	Reappointed	10/30/2019 1/1/2023
Mr. Rex Svoboda Frenchtown Qualifications (if required): Motorcycle rider representing motorcycle groups	Governor	Kennedy	10/30/2019 7/1/2023
<b>Private Land Public Wildlife Advisory Council</b>			
Representative Duane Ankney Colstrip Qualifications (if required): Landowner	Governor	Reappointed	10/30/2019 8/1/2021
Mr. Edward Albert Beall Helena Qualifications (if required): Sports person	Governor	Reappointed	10/30/2019 8/1/2021
Mr. Ralph E. Bukoskey Rosebud Qualifications (if required): Sports person	Governor	Reappointed	10/30/2019 8/1/2021

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Private Land Public Wildlife Advisory Council Cont.</b>			
Ms. Cynthia Cohan Butte Qualifications (if required): Sports person	Governor	Reappointed	10/30/2019 8/1/2021
Mr. M. Lee Cornwell Glasgow Qualifications (if required): Landowner	Governor	Reappointed	10/30/2019 8/1/2021
Dr. Daniel R. Fiehrer Helena Qualifications (if required): Sports person	Governor	Reappointed	10/30/2019 8/1/2021
Representative Denley Loge St. Regis Qualifications (if required): Landowner and Legislator	Governor	Reappointed	10/30/2019 8/1/2021
Mr. Richard L. Stuker Chinook Qualifications (if required): Landowner	Governor	Reappointed	10/30/2019 8/1/2021
Mr. Dale Tribby Miles City Qualifications (if required): Sports person	Governor	Perry	10/30/2019 8/1/2021

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Private Land Public Wildlife Advisory Council Cont.</b>			
Mr. Carl L. Zabrocki	Governor	Reappointed	10/30/2019
Billings			8/1/2021
Qualifications (if required): Sports person			
<b>State Emergency Response Commission</b>			
Mr. Anthony Bacino	Governor	Reappointed	10/30/2019
Missoula			10/1/2023
Qualifications (if required): Representative of a railroad company doing business in Montana			
Mr. Donald W. Britton	Governor	Reappointed	10/30/2019
Great Falls			10/1/2023
Qualifications (if required): Representative of the National Weather Service			
Ms. Delila Bruno	Governor	Reappointed	10/30/2019
Helena			10/1/2023
Qualifications (if required): Co-Presiding Officer and Representative of the Dept. of Military Affairs			
Mrs. Georgia Bruski	Governor	Reappointed	10/30/2019
Ekalaka			10/1/2023
Qualifications (if required): Representative of an emergency management association			



**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission Cont.</b>			
Col. Tom Butler Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Montana Department of Justice			
Mr. John Culbertson Great Falls	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Fire Services Training School			
Mr. Gregory Thomas Doyon Great Falls	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Montana League of Cities and Towns			
Ms. Shari Graham Helena	Governor	DeTienne	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Emergency Medical Services			
Mr. Raphael Graybill Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Governor's Office			
Mr. Ron Jendro Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Dept. of Fish, Wildlife and Parks			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission Cont.</b>			
Mr. Danny Kaluza Butte	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of a Utility Company			
Mrs. Michelle Marie Kimball Kalispell	Governor	Marcotte	10/30/2019 10/1/2023
Qualifications (if required): Representative of Montana hospitals			
Chief Thomas Kuntz Red Lodge	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of a Fire Services Assoc.			
Ms. Susan McEachern Helena	Governor	Kerttula	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Dept. of Transportation			
Commissioner Mike McGinley Dillon	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Montana Association of Counties			
Mr. John Monzie Helena	Governor	Suenram	10/30/2019 10/1/2023
Qualifications (if required): DNRC Representative			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission Cont.</b>			
Mr. Todd Michael Mulcahy Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of a trucking association			
Mr. Jim Murphy Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of DPHHS			
Ms. Maleen Olson Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of Montana's insurance industry			
Mr. John Rasmann Helena	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Department of Environmental Quality			
Mr. Scott Sanders Belgrade	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of an emergency medical services association			
Mrs. Michelle L. Slyder Billings	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Montana's petroleum industry			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission Cont.</b>			
Ms. Hayley Tuggle Bozeman	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): University Representative			
Mr. Brian L. Wilkinson Malmstrom AFB	Governor	Reappointed	10/30/2019 10/1/2023
Qualifications (if required): Representative of the Air Force			
<b>State Rehabilitation Council</b>			
Mr. Dale Thomas Kimmet Helena	Governor	Podobnik	10/4/2019 10/1/2022
Qualifications (if required): Office of Public Instruction Representative			
Ms. Marcy Rae Roberts Kalispell	Governor	Nielson	10/4/2019 10/1/2022
Qualifications (if required): Community rehabilitation program			
<b>Statewide Public Safety Communications System Advisory Council</b>			
Atty. Gen. Tim Fox Helena	Governor	Reappointed	10/4/2019 7/1/2021
Qualifications (if required): Attorney General			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Upper Columbia Conservation Commission</b>			
Dr. Jeremy Anderson Corvallis	Governor	None Stated	10/11/2019 5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization			
Mr. Paul Frederick Bradford Libby	Governor	None Stated	10/11/2019 5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization			
Mr. Andrew Gorder Missoula	Governor	None Stated	10/11/2019 5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization			
Mr. Larry Clarence Lack, Sr. Thompson Falls	Governor	None Stated	10/11/2019 5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization			
Mr. Robert Littlejohn Rich III Condon	Governor	None Stated	10/11/2019 5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization			

**EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Western Interstate Nuclear Compact</b>			
Mr. Christopher Dorrington	Governor	Blend	10/30/2019
Helena			1/1/2021
Qualifications (if required): Board Alternate Member			
Mr. Patrick Holmes	Governor	Lloyd	10/30/2019
Helena			1/1/2021
Qualifications (if required): Board member			

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Chiropractors</b> Dr. Amy Pezo, Helena Qualifications (if required): Chiropractor	Governor	1/1/2020
<b>Board of Personnel Appeals</b> Ms. Anne L. MacIntyre, Helena Qualifications (if required): Attorney with General Labor-Management experience	Governor	1/1/2020
<b>Board of Public Education</b> Mr. Paul Andersen, Bozeman Qualifications (if required): District 1	Governor	2/1/2020
Mr. Scott M. Stearns, Missoula Qualifications (if required): District 1, Democrat	Governor	2/1/2020
<b>Board of Regents</b> Mr. Paul Tuss, Havre Qualifications (if required): District 2 Representative	Governor	2/1/2020
<b>Board of Speech-Language Pathologists and Audiologists</b> Mr. Rich Turner, Billings Qualifications (if required): Public member who is a consumer of speech-language pathology or audiology	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Speech-Language Pathologists and Audiologists Cont.</b> Mrs. Rachel Glazer Stransberry, Lewistown Qualifications (if required): Speech-Language Pathologists	Governor	12/31/2019
<b>Grass Conservation Commission</b> Mr. Jeffrey Allen Willmore, Roy Qualifications (if required): Holds an active grazing preference right within a state district	Governor	1/1/2020
Mr. Gregory Martin Oxarart, Malta Qualifications (if required): Officer of or serves on the board of directors of a state district	Governor	1/1/2020
<b>Judicial Nomination Commission</b> Mr. Karl Englund, Missoula Qualifications (if required): Elected	Supreme Court	12/31/2019
Ms. Janice Bishop, Missoula Qualifications (if required): Lay member who is neither a judge nor an attorney active or retired	Governor	1/1/2020
<b>Labor-Management Advisory Council</b> Lt. Governor Mike Cooney, Helena Qualifications (if required): None Stated	Governor	12/31/2019
Mr. Don Judge, Helena Qualifications (if required): Representing Employees	Governor	12/31/2019



**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council Cont.</b>		
Mr. Doug Buman, Seattle, WA Qualifications (if required): Representing Employees	Governor	12/31/2019
Ms. Annette Hoffman, Billings Qualifications (if required): Representing Employers	Governor	12/31/2019
Mr. Eric Strauss, Helena Qualifications (if required): Ex-officio Member	Governor	12/31/2019
Mr. Lance Zanto, Helena Qualifications (if required): Representing Employers	Governor	12/31/2019
Mr. Jim Larson, Billings Qualifications (if required): Representing Employees	Governor	12/31/2019
Mr. Al Smith, Helena Qualifications (if required): Employee chosen by the Montana Trial Lawyers Association	Governor	12/31/2019
Ms. Vicki Evans, Great Falls Qualifications (if required): Employer representing self-insurers	Governor	12/31/2019
Mr. Adam Haight, Helena Qualifications (if required): Representing Employees	Governor	12/31/2019
Mr. Bridger Mahlum, Helena Qualifications (if required): Employer representing Montana Chamber of Commerce	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council Cont.</b>		
Mr. Mike Marsh, Billings Qualifications (if required): Representing Employers	Governor	12/31/2019
<b>Montana Alfalfa Seed Committee</b>		
Mr. Tom Matchett, Billings Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2019
Mr. Tom Neibur, Malta Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2019
<b>Montana Arts Council</b>		
Mr. Sean Chandler, Harlem Qualifications (if required): Public Representative	Governor	2/1/2020
Mr. Rob Quist, Kalispell Qualifications (if required): Public Representative	Governor	2/1/2020
Ms. Youpa Stein, Arlee Qualifications (if required): Public Representative	Governor	2/1/2020
Mr. Mark Kuipers, Missoula Qualifications (if required): Public Representative	Governor	2/1/2020
Ms. Jean Steele, Hamilton Qualifications (if required): Public Representative	Governor	2/1/2020

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Arts Council Cont.</b> Ms. Lynne Montague, Billings Qualifications (if required): Public Representative	Governor	2/1/2020
<b>Montana Small Business Development Center Advisory Council</b> Mr. Matt Harrington, Browning Qualifications (if required): Economic Developer	Governor	2/1/2020
Mr. Paddy Fleming, Bozeman Qualifications (if required): Economic Developer	Governor	2/1/2020
Mr. Joseph Willauer, Butte Qualifications (if required): Economic Developer	Governor	2/1/2020
Mr. Reed W. Bassett, Great Falls Qualifications (if required): Small Business Lender	Governor	2/1/2020
Mr. Chris Davis, Helena Qualifications (if required): Small Business Owner	Governor	2/1/2020
Mr. Karl Drga, Miles City Qualifications (if required): Small Business Lender	Governor	2/1/2020
Mr. Joe Fanguy, Missoula Qualifications (if required): Economic Developer	Governor	2/1/2020

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Small Business Development Center Advisory Council Cont.</b> Ms. Debbie Singer, Billings Qualifications (if required): Economic Developer	Governor	2/1/2020
<b>Pulse Crop Commodity Advisory Committee</b> Mr. Paul Kanning, Flaxville Qualifications (if required): producer	Governor	2/1/2020
Ms. Jullien Street, Chester Qualifications (if required): producer	Governor	2/1/2020
<b>Resource Conservation Advisory Council</b> Mr. Doug Bonsell, Ekalaka Qualifications (if required): Eastern Montana	Governor	1/1/2020
<b>State Employee Group Benefits Advisory Council</b> Director Sheila Hogan, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Representative Jim Keane, Butte Qualifications (if required): Legislature Representative	Governor	12/31/2019
Ms. Peggy MacEwen, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council Cont.</b>		
Ms. Samantha Chase, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Penny Fassett, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Diane Fladmo, Helena Qualifications (if required): State Employees and labor organizations	Governor	12/31/2019
Ms. Susan Fox, Helena Qualifications (if required): Legislative Branch	Governor	12/31/2019
Ms. Cheryl Grey, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Mandi Hinman, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Mr. Jim Lewis, Helena Qualifications (if required): Retired State Employees' Representative	Governor	12/31/2019
Mr. Quint Nyman, Helena Qualifications (if required): State Employees and Labor Organizations	Governor	12/31/2019
Mr. Duane Preshinger, Helena Qualifications (if required): Ex-Officio member representing the Dept. of Administration	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council Cont.</b>		
Ms. Amy Sassano, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Mr. Derek Shepherd, Helena Qualifications (if required): Judicial Branch	Governor	12/31/2019
<b>Statewide Independent Living Council</b>		
Ms. Leanne Beers, Missoula Qualifications (if required): Person with a disability	Governor	12/1/2019
Ms. Jennifer Cleland, Billings Qualifications (if required): Person with a disability	Governor	12/1/2019
Mr. Scott Lee Birkenbuel, Bozeman Qualifications (if required): None Stated	Governor	12/1/2019
<b>Traumatic Brain Injury Advisory Council</b>		
Dr. Ruth Elizabeth Ross, Missoula Qualifications (if required): Member of the public	Governor	1/1/2020
Ms. Joanna Susanne Reed, Helena Qualifications (if required): Representative of injury control or prevention programs	Governor	1/1/2020
Ms. Ann Geiger, Whitehall Qualifications (if required): Advocate for Brain-Injured Persons	Governor	1/1/2020

**EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2019 THROUGH FEBRUARY 29, 2020**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Traumatic Brain Injury Advisory Council Cont.</b>		
Ms. April Haugrose, Great Falls	Governor	1/1/2020
Qualifications (if required): Representative of injury control or prevention programs		
Ms. Angela K. Grant, Arlee	Governor	1/1/2020
Qualifications (if required): Representative of injury control or prevention programs		
<b>Yellowstone River Recreation Project Advisory Council</b>		
Ms. Kathleen Aragon, Billings	Governor	12/31/2019
Qualifications (if required): Member of the public		
Mr. Ted Lovec, Billings	Governor	12/31/2019
Qualifications (if required): Member of the public		

MONTANA ADMINISTRATIVE  
REGISTER

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NOVEMBER 22, 2019  
PAGES 2075-2181

**COREY STAPLETON**  
SECRETARY OF STATE

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