

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to phytosanitary ) PROPOSED ADOPTION  
certification fees )

TO: All Concerned Persons

1. On March 5, 2014, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Cort Jenson, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov).

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

NEW RULE I PHYTOSANITARY INSPECTION AND CERTIFICATION

COSTS -- FEES (1) All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to providing inspection and certification services.

(2) Export certification fees shall be as follows:

(a) federal and state phytosanitary certificate:

(i) \$105 for a noncommercial shipment, those shipments having a value that is less than \$1,250; or

(ii) \$180 for a commercial shipment having a value that is \$1,250 or more;

(iii) \$160 for a commercial produce shipment having a value that is \$1,250 or more;

(iv) administrative and replacement user fees for each federal or state phytosanitary certification. Requests for export certification shall be made through a client-funded Phytosanitary Certification Information Tracking (PCIT) account; and

(v) certificate of Origin and Statement of Origin \$150.

AUTH: 80-1-102, 80-7-108, 80-7-122, MCA

IMP: 80-7-108, 80-7-122, MCA

REASON: To provide a separate section focused on phytosanitary certification and certificate of origin since it is not nursery-specific and includes all agricultural

commodities and products that are being exported domestically or internationally, and to increase fees associated with phytosanitary certification and certificates of origin so that fees cover actual costs of providing the service.

**ECONOMIC IMPACT:** The department provides phytosanitary certification services under agreement with USDA APHIS but receives no funding from USDA APHIS PPQ. Phytosanitary services are based solely on fee for service. Revenue from fees varies with export demand and ranges between \$35,000 and \$45,000 a year. Fee increases are necessary to provide sufficient revenue to cover the cost of providing the service. Under the proposed rule, a cost is assigned to a noncommercial phytosanitary certificate (hereafter referred to as a phyto) and includes the inspection, hourly costs, per diem, and mileage. There are cases where a commercial phyto inspection may be satisfied by another type of inspection that covers the pest concerns of the importing country or state. Because of this, the fee structure provides for commercial phytos that include and commercial phytos that do not include an inspection by a department Accredited Certifying Official (ACO). The potential economic impact to exporters can be best shown through illustrative examples.

A grain phyto based on a FGIS 921-2 currently costs \$56 and will cost \$180 under the proposed rules. A grain phyto (non-FGIS 921-2) currently costs \$96 and will cost \$180. A noncommercial phyto for nursery stock currently costs \$157.76 and will cost \$105. Multiple (four) nursery stock phytos (two noncommercial and two commercial) that currently cost \$311 will cost \$570. Grain that need only attest to origin of the grain can be processed as a Certificate of Origin currently costs \$30 and will cost \$150 under the proposed rule. A log home kit currently costing \$225 will cost \$180. The fee increases associated with this rule will allow the department to recover the costs associated with providing the service. USDA administrative and replacement pass-through fees also apply. Current administrative fees are \$6 when the Phytosanitary Certification Information Tracking (PCIT, the USDA database) is used and \$12 when PCIT is not used. The department requires the use of PCIT for all phytos except in extreme, extenuating circumstances. The current replacement fee is \$15.

Export service is available from the Montana Department of Agriculture and the Montana USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov), and must be received no later than 5:00 p.m., April 10, 2014.

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

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will significantly and directly impact small businesses.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

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

Certified to the Secretary of State February 3, 2013.

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

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.36.345 and 17.38.101 pertaining to )	PROPOSED AMENDMENT
adoption by reference and plans for )	
public water supply or public sewage )	(WATER QUALITY)
system )	(SUBDIVISIONS/ON-SITE
)	SUBSURFACE WASTEWATER
)	TREATMENT)
)	(PUBLIC WATER AND SEWAGE
)	SYSTEMS REQUIREMENTS)

TO: All Concerned Persons

1. On March 7, 2014, at 1:30 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

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

- (a) Department Circular DEQ-1, "Standards for Water Works," ~~2006~~ 2014 edition;
- (b) remains the same.
- (c) Department Circular DEQ-3, "Standards for Small Water Systems," ~~2006~~ 2014 edition;
- (d) through (f) remain the same.
- (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;
- (g) remains the same, but is renumbered (h).
- (i) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;

(h) through (k) remain the same, but are renumbered (j) through (m).  
(2) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to (1)(a) updates the adoption by reference of Department Circular DEQ-1, "Standards for Water Works," and Department Circular DEQ-3, "Standards for Small Water Systems," to the 2014 editions. The proposed amendments to these circulars are necessary to make the design standards consistent with current industry standards contained in the Recommended Standards for Water Works, which are commonly referred to as the 10 States Standards. The 10 States Standards have been developed by the states and provinces in the Great Lakes and upper Mississippi Rivers regions to ensure the safety of drinking water. They are used by those states and provinces to apply consistent engineering standards across those regions. They are also used by a number of other states across the country, including Montana. The 10 States Standards are periodically updated to incorporate changes in technology and drinking water protection practices. The board and department do not adopt the 10 States Standards by reference. However, they do adopt, via Department Circulars DEQ-1 and DEQ-3, language similar to a significant portion of language found in the 10 States Standards. Use of these standards, or language similar to these standards, protects potable water, reduces the costs associated with the preparation of plans and specifications, and increases consumer confidence in the safety of the system. DEQ-1 and DEQ-3 are currently based on the 2003 edition of the 10 States Standards. The 10 States Standards were updated in 2007 and 2012. The board and department are proposing to modify DEQ-1 and DEQ-3 to incorporate the 2007 and 2012 changes, to make the circular consistent with recent changes to water well requirements adopted by the Board of Water Well Contractors, to make the circular consistent with recent changes to Water Use Act rules adopted by the Department of Natural Resources and Conservation, to remove requirements that are beyond the the board and department's authority, and to make style and grammar changes for readability. A more detailed summary of the major changes to these circulars is available as indicated in section 4 of this notice.

The proposed new Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," would set standards for the development of springs to serve public water supply systems. The proposed standards are necessary to ensure that a spring that is developed to supply water for a public system is capable of producing a safe supply of water. In addition to jeopardizing public health, incorrectly developed spring sources can be very expensive to fix. The board and department have not adopted standards for the use of springs as a public water supply source. However, they have adopted Department Circular DEQ-11, Montana Standards for Development of Springs for Individual and Shared Non-Public Systems. Proposed DEQ-10 adapts the DEQ-10 standards to public systems.

The proposed new Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," would set standards for the



construction and maintenance of cisterns in public water supply systems. Incorrectly installed or maintained cisterns have a significant potential to create public health and regulatory issues. The proposed standards are necessary to ensure that a noncommunity public water supply system using cisterns has an adequate and safe supply of water. The board and department have not adopted standards for the use of cisterns within a noncommunity public water supply system. However, they have adopted Department Circular DEQ-17, Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-Public Systems. Cisterns used for noncommunity public systems are similar to cisterns used for private systems, and proposed DEQ-16 generally adapts the DEQ-17 standards to noncommunity public systems.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (3)(n)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) remains the same.

(b) the design report, plans, and specifications for noncommunity water systems must be prepared in accordance with the format and criteria set forth in ~~d~~Department Circular DEQ-3, "Montana Department of Environmental Quality Standards for Small Water Systems."

(i) The department or a delegated division of local government may require the plans and specifications for such a system to be prepared by a professional engineer when the complexity of the proposed system warrants such engineering (e.g., systems using gravity storage, pressure booster/reduction stations).

(ii) Except as provided in (iii), ~~The~~ the department or a delegated division of local government will require the plans and specifications for such a system to be prepared by a professional engineer when:

(A) treatment processes and equipment, system components subject to review under ~~d~~Department Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works," are proposed;

(B) chlorination subject to review under Department Circular DEQ-3, "Standards for Small Water Systems," is proposed; or

(C) springs subject to review under Department Circular DEQ-10, "Standards for the Development of Springs to Serve Public Water Supply Systems" are proposed.

(iii) The department or a delegated division of local government may allow standard plans and specifications previously approved by the department to be used

for such a system in place of those prepared by a professional engineer on a case-by-case basis;

(c) through (5) remain the same.

(6) Plans and specifications for a project that would violate the approval of a public water supply system, public wastewater system, or that would cause a significant deficiency, as defined in ARM 17.38.104(1), will ~~may~~ not be approved by the reviewing authority.

(7) through (8)(c) remain the same.

(9) Except as provided in ~~(10)~~ (11)(b), unless the applicant has completed the construction, alteration, or extension of a public water supply or public sewage system within three years after the department or a delegated unit of local government has issued its written approval, the approval is void and a design report, plans, and specifications must be resubmitted as required by (4) with the appropriate fees specified in this subchapter. ~~The department may grant a completion deadline extension if the applicant requests an extension in writing and demonstrates adequate justification to the department.~~

(a) If the relevant design standards and administrative rules have not changed since the original approval was issued, the department may, at its discretion, reapprove the project using the following abbreviated process:

(i) The original design report, plans, and specifications must be resubmitted as required by (4).

(ii) The engineer or firm that originally submitted the project must, in writing, grant permission for the department to re-review the plan set, and state that the conditions surrounding the original submission have not changed.

(iii) The review fee will be established by the hourly rate designated in ARM 17.38.106(3) multiplied by the time required to review the plans and specifications.

(10) Continuously active public water supply systems that have never submitted plans and specifications for department review are not required to submit plans and specifications unless specifically required by the department. All public water supply systems that are inactive for three or more years must submit a design report, plans, and specifications, as required by (4) with the appropriate fees specified in this subchapter, for approval prior to reactivation. Previously approved systems that have been inactive for three or more years may, at the department's discretion, use the abbreviated review process described in (9)(a).

~~(10)~~ (11) As provided in 75-6-131, MCA, the following requirements apply to regional public water supply systems for which a final engineering report has been approved by the United States Bureau of Reclamation. These requirements are in addition to the other requirements in this chapter, except where a rule specifically provides otherwise:

(a) and (b) remain the same.

(c) Except as provided in (4) and ~~(10)~~ (11)(b), the approval of a regional water system's standard construction contract documents and provisions for amendments to those documents remains in effect for the construction period of the project as contained in the final engineering report approved by the United States Bureau of Reclamation.

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

~~(12)~~ (13) A person may not commence or continue the operation of a public

water supply or public sewage system, or any portion of such system, prior to certifying by letter to the department or a delegated division of local government that the system, or portion of the system constructed, altered, or extended to that date, was completed in substantial accordance with plans and specifications approved by the department and there are no deviations from the design standards of the applicable circulars other than those previously approved by the department pursuant to ARM 17.38.101. For a system or any portion of a system designed by a professional engineer, ~~the~~ an engineer shall sign and submit the certification letter to the department or a delegated division of local government.

~~(13)~~ (14) Within 90 days after the completion of construction, alteration, or extension of a public water supply or public sewage system, or any portion of such system, a complete set of certified "as-built" drawings must be signed and submitted to the department or a delegated division of local government. The department may require that the "as-built" submittal be accompanied by an operation and maintenance manual. For a system or any portion of a system designed by a professional engineer, ~~the~~ an engineer shall sign and submit the certified "as-built" drawings to the department or a delegated division of local government.

(14) through (18)(b) remain the same, but are renumbered (15) through (19)(b).

~~(19)~~ (20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department of ~~Environmental Quality~~ Circular DEQ-1, ~~2006~~ 2014 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems;

(b) remains the same.

(c) Department of ~~Environmental Quality~~ Circular DEQ-3, ~~2006~~ 2014 edition, which sets forth minimum design standards for small water systems;

(d) remains the same.

(e) Department of ~~Environmental Quality~~ Water Main Certified Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for water main extensions and replacements;

(f) Department of ~~Environmental Quality~~ Sewer Main Certified Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for sewer main extensions and replacements;

(g) Department of ~~Environmental Quality~~ Community Water Supply Well Expedited Review Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for new community water supply wells;

(h) Department of ~~Environmental Quality~~ Noncommunity Water Supply Well Expedited Review Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for new noncommunity water supply wells; ~~and~~

(i) 40 CFR 141.5, which sets forth siting requirements for public water supply components;

(j) Department Circular DEQ-10, 2014 edition, which sets forth the standards for development of springs to serve public water supply systems; and

(k) Department Circular DEQ-16, 2014 edition, which sets forth standards for cisterns to serve noncommunity public water supply systems.

~~(20)~~ (21) A copy of any of the documents adopted under ~~(19)~~ (20) may be ~~obtained from~~ viewed at the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA

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

REASON: ARM 17.38.101(4)(b) is being amended to correct the titles of Department Circular DEQ-1 and Department Circular DEQ-3. This amendment has no significant impact and is housekeeping in nature only.

The other proposed amendments modify a requirement to employ a professional engineer to prepare plans and specifications for department review of a noncommunity system. The proposed amendments are necessary because all systems must submit plans and specifications for review against department design standards. The minimum standards for drinking water are described in two separate documents, Department Circular DEQ-1 and Department Circular DEQ-3. The minimum design standards are based on risks associated with exposure and the complexity of treatment. Community systems must submit under Department Circular DEQ-1 and must use a professional engineer. Noncommunity systems may submit under Department Circular DEQ-3 and are required to use a professional engineer only when directed by the department. Because of the complexities involved, the department currently requires an engineer for systems using chlorination or springs. Inserting a requirement to use a professional engineer upfront would avoid the return and resubmittal of plans and specifications that were originally submitted without the use of a professional engineer.

The proposed amendment to (6) provides clarification. The proposed amendment is necessary to clarify that the department may not approve plans and specifications that would create a violation of a previously issued approval, whether for a water system or a wastewater system, or that would create a significant deficiency.

The proposed amendments to (9) are intended to clarify the rule and to make the rule consistent with the statute. The proposed amendments are necessary because the current rule, which allows for an extension for non-completed facilities, is in conflict with the law. The law states that a system that has not completed construction within three years "must" resubmit those unconstructed portions of the facility for re-review. No authority exists for a department extension.

The proposed addition of (9)(a) is intended to create a potentially abbreviated review process for those facilities that did not complete construction within the three-year window. The proposed addition is necessary to ensure that newly constructed facilities meet the current design standards, but will also allow for a reduced cost approach when the standards used in the original review have not been significantly modified.

The proposed addition of (10) would set out the department's approval process for existing systems that have not previously been required to undergo department review and approval. The proposed addition provides that existing systems that have never received department review and approval may be subject to that requirement. In its enforcement discretion, the department does not routinely

require systems that were in existence prior to the requirement for submittal of plans and specifications to submit those documents for department review and approval. Satisfactory routine monitoring reports submitted by these operating systems are used in place of the review to determine if the system is capable of producing a safe supply of water. Those systems with unsatisfactory results, or those systems that have discontinued operations for more than three years, are required to submit plans and specifications for department review. Proposed (10) lays out that process.

The proposed changes in (12) and (13) clarify that "an" engineer must submit required documents as opposed to "the" design engineer exclusively. The proposed change is necessary to resolve issues in which the design engineer is unable or unwilling to submit the required documents. The non-design engineer will be bound by the engineering code of ethics and licensure requirements to ensure the appropriate use of their stamp on a project that they may have acquired after the project was initiated.

The additional proposed change in (13) clarifies that deviations from the approved plans and specifications during construction may not violate a design standard. The proposed change is necessary to allow engineers the ability to resolve construction issues encountered during construction, but makes it clear that those changes may not violate a design standard unless the department has approved the deviation.

The proposed amendments to (20)(a) and (c) simply incorporate by reference into the public water supply rules the new versions of DEQ-1 and DEQ-3. The proposed amendments to (20)(e), (g), and (h) simply incorporate into the public water supply updated checklists that reflect the amendments made to DEQ-1 and DEQ-3. The proposed amendments to (20)(f) simply incorporate by reference into the public water supply rules an updated checklist that reflects changes made to DEQ-2 in 2012. The proposed new (20)(i) and (k) simply incorporate by reference into the public water supply rules the new DEQ-10 and DEQ-16.

4. The proposed new and amended circulars and checklists may be viewed at and copied from the department's web site at <http://deq.mt.gov/wqinfo/pws/PlanReviewEngineer.mcp>. Also, copies may be obtained by contacting Leata English at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-4224; or by e-mail at [LEnglish@mt.gov](mailto:LEnglish@mt.gov).

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., March 13, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Robin Shropshire  
ROBIN SHROPSHIRE  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: /s/ Tracy Stone-Manning  
TRACY STONE-MANNING, Director

Certified to the Secretary of State, February 3, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of new rule )	NOTICE OF PUBLIC HEARING ON
I pertaining to nutrient standards )	PROPOSED ADOPTION
variances )	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On March 24, 2014, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Ave., Helena, Montana, to consider the proposed adoption of the above-stated rule. Immediately preceding the hearing at 9:00 a.m. at the same location, the department will hold an informal question and answer session regarding this rulemaking and MAR Notice No. 17-356, which is the Board of Environmental Review's proposed adoption of numeric nutrient standards.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., March 10, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The proposed new rule provides as follows:

NEW RULE I NUTRIENT STANDARDS VARIANCES (1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards. In addition to this rule, variances are subject to the procedures and requirements contained in Department Circular DEQ-12B ([month of adoption] 2014 edition).

(2) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of Department Circular DEQ-12B ([month of adoption] 2014 edition). The decision to grant the general variance must be reflected in the permit that is made available for public comment.

(3) An application for an individual variance must adequately demonstrate that there are no reasonable alternatives that eliminate the need for a variance and that attainment of the base numeric nutrient standards is precluded due to economic impacts or limits of technology, or both. If the demonstration relies upon economic impacts, the department shall consider any guidance developed by the department and the nutrient work group, as provided in 75-5-313(2), MCA.

(4) The department may approve the adoption of an individual variance that specifies interim effluent limits different from those contained in general variance limits contained in Department Circular DEQ-12B ([month of adoption] 2014 edition),

if water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. The variance must provide effluent limits that reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in an application for an individual nutrient variance under (3). A person who has an individual variance with effluent limits that are based on this section shall, in each subsequent triennial review of those limits conducted pursuant to 75-5-313(7), MCA, collect and submit water quality data to demonstrate whether the biological status of the receiving water continues to justify those effluent limits.

(5) The department shall review each application for an individual variance to determine whether a reasonable alternative, such as trading, a permit compliance schedule, a general variance, reuse, recharge, or land application would eliminate the need for an individual variance. If the department makes a preliminary finding that a reasonable alternative to approving an individual variance is available, the department shall consult with the applicant prior to making a final decision to approve or deny the individual variance.

(6) If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department shall determine whether the information provided by the applicant pursuant to (3) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. If the department finds that attaining the base numeric nutrient standards is not feasible, the department shall approve an individual variance, which will become effective and incorporated into the applicant's permit only after adoption by the department in a formal rulemaking proceeding.

(7) A variance is not needed in situations where a person complies with the waste load allocation established in an approved TMDL.

(8) The department adopts and incorporates by reference Department Circular DEQ-12B, entitled "Nutrient Standards Variances" ([month of adoption] 2014 edition), which provides procedures and requirements for nutrient standards variances. Copies of Department Circular DEQ-12B are available at the Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

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

IMP: 75-5-313, MCA

REASON: The Board of Environmental Review is initiating rulemaking to adopt base numeric nutrient standards. The nutrient concentrations being proposed are generally low, particularly in the western region of Montana. In many cases, the concentrations are below the limits of current wastewater treatment technology, particularly for nitrogen. Therefore, when little or no stream dilution is available, dischargers will find it difficult or impossible to meet the standards. Senate Bill 95 (2009 Legislature) and Senate Bill 367 (2011 Legislature), now codified at 75-5-313, MCA, addressed the high cost and technological difficulties associated with meeting the nutrient standards in the short term. That statute allows dischargers to be



granted variances from base numeric nutrient standards in those cases where meeting the standards today would be an unreasonable economic burden or technologically infeasible. Variances from the standards may be granted for up to 20 years. Thus, 75-5-313, MCA, allows for the base numeric nutrient standards to be met in a staged manner over time, as alternative effluent management methods are considered, nutrient removal technologies become more cost-effective and efficient, and nonpoint sources of nutrients are addressed. New Rule I, which incorporates proposed Department Circular DEQ-12B (DEQ-12B), is being proposed to implement 75-5-313, MCA. New Rule I and DEQ-12B provide a process for granting variances and factors that the department will consider when deciding whether a person may be granted an individual nutrient standards variance.

New Rule I(1) makes clear that variances are available only after the time that the board adopts base numeric nutrient standards. The department is required to adopt the statute-defined general variance categories and their associated concentrations and conditions into department rule by May 31, 2016. This rulemaking adopts those concentrations. After that date, the concentrations and conditions associated with each category may be modified by the department in a rulemaking proceeding.

New Rule I(2) merely reflects the procedural requirement contained in 75-5-313, MCA.

New Rule I(3) requires the applicant to explore alternatives to discharging that may preclude the need for an individual variance. This implements 75-5-313(3), MCA.

New Rule I(4) addresses the situation in which water quality modeling for a river or stream segment indicates that greater reduction of one nutrient can achieve the same desired physical or biological condition as reducing both nitrogen and phosphorus. In such cases, requiring a point source discharger to immediately install sophisticated nutrient-removal technologies to reduce to general variance levels the concentration of the less-important nutrient may not be the most prudent nutrient control expenditure and would cause the discharger to incur unnecessary economic expense. Because this relates to economic expense, these situations may be addressed with an individual variance. Nutrient limitation status of water bodies can change due to a number of factors. For example, it can change due to substantive nonpoint source cleanups upstream of the discharger. Therefore, status monitoring by dischargers receiving this type of individual variance is required per New Rule I(4).

New Rule I(5) requires the department to consult with the applicant regarding what the department perceives to be the availability of reasonable alternatives which would preclude the need for the individual variance. This consultation would occur before the department makes a final decision regarding the granting of the individual variance. Requiring consultation with the applicant assures that the reasonable alternatives decision is made based on complete information.

If it results that no reasonable alternative can be identified, New Rule I(6) requires the department to determine if the applicant has adequately demonstrated compliance. This implements 75-5-313(1), MCA.

New Rule I(7) simply makes clear that, in the development of a TMDL, it may be determined that a point source discharger is an insignificant load of nutrients and,

in such cases, there would be no need for the discharger to request a nutrient standards variance, because the current level of total nitrogen and total phosphorus removal is adequate.

New Rule I(8) adopts DEQ-12B by reference. Section 75-5-313, MCA, provides for different types of variances and directs the department and the nutrient work group to develop guidance on implementing individual variances. DEQ-12B contains the individual variance implementation details that have been developed by the department and the nutrient work group over the past five years. For example, in DEQ-12B, individual variances from the base numeric nutrient standards may be granted for economic reasons using two different approaches: (a) via a direct assessment of a community's ability to pay for increased wastewater treatment; and (b) via an evaluation to determine if a stream receiving wastewater can support beneficial uses at nutrient concentrations higher than the proposed standards (discussed above for New Rule I(4)). Individual variances granted by the department will be documented in DEQ-12B. In addition, DEQ-12B addresses other specifics pertaining to variances, for example how general variance treatment requirements will be re-evaluated every three years, how general and individual variances will be expressed in discharge permits, and specifics on the nutrient-reduction optimization study (required for recipients of general variances). As is required by 75-5-313(6)(a), MCA, DEQ-12B adopts the variance limits contained in 75-5-313(5)(b), MCA. Department Circular DEQ-12B sunsets these limits in 2017 in order to ensure that the department takes action pursuant to the review mandated by 75-5-313(7)(a), MCA. In short, 75-5-313, MCA, provides for variances and DEQ-12B provides additional, technical details necessary to implement the concept.

4. The proposed new circular may be viewed at and copied from the department's web site at <http://deq.mt.gov/wqinfo/Standards/default.mcp>. Also, copies may be obtained by contacting Carrie Greeley at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-6749; or by e-mail at [CGreeley@mt.gov](mailto:CGreeley@mt.gov).

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 Carrie Greeley, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-6836; or e-mailed to [deqwqpadmin@mt.gov](mailto:deqwqpadmin@mt.gov), no later than 5:00 p.m., April 1, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. George Mathieus, Administrator of the Planning, Prevention, and Assistance Division of the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by the department in person on September 15, 2011.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

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

BY: /s/ Tracy Stone-Manning  
TRACY STONE-MANNING, Director

Certified to the Secretary of State, February 3, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.30.201, 17.30.507, 17.30.516, )  
17.30.602, 17.30.619, 17.30.622, )  
17.30.623, 17.30.624, 17.30.625, )  
17.30.626, 17.30.627, 17.30.628, )  
17.30.629, 17.30.635, 17.30.702, and )  
17.30.715 pertaining to permit )  
application, degradation authorization, )  
and annual permit fees, specific )  
restrictions for surface water mixing )  
zones, standard mixing zones for )  
surface water, definitions, incorporations )  
by reference, A-1 classification )  
standards, B-1 classification standards, )  
B-2 classification standards, B-3 )  
classification standards, C-1 )  
classification standards, C-2 )  
classification standards, I classification )  
standards, C-3 classification standards, )  
general treatment standards, definitions, )  
and criteria for determining )  
nonsignificant changes in water quality )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On March 24, 2014, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules. At 9:00 a.m., immediately preceding the hearing for MAR Notice No. 17-355 (which is scheduled for 10:00 a.m.), at the same location, the Department of Environmental Quality will hold an informal question and answer session regarding this rulemaking and MAR Notice No. 17-355, which is the Department's proposed adoption of numeric nutrient standards variances rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., March 10, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The board is proposing to adopt new Department Circular DEQ-12A (DEQ-12A), which contains base numeric nutrient standards for total nitrogen and

total phosphorus, and to incorporate new DEQ-12A into the surface water quality classifications and the nondegradation rules. The board is also proposing rule amendments pertaining to definitions and a low flow for base numeric nutrient standards appropriate for the design of disposal systems.

The department has documented that various forms of nitrogen and phosphorus rank as the 4th, 8th, 10th, and 12th most common types of pollution in Montana's flowing waters. In fact, excess nitrogen and phosphorus levels account for 17 percent of all stream miles impaired by all forms of water pollution in Montana. The intent of the proposed nutrient standards is to control the undesirable effects of eutrophication. Eutrophication is the enrichment of a waterbody (e.g., a stream or lake) by nitrogen and phosphorus, which leads to increased plant and algae growth and decay and all the consequential changes to the water quality that occur as a result. At present Montana does not have numeric water quality standards for controlling eutrophication, except on the Clark Fork River. Therefore, in most cases, permit limits, including waste load allocations determined in Total Maximum Daily Loads (i.e., TMDLs) are based upon the narrative water quality standard. The narrative standard prohibits substances in water that "create conditions which produce undesirable aquatic life" (ARM 17.30.637(1)(e)). Translating the narrative standard into enforceable permit limits on a case-by-case basis is time-consuming, dependent upon judgment which invites controversy, and may result in inconsistent or differing permit limits due to various interpretations among permit or TMDL writers. Numeric nutrient criteria will resolve this.

The effects of excess nitrogen and phosphorus in streams and rivers go well beyond the undesirable aquatic life referred to in the narrative standard. Excess nitrogen and phosphorus affect other water quality parameters for which Montana already has standards (dissolved oxygen, pH). The state of the science is such that linkages can clearly be made between nitrogen and phosphorus concentrations and these other, already-adopted standards. Thus, the numeric nutrient criteria will also ensure protection and attainment of Montana's dissolved oxygen and pH standards which are, in and of themselves, critical to the protection of fish and aquatic life.

State law requires that waterbodies support multiple beneficial uses (e.g., agriculture, fish and associated aquatic life, recreation). In turn, a water quality criterion for a given pollutant is established at a concentration that protects the most sensitive of the beneficial uses from the impacts caused by the pollutant. Numeric criteria for nitrogen and phosphorus concentrations are contained in DEQ-12A and vary geographically across the state. For streams and small rivers of western Montana, the numeric nutrient criteria have generally been established at concentrations that will prevent nuisance levels of bottom-attached algae and ensure that dissolved oxygen levels are maintained at standards already established by the state. The nuisance threshold for attached algae was determined via scientific polling of Montana citizens and river and stream users, and is, therefore, associated with the recreation use. Dissolved oxygen standards, in contrast, are associated with the fish and aquatic life beneficial use. In western Montana, the fish and aquatic life use and the recreation use have broadly similar sensitivities to nitrogen and phosphorus pollution.

In eastern Montana, the criteria are established at levels that will protect the indigenous fish populations and will generally ensure that dissolved oxygen levels do

not decline below state standards. The attached algae threshold was not used to derive nutrient criteria for eastern Montana streams and small rivers because (a) the department's scientific poll did not address the types of streams typical of eastern Montana, and (b) attached algae levels higher than the nuisance threshold have been periodically observed in reference streams of the region. Nitrogen and phosphorus criteria concentrations are substantially higher in eastern Montana and this is due, in part, to the higher natural turbidity of those streams. Nutrient criteria for large rivers are mostly still under development. However, they have been completed for a large river segment (the lower Yellowstone), which is included in DEQ-12A. In the lower Yellowstone River, the nutrient criteria are set at concentrations that will prevent nuisance bottom-attached algae and extreme variations in pH (the latter of which impacts fish). The scientific bases for the criteria are laid out in more detail in the following documents: Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers (2008) and Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers: Update 1 (2013). These documents may be viewed on the department's web site at <http://www.deq.mt.gov/wqinfo/standards/NumericNutrientCriteria.mcp>x. They may also be obtained from the department at the address or phone number listed in paragraph 5 of this notice.

The nutrient criteria concentrations being proposed for adoption as standards are generally low, particularly in the western region of Montana. In many cases, the concentrations are below the limits of current wastewater treatment technology, particularly for nitrogen. Therefore, when little or no stream dilution is available, dischargers will find it difficult or impossible to meet the standards. Senate Bill 95 (2009 Legislature) and Senate Bill 367 (2011 Legislature), now codified at 75-5-313, MCA, addressed the high cost and technological difficulties associated with meeting the nutrient standards in the short term. Section 75-5-313, MCA, allows dischargers to be granted variances from numeric nutrient standards, once the criteria have been adopted as standards, in those cases where meeting the standards today would be an unreasonable economic burden or technologically infeasible. Variances from the standards may be granted for up to twenty years. Thus, 75-5-313, MCA, allows for the nutrient standards to be met in a staged manner, over time, as alternative effluent management methods are considered, nutrient removal technologies become more cost-effective and efficient, and nonpoint sources of nutrients are addressed. Rules implementing 75-5-313, MCA, are within the rulemaking authority of the Department of Environmental Quality, not the Board of Environmental Review. Concurrent with the board's rulemaking process initiated by this notice, the department has proposed rulemaking to implement the variance process. See MAR Notice No. 17-355. The department will hold a separate hearing on those rules. Comments regarding the variance process must be submitted to the department as indicated in MAR Notice No. 17-355.

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

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION,

AND ANNUAL PERMIT FEES (1) through (5) remain the same.

(6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, are set forth below as Schedules I.A, I.B, I.C, and I.D. Fees must be paid in full at the time of submission of the application. For new applications under Schedule I.A, the annual fee from Schedule III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B and I.C, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) through (e) remain the same.

(f) Applications for new permits or permit renewals for sources that constitute a new or increased source, as defined in ARM 17.30.702~~(18)~~ (17), must pay a significance determination fee for each outfall in addition to the application fee.

(g) through (11)(b) remain the same.

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: The amendment to ARM 17.30.201(6)(f) modifies a cross-reference to ARM 17.30.702 because the numbering in that rule is proposed to be changed in this notice.

17.30.507 SPECIFIC RESTRICTIONS FOR SURFACE WATER MIXING ZONES (1) Mixing zones for surface waters are ~~to comply with~~ subject to the following water quality standards:

(a) narrative water quality standards, standards for harmful substances, numeric acute and chronic standards for aquatic life; standards in Department Circular DEQ-12A; and standards based on human health must not be exceeded beyond the boundaries of the surface water mixing zone;

(b) through (3) remain the same.

AUTH: 75-5-301, MCA

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

REASON: The amendment to this rule is necessary to ensure that mixing zones are available for nutrient standards and to ensure that the nutrient standards must be met beyond the mixing zone. A mixing zone is a nationally recognized and useful tool to implement standards in permits, and there is no reason that this tool should not be available for nutrient standards.

17.30.516 STANDARD MIXING ZONES FOR SURFACE WATER (1) and (2) remain the same.

(3) Facilities that meet the terms and conditions in (a) through ~~(d)~~ (e) qualify for a standard mixing zone as follows:

(a) through (d) remain the same.

(e) Facilities that discharge the parameters found in Department Circular DEQ-12A to surface water. Discharge limitations must be based on dilution with the entire seasonal 14-day, five-year (seasonal 14Q5) low flow of the receiving water without the discharge.

(4) The length of a standard mixing zone for flowing surface water, other than a nearly instantaneous mixing zone, must not extend downstream more than the one-half mixing width distance or extend downstream more than ~~40~~ ten times the stream width, whichever is more restrictive. For purposes of making this determination, the stream width as well as the discharge limitations are considered at the 7Q10 or seasonal 14Q5 low flow. The seasonal 14Q5 low flow may be used only in conjunction with base numeric nutrient standards in Department Circular DEQ-12A. The recommended calculation to be used to determine the one-half mixing width distance downstream from a stream bank discharge is described below.

(a)  $A_{1/2} = [0.4(W/2)^2V]/L$ , where:

(i) remains the same.

(ii)  $W$  = width in feet at the 7Q10 or seasonal 14Q5;

(iii)  $V$  = velocity of the stream at the 7Q10 or seasonal 14Q5 downstream of the discharge (in ft/second);

(iv)  $L$  = lateral dispersion coefficient for the 7Q10 or seasonal 14Q5 downstream of the discharge (in ft<sup>2</sup>/second), where:

(b)  $L = CDU$ , where:

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

(ii)  $D$  = average water depth at the 7Q10 or seasonal 14Q5 downstream of the discharge (in feet);

(iii) remains the same.

(c)  $U = (32.2DS)^{1/2}$ , where:

(i) remains the same.

(ii)  $D$  = average water depth at the 7Q10 or seasonal 14Q5 downstream of the discharge (in feet); and

(iii) through (6) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The manner in which nutrients affect and impact beneficial uses in streams and rivers is different from toxic and harmful compounds found in Department Circular DEQ-7 (DEQ-7), and it is necessary to develop an appropriate low flow design flow (the seasonal 14Q5) specifically for permitting nutrient discharges. Derivation of the seasonal 14Q5 is discussed in the proposed changes to ARM 17.30.635. Here, the rule amendments incorporate the seasonal 14Q5 flow into the calculations used to determine the length of a standard mixing zone. ARM 17.30.516 is proposed to be amended to provide that the full volume of a seasonal 14Q5, as opposed to some fraction of it, is to be used for dilution calculations for nutrients in DEQ-12A. This allowance reflects the non-toxic nature of nutrients at the concentrations found in DEQ-12A.



17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (32) remain the same.

(33) "Total nitrogen" means the ~~total nitrogen concentration (as N) of unfiltered water. This may be determined by direct methods, or derived as the sum of the soluble (as N) and non-soluble (as N) nitrogen fractions. The filter used to separate the soluble and non-soluble fractions must be 0.45 µm~~ sum of all nitrate, nitrite, ammonia, and organic nitrogen, as N, in an unfiltered water sample. Total nitrogen in a sample may also be determined by the persulfate digestion or as the sum of total kjeldahl nitrogen plus nitrate plus nitrite.

(34) "Total phosphorus" means the ~~total phosphorus concentration (as P) of unfiltered water~~ sum of orthophosphates, polyphosphates, and organically bound phosphates, as P, in an unfiltered water sample. Total phosphorus may also be determined directly by persulfate digestion.

(35) through (38) remain the same.

(39) "DEQ-7" means the department circular that is adopted and incorporated by reference in ARM 17.30.619 and is entitled "Montana Numeric Water Quality Standards." This circular establishes water quality standards for toxic, carcinogenic, ~~bioconcentration~~ bioconcentrating, ~~nutrient~~, radioactive, and harmful parameters, and also establishes human health-based water quality standards for the following specific nutrients with toxic effects:

(a) nitrate;

(b) nitrate + nitrite; and

(c) nitrite.

(40) "DEQ-12A" means the department circular that is adopted and incorporated by reference in ARM 17.30.619 and is entitled "Montana Base Numeric Nutrient Standards." This circular contains numeric water quality standards for total nitrogen and total phosphorus in surface waters.

(41) "DEQ-12B" means the department circular that is adopted and that is entitled "Montana Base Numeric Nutrient Standards Variances." This circular describes procedures for receiving a variance from the standards and will document recipients of individual variances.

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

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

REASON: The proposed amendments to ARM 17.30.602 provide modification of existing definitions and a new definition in order to implement the nutrient standards. The modified definition of "total nitrogen," at (33), provides a more technically accurate description compared to the old definition. The same is true for "total phosphorus," at (34). In the definition for "DEQ-7," at (39), "nutrient" has been removed because base numeric nutrient standards will now be housed in a new department circular, DEQ-12A. Some nitrogen compounds (nitrate, nitrate + nitrite, and nitrite) have toxic effects at relatively high concentrations and standards for them already exist and are intended to protect human health. By definition at 75-

5-103(2)(b), MCA, these compounds are not considered part of the base numeric nutrients standards. Therefore, they will remain in DEQ-7 and are now listed under the DEQ-7 definition for better clarity. The new definition at (40), "DEQ-12A," defines the new department circular where base numeric nutrient standards are found. In addition to the criteria concentrations, the circular includes instructions on how to develop permits for base numeric nutrient standards. In MAR Notice No. 17-355, the department is proposing to adopt new Department Circular DEQ-12B. It contains the procedures for receiving a variance from the standards and will document recipients of individual variances. The board anticipates that DEQ-12B will be adopted before or at the same time DEQ-12A is adopted.

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

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, ~~nutrient~~, radioactive, and harmful parameters and also establishes human health-based water quality standards for the following specific nutrients with toxic effects:

(i) nitrate;

(ii) nitrate + nitrite; and

(iii) nitrite;

(b) remains the same.

(c) 40 CFR Part 136 (July 1, 2011), which establishes guidelines and procedures for the analysis of pollutants; ~~and~~

(d) 40 CFR 131.10(g), (h) and (j) (2000), which establishes criteria and guidelines for conducting a use attainability analysis; and

(e) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (December 2013 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters.

(2) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute, under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then (1)(e) and all references to DEQ-12A, base numeric nutrient standards and nutrient standards variances in ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.622 through 17.30.629, 17.30.635, 17.30.702, and 17.30.715 are void, and the narrative water quality standards contained in ARM 17.30.637 are the standards for total nitrogen and total phosphorus in surface water, except for the Clark Fork River, for which the standards are the numeric standards in ARM 17.30.631.

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

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

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

REASON: The amendments to the definitions for DEQ-7, in (1)(a),

correspond to those already discussed above for definitions (ARM 17.30.602). Proposed new (2) is a non-severability clause. Essentially, if the statute that defines the nutrient standards variance process is rendered invalid, or if general variance rules expire and general variances are not available, then the base numeric nutrient standards would no longer be contained in the rules. The Legislature intended that variances be available to permittees once base numeric nutrient standards were adopted and both pieces (base numeric standards and variances) must remain together as a package.

17.30.622 A-1 CLASSIFICATION STANDARDS (1) and (2) remain the same.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters may not exceed the applicable standards set forth in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards contained in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

17.30.623 B-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

17.30.624 B-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

17.30.625 B-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

17.30.626 C-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in dDepartment Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in ~~Department Circular DEQ-7~~ and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

17.30.627 C-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in ~~Department Circular ~~WQB~~ DEQ-7~~ and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in ~~Department Circular DEQ-7~~ and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

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

REASON: The proposed amendments to ARM 17.30.622 through 17.30.627 are necessary to incorporate DEQ-12A standards and nutrient standards variance limits into the surface water classes.

17.30.628 I CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified I:

(a) through (i) remain the same.

(j) Beneficial uses are considered supported when the concentrations of toxic, carcinogenic, nutrient, or harmful parameters in these waters do not exceed the applicable standards specified in ~~Department Circular DEQ-7~~ and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the flows specified in ARM 17.30.635(4) (2) or, alternatively, for aquatic life when site-specific criteria are adopted using the procedures given in 75-5-310, MCA. The limits shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards in ~~Department Circular DEQ-7~~.

(k) Limits for toxic, carcinogenic, or harmful parameters in new discharge permits issued pursuant to the MPDES rules (ARM Title 17, chapter 30, subchapter 13) are the larger of either the applicable standards specified in Department Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A, site-specific standards, or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

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

REASON: The proposed amendment to ARM 17.30.628 is necessary to incorporate DEQ-12A and the nutrient standards variance limits into the I surface water class. I Class waterbodies are those which had severe human-caused pollution problems at the time the surface water class system was adopted in the 1970s, and it is the board's intent that these waterbodies will eventually support beneficial uses typical for ecologically similar, unimpacted waterbodies.

17.30.629 C-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A when stream flows equal or exceed the design flows specified in ARM 17.30.635(4) (2).

(j) and (k) remain the same.

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

REASON: The proposed amendments to ARM 17.30.629 are necessary to incorporate DEQ-12A standards and nutrient variance limits into the C-3 surface water class.

17.30.635 GENERAL TREATMENT STANDARDS (1) through (1)(e) remain the same.

(2) For design of disposal systems, stream flow dilution requirements must be based on the minimum consecutive seven-day average flow which may be expected to occur on the average of once in ten years. When dilution flows are less than the above design flow at a point discharge, the discharge is to be governed by the permit conditions developed for the discharge through the waste discharge

permit program. If the flow records on an affected surface water are insufficient to calculate a ten-year seven-day low flow, the department shall determine an acceptable stream flow for disposal system design. ~~The department shall determine the acceptable stream flow for disposal system design for controlling nitrogen and phosphorus concentrations.~~ For total nitrogen and total phosphorus, the stream flow dilution requirements must be based on the seasonal 14Q5, which is the lowest average 14 consecutive day low flow, occurring from July through October, with an average recurrence frequency of once in five years.

(3) remains the same.

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

IMP: 75-5-301, MCA

REASON: The proposed amendments to ARM 17.30.635 will provide a low flow for the design of disposal systems specific to eutrophication-based nutrient standards. Work by the department and others shows that nuisance benthic algae can develop in about 15-20 days once nutrient concentrations exceed the proposed standards. In many streams, these algae levels can ultimately lead to dissolved oxygen impacts. The use of the seasonal 14Q5 flow for the design of disposal systems is appropriate because this flow should not allow excess algae levels to develop more often than about once in five summers, on average. This frequency of exceedence is within the acceptable recommendations of the U.S. Environmental Protection Agency for the protection of aquatic life. Unlike the 7Q10 flow, which will continue to be used for parameters in DEQ-7 and which was derived from year-round flow data, the seasonal 14Q5 flow is derived from July through October data and is, therefore, in alignment with the proposed nutrient standards' periods of application. The seasonal 14Q5 is routinely calculated and reported by the U.S. Geological Survey.

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

(1) through (16) remain the same.

~~(17) "Nutrients" means total inorganic phosphorus and total inorganic nitrogen.~~

(18) through (21) remain the same, but are renumbered (17) through (20).

~~(22)~~ (21) "Reporting values (RRV)" means the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the department unless otherwise specified in a permit, approval, or authorization issued by the department. The RRV is the ~~department's~~ board's best determination of a level of analysis that can be achieved by the majority of commercial, university, or governmental laboratories using EPA approved methods or methods approved by the department. The RRV is listed in Department Circular DEQ-7, Department Circular DEQ-12A, and in the definition of "total inorganic phosphorus."

(23) remains the same, but is renumbered (22).

(23) "Total nitrogen" means the sum of all nitrate, nitrite, ammonia, and

organic nitrogen, as N, in an unfiltered water sample. Total nitrogen in a sample may also be determined by persulfate digestion, or as the sum of total kjeldahl nitrogen plus nitrate plus nitrite.

(24) "Total phosphorus" means the sum of orthophosphates, polyphosphates, and organically bound phosphates, as P, in an unfiltered water sample. Total phosphorus may also be determined directly by persulfate digestion.

(24) and (25) remain as proposed, but are renumbered (25) and (26).

~~(26)~~ (27) The board adopts and incorporates by reference:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, ~~nutrient~~, radioactive, and harmful parameters and also establishes human health-based water quality standards for the following specific nutrients with toxic effects:

(i) nitrate;

(ii) nitrate + nitrite; and

(iii) nitrite;

(b) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (December 2013 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters;

(b) through (d) remain the same, but are renumbered (c) through (e).

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

IMP: 75-5-303, MCA

**REASON:** The proposed amendments to ARM 17.30.702 will modify current definitions in the nondegradation rules and will add new definitions necessary for the implementation of base numeric nutrient standards. "Base numeric nutrients standards" have been added to the list of definitions from 75-5-103, MCA, that are incorporated by reference. The current definition of "nutrients," at (17), is being repealed, because it is not consistent with the use of the term in DEQ-12A, which contains standards for total nutrients. Further, the definition of "nutrients" added no clear value to the nondegradation rules, because, where needed, specific nutrient compounds or forms (e.g., TKN, nitrate as N) are named or referenced in the nondegradation rules. The proposed definitions of "total nitrogen," at (24), and "total phosphorus," at (25), correspond to those discussed above for amendments to ARM 17.30.602. The definition of "DEQ-7," in (28)(b), has been amended for the same reasons described above for ARM 17.30.602.

**17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY** (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:



(a) and (b) remain the same.

(c) discharges containing toxic parameters, inorganic nitrogen, or inorganic phosphorus ~~or nutrients~~, except as specified in (1)(d) and (e), which will not cause changes that equal or exceed the trigger values in ~~Department Circular DEQ-7~~. Whenever the change exceeds the trigger value, the change is not significant if the resulting concentration outside of a mixing zone designated by the department does not exceed 15% of the lowest applicable standard;

(d) through (e) remain the same.

(f) changes in the quality of water for any harmful parameter, including parameters listed in Department Circular DEQ-12A, for which water quality standards have been adopted other than ~~nitrogen, phosphorous, and~~ carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than 10% of the applicable standard and the existing water quality level is less than 40% of the standard;

(g) through (3) remain the same.

(4) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute under 30 CFR 131.21, then the significance criteria contained in (1)(g) are the significance criteria for total nitrogen and total phosphorus in surface water.

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

IMP: 75-5-303, MCA

REASON: The proposed amendments to ARM 17.30.715 will allow the department to calculate nonsignificant changes in water quality for the base numeric nutrient standards in DEQ-12A. If adopted by the board, base numeric nutrient standards will preclude the need to use the narrative standards at ARM 17.30.637(1)(e) to interpret eutrophication-based water quality impacts from nutrients. Base numeric nutrient standards are intended to control eutrophication and, at the concentrations found in DEQ-12A, the board considers base numeric nutrient standards to be harmful parameters. Therefore, DEQ-12A is incorporated into (1)(f), the section of the nondegradation rules addressing nonsignificance specific to harmful parameters. Nitrogen compounds at concentrations that are toxic, e.g., nitrate at ten mg/L, will remain in DEQ-7, as discussed earlier, and toxics-based nonsignificance criteria applicable to such compounds will continue to be applied to them. The proposed deletion of "or nutrients," in (1)(c), corresponds with the retaining of toxic-level nitrogen compounds in DEQ-7 and the relocation of eutrophication-based nitrogen and phosphorus standards to DEQ-12A. In addition, the term "or nutrients" in (1)(c) has been replaced with "or total inorganic phosphorus or total inorganic nitrogen," for the specific purpose of providing a nonsignificance threshold for nondegradation review of new dischargers, which are commonly subdivisions. This change allows the department to continue to carry out these reviews in the same manner as currently practiced, because DEQ-7 provides a trigger value for both of these inorganic compounds. ARM 17.30.715(1)(c) also provides: "Whenever the change exceeds the trigger value, the change is not

significant if the resulting concentration outside of a mixing zone designated by the department does not exceed 15% of the lowest applicable standard." When these provisions become applicable, the "lowest applicable standard" would be the narrative standard contained in ARM 17.30.637(1)(e). Significance would then be determined under ARM 17.30.715(1)(g). Proposed new (4) is a non-severability clause. If the statute that defines the nutrient standards variance process is rendered invalid, then the numeric nutrient standards in DEQ-12A are void and the narrative standard for nutrients at ARM 17.30.637(1)(e) applies. As a result, the part of the nondegradation rules at ARM 17.30.715(1)(g) that relate to the narrative standards would apply. The Legislature intended that both major pieces of the numeric nutrient standards rules (base numeric nutrient standards and nutrient standards variances) remain together as a package.

5. The proposed new circular may be viewed at and copied from the department's web site at <http://deq.mt.gov/wqinfo/Standards/default.mcp>x. Also, copies may be obtained by contacting Carrie Greeley at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-6749; or by e-mail at [CGreeley@mt.gov](mailto:CGreeley@mt.gov).

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., April 1, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

completing a request form at any rules hearing held by the board.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Robin Shropshire  
ROBIN SHROPSHIRE  
Chairman

Certified to the Secretary of State, February 3, 2014.

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

In the matter of the amendment of )  
ARM 24.11.204, 24.11.206, 24.11.443, )  
24.11.445, 24.11.451, 24.11.452A, )  
24.11.459, 24.11.470, 24.11.471, )  
24.11.2504, 24.11.2707; the adoption )  
of NEW RULE I; and the repeal of ARM )  
24.11.440, 24.11.513, 24.11.605, )  
24.11.1223, 24.11.2001, pertaining to )  
unemployment insurance )

TO: All Concerned Persons

1. On March 7, 2014, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the DPHHS Building, 111 North Sanders St., Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on March 5, 2014, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Rachel Bawden, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-2582; fax (406) 444-2993; Montana Relay Service at 711; or e-mail rbawden@mt.gov.

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

24.11.204 DEFINITIONS The terms used by the department are, in great part, defined in 39-51-201 through 39-51-205, MCA. In addition to these statutory definitions, the following definitions apply to this chapter, unless context or the particular rule provides otherwise:

(1) and (2) remain the same.

(3) "Agent state" means any state from or through which an individual files an interstate claim for benefits against another state.

(3) and (4) remain the same but are renumbered (4) and (5).

~~(5) "Benefit overpayment" means the amount of benefits paid to a claimant to which it is subsequently determined the claimant was not entitled by reason of disqualification, ineligibility, or reduction in entitlement.~~

(6) "Calendar quarter" means any one of the following quarters in a year:

First - January, February, March

Second - April, May, June

Third - July, August, September

Fourth - October, November, December

~~(6)~~(7) "Child" as used in 39-51-2111, MCA, means:

~~(a)~~ (a) an individual under the age of 18 who is a minor, including an emancipated minor, under the age of 18, as defined under 41-1-101, MCA; or a disabled adult

~~(b)~~ (b) an individual who is 18 or older and meets the definition of an individual with a disability as defined by Title VII of the federal Rehabilitation Act of 1973, 29 U.S.C. 705(20)(A) and (B), as amended, and who is dependent upon his/her parent(s) or guardian(s) for food, shelter, living expenses and other necessities.

~~(i)~~ (i) The department will consider information provided by state or federal agencies or professional persons, who are certified by the state of Montana according to 53-21-106, MCA, to determine if an individual who is 18 or older should be considered a disabled adult.

~~(7)~~(8) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, or reactivated ~~reopened, continued, or biweekly claim~~ for unemployment insurance benefits.

~~(8)~~(9) "Claimant" means a person who has filed, or is in the process of filing, an initial a claim.

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

~~(10)~~ "Continued claim" means a notice filed by a claimant stating whether or not the claimant wishes to claim benefits or waiting period credit for any week that begins within the claimant's benefit year.

(11) "Commuter claimant" means an individual who customarily commutes across state lines from a residence in one state to work in a liable state.

(12) "Contribution rate schedule" means the schedule of contribution rates assigned to employers each calendar year based upon the ratio between the trust fund balance as of October 31 and the total wages in employment for the year ending June 30.

(11) through (15) remain the same but are renumbered (13) through (17).

~~(16)~~ "File" or "filing" means:

~~(a)~~ with respect to an appeal of a determination, redetermination, or decision regarding a claim for benefits, an interested party's communication to the department, in the manner and within the time prescribed by the department, of that party's desire to have that determination, redetermination, or decision reviewed or heard by the next highest level of adjudication;

~~(b)~~ with respect to a claim for benefits, a communication to the department, in the manner and within the time prescribed by the department, of a claimant's desire to establish an initial claim, reactivate an inactive claim, or make a biweekly claim;

~~(c)~~ with respect to information required by the department for the proper administration of a claim or information an interested party wishes the department to consider regarding a claim, a communication to the department, in the manner and within the time prescribed by the department, conveying the purpose and substance of the information;

~~(d)~~ with respect to records kept by the department for unemployment insurance matters, the place where such records are stored or the act of placing information into the place where such records are stored. The department's records

may be stored in a variety of media, including traditional paper copies, microfilm, and electronic or magnetic formats, or a combination of those media.

(17) through (19) remain the same but are renumbered (18) through (20).

~~(20)~~(21) "Insured work" means services deemed to be employment in any state pursuant to an arrangement under 39-51-504(1), MCA, and employment, as defined in 39-51-203, MCA, including federal civilian service, federal military service, and services that constitute employment in any other state, but does not include those services enumerated in 39-51-204, MCA, except for federal civilian service, federal military service, and services that constitute employment in any other state, provided that those services and the wages therefore are potentially:

(a) assignable to this or another state pursuant to 20 CFR 609 or 20 CFR 614; or

(b) transferable to this state or another state pursuant to 20 CFR 616.

(21) remains the same but is renumbered (24).

(22) "Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce Agencies (NASWA) under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have accumulated.

(23) "Interstate claimant" means an individual who files an interstate claim for benefits under the unemployment insurance law of a liable state.

(22) and (23) remain the same but are renumbered (25) and (26).

(27) "Liable state" means the state responsible for administering an interstate claim for benefits established by an individual under the law of the liable state.

(24) and (25) remain the same but are renumbered (28) and (29).

~~(26)~~(30) "Nonmonetary determination" means a decision involving an issue relative related to a claimant's qualification or eligibility for benefits, independent of claimant's monetary determination of benefits that does not involve a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.

(31) "Offset" means the withholding of benefits that would otherwise be payable to a claimant for a compensable week of unemployment in order for the department to recover an overpayment.

(32) "Overpayment" means the amount of benefits paid to a claimant from a state or federal unemployment compensation fund that the liable state subsequently determines the claimant was not entitled to receive by reason of disqualification, ineligibility, or reduction in entitlement under the law of the liable state.

(33) "Participating state" means a state which has subscribed to the interstate reciprocal overpayment recovery agreement.

~~(27)~~(34) "Part-time work" means insured work in which a worker is regularly scheduled to work that is less than 40 hours per week.

(28) and (29) remain the same but are renumbered (35) and (36).

(37) "Recovering state" identifies a state that has received a request from another state to assist in the recovery of a benefit overpayment.

(30) remains the same but is renumbered (38).

(39) "Requesting state" means the state that has issued a final determination of benefit overpayment and requests another state to assist in recovering the outstanding balance from the overpaid individual.

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

(48) "Transferring state" means the state that transfers wage credits reported for a claimant to the liable state for use in determining the benefit entitlement of the claimant under the law of the liable state.

(49) "Trust fund" means the unemployment insurance fund created in 39-51-401, MCA.

(39) and (40) remain the same but are renumbered (50) and (51).

(52) "Wage credits" means the wages reported to a state unemployment insurance program that were paid to an employee.

(53) "Wage credits from another state" means the assignment or transfer of wage credits, under an arrangement under 39-51-504(1), MCA, to Montana or another liable state, pursuant to 20 CFR 609, 20 CFR 616, or 20 CFR 614.

(54) "Waiting week" means a week of total unemployment, as defined by 39-51-2101, MCA, for which a claimant must file a weekly payment request but is not entitled to receive unemployment insurance benefits, pursuant to 39-51-2104, MCA.

(41)(55) "Week claimed" means any week with respect to which a claimant files a ~~continued claim~~ weekly payment request for benefits or waiting week credit.

(42) remains the same but is renumbered (56).

(57) "Week of unemployment" means any week of unemployment, as defined in the law of the liable state in which a valid claim is established.

(58) "Weekly payment request" means the filing by a claimant of a request for benefit payment or waiting week credit for any week within claimant's benefit year.

(59) "Work search contact" means a documented contact by a claimant with an employer or authorized agent that hires workers for work the claimant is qualified for and able to perform, and further described by [NEW RULE I].

(43) remains the same but is renumbered (60).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, 39-51-401, 39-51-504, 39-51-1103, 39-51-1213, 39-51-1218, Title 39, Ch. 51, parts 21 through 25, MCA, 39-51-2601, 39-51-2111, 39-51-2112, 39-51-2115, 39-51-2116, 39-51-2304, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The department determines it is reasonable and necessary to consolidate all definitions commonly used in the administration of unemployment insurance benefits in a single administrative rule. The proposed rule amendment clarifies terminology, removes definitions repetitive of statutory definitions, and adds a number of new terms. "Weekly payment request" replaces the terms "biweekly claim" or "continuing claim" in order to avoid confusion between a claimant filing with the department who seeks weekly unemployment insurance benefits and the filing of an unemployment insurance "claim," which initiates a qualified claimant's access to available benefits during the subsequent year. The department further determines it is necessary to implement oversight measures to ensure that claimants consistently make appropriate work searches. To this end, the department defines "work search contact" and refers to NEW RULE I, which fully outlines the weekly work search

requirements. The department proposes to reduce redundancy by deleting all definitions for terms that are defined by 39-51-201, MCA.

24.11.206 TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS (1) Claimants and employers must respond in a timely manner to all department requests for information. Whenever a particular thing is required to be filed with or submitted to the department within a certain number of days and the last day The department shall notify claimants and employers of the established deadline for each submission. When a deadline falls on a Saturday, Sunday, or holiday, the filing or submission may be done occur no later than the next business day. This subsection rule does not apply to the filing of biweekly claims weekly payment requests under ARM 24.11.443.

(2) Except as provided for the filing of biweekly claims under ARM 24.11.443, if a Claimants and employers may submit information to the department using the following means:

(a) telephone filing or submission is required or allowed to be done by telephone, the person wishing to make the filing or submission must contact with a customer service representative no later than the last day allowed to make the filing or submission, by calling at the department's claims processing center during the center's published business hours, and provide such information as the customer service representative may require to establish the identity of the person and the nature of the filing or submission the person intends to make.

(b) mailing a written If a filing or submission is required or allowed to be done in writing, the writing must be delivered to the department, either by mail or by facsimile and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make. Filings or Submissions by mail of responses to department requests for information must be postmarked received by the department (not postmarked) by the established deadline. no later than the last day allowed to make the filing or submission.

(c) e-mail transmission to the file transfer service or the e-mail address designated by the department. Filings or submissions by facsimile must be received no later than the last day allowed to make the filing or submission. If the filing or submission is required or allowed to be done by electronic mail, the electronic mail message must be transmitted no later than the last day allowed to make the filing or submission and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make.

(d) facsimile transmission at the fax number designated by the department.

(3) Claimants and employers are allowed eight days to respond to department requests for information pertaining to a benefit claim. A timely response by mail must be received by the department no later than the established deadline. Each response must identify the person responding and address fully the department's questions.

(4) An employer who, without good cause, provides an untimely or incomplete response to a department request for information may forfeit interested



party status and the right to credit for any overpayment, pursuant to 39-51-605, MCA, and ARM 24.11.208 and 24.11.617.

(5) Claimants and employers are allowed ten days to submit a request for an appeal of a ~~Any~~ determination, redetermination, or decision of an appeals referee relating to a claimant's entitlement to or eligibility for benefits or to an employer's chargeability for benefits. A timely request for an appeal by mail must be received by the department no later than the established deadline. In the absence of an appeal, a determination, redetermination, or decision becomes final unless an interested party appeals the determination, redetermination, or decision within ten days after the determination, redetermination, or decision was mailed by the department to the party's last known address.

~~(4)(6) The department may accept any filing or allow the untimely submission of information or request for an appeal made after the time allowed or extend the time allowed for any filing or submission to be made if only when the department determines that there is the claimant or employer had good cause to do so to be untimely.~~

~~(5)(7) Any individual can~~ may obtain an answer to an inquiry concerning the unemployment insurance program by submitting the inquiry by telephone, ~~by~~ facsimile, ~~by~~ mail, or ~~by~~ e-mail.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: The department determines it is reasonable to replace the term "biweekly claim" with the phrase "weekly payment request" to increase clarity and avoid confusion between claimant's weekly filings seeking benefits and the filing of a "claim," which initiates a qualified claimant's access to available benefits during the subsequent year. The department finds it necessary to clarify by this proposed amendment that submissions by mail must be received by the department and not simply postmarked by the designated deadline for submission of information pertaining to an unemployment insurance claim. The terms "filing" and "submission" are used interchangeably by the unemployment insurance program. The department also determines it is reasonable to add the cross reference to ARM 24.11.208 and 24.11.617, because those rules govern the procedures that apply when an employer does not timely respond.

24.11.443 BIWEEKLY CLAIMS WEEKLY PAYMENT REQUESTS (1) ~~After filing an initial claim and establishing a valid claim for benefits, a claimant wishing to claim benefits or waiting period credit for any week that begins within the claimant's benefit year must file a timely biweekly claim for the week~~ weekly payment requests. ~~The biweekly claim must be filed using either the department's interactive voice response telephone system or the Internet claims application system, unless it is determined by the department determines that the a claimant is unable to use either the Internet filing method. In those instances, the department shall allow the claimant will be allowed to file biweekly claims~~ weekly payment requests by mail, e-mail, or facsimile using biweekly claim paper forms provided by the department.

Claimants may elect to file payment requests each week or to file two payment requests every two weeks.

~~(2)(a) The term "biweekly claim" refers to the manner in which continued claims, except as provided in (2)(b), must be filed. A biweekly claim consists of continued claims for any two previously unclaimed consecutive weeks that begin within a claimant's benefit year. The biweekly claim must be filed after the Saturday of the second week, but no later than seven calendar days following the Saturday of the second week. A claimant must file weekly payment requests only after the week has passed for which the claimant seeks benefits or waiting week credit. The time frame for filing weekly payment requests begins on the Sunday following the last week for which payment or waiting week credit is requested and runs through the following seven calendar days.~~

~~(b) When there is only one previously unclaimed week remaining that begins within a claimant's benefit year, a continued claim may be filed for that week alone. The continued claim must be filed after the Saturday of the week, but no later than seven calendar days following the Saturday of the week. For the purposes of this rule, the term "biweekly claim" includes a continued claim filed under this subsection.~~

~~(c) The department may extend the time allowed for filing a biweekly claim if it determines that the claimant had good cause for failing to file the claim within the time allowed. If no good cause is found for the delay in filing, benefits or waiting period credit, as the case may be, will be denied and the claimant may be required to reactivate the claim as provided in ARM 24.11.445.~~

~~(3) When filing a biweekly claim using the interactive voice response telephone system, a claimant must enter the claimant's social security number and personal identification number to access the system and must answer each question asked by the system. A claimant must answer fully each question on the weekly payment request form and certify that the claimant's responses are true and accurate to the best of the claimant's knowledge.~~

~~(4) When filing a biweekly claim using weekly payment requests using the Internet claims application system, a claimant must enter the claimant's social security number, birth date, and personal identification number to access the application system and must answer each question listed on the biweekly claims form. The claimant's personal identification number, which is established by the claimant and unknown to the department. Claimants are required to keep their personal identification numbers confidential, and which the claimant is required to keep. A claimant's personal identification number confidential, is considered by the department to be the equivalent of the claimant's signature for the purpose of certifying that the claimant's responses to the questions are true and accurate to the best of the claimant's knowledge. When filing a biweekly claim by mail, a claimant must answer each question on the biweekly claim form and sign the form to certify that the claimant's responses to the questions are true and accurate to the best of the claimant's knowledge.~~

~~(4)(5) A claimant must report all hours of insured work and gross wages for insured work for each week claimed. The wages must be reported for the week in which they were earned rather than for the week in which they were paid, except as otherwise provided in this rule. for the following:~~

(a) payments made for termination of employment in insured work must be reported for the week in which the separation from insured work occurred. Termination payments are generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, must be reported for the week in which the separation from work occurred.

(b) through (g) remain the same.

~~(5)(6)~~ (6) A claimant must file timely ~~biweekly claims~~ weekly payment requests during the pendency of a monetary determination, a non-monetary determination, or an appeal, in order to ~~claim~~ request benefits or waiting period credit for that week or weeks.

(7) A claimant must complete work search contacts seeking insured work during each week for which claimant requests payment of benefits or waiting week credit, unless the claimant is exempt from this requirement pursuant to [NEW RULE II].

(8) The department may allow the untimely filing of a weekly payment request only when the department determines the claimant had good cause for failing to file within the time allowed. If the department determines that no good cause justifies the delay in filing, benefits or waiting week credit must be denied and the claimant may be required to reactivate the claim as provided in ARM 24.11.445.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, Title 39, Ch. 51, parts 21 through 23, MCA

REASON: The department determines the proposed rule amendment is necessary because the department no longer offers the interactive voice response system as an option for claimants filing weekly payment requests. The only two filing options available to claimants now are the Internet claim system and paper-filing by U.S. mail or facsimile. The department determines that the cost of maintaining and upgrading the voice response system is prohibitive. The proposed rule amendment is reasonable because more than 80% of claimants already use the Internet claim system and the department allows those claimants who lack access to the Internet to continue filing weekly payment requests using the department's paper forms. The department further determines that it is necessary to require claimants to document weekly work search contacts in order to ensure claimants are actively seeking suitable employment while collecting benefits to ensure the integrity of Montana's unemployment insurance program.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM (1) A claim for benefits becomes inactive if, for any two consecutive weeks within the benefit year, any of the following occur in any combination:

- (a) ~~the claimant does not file a continued claim~~ weekly payment request; or
- (b) ~~the claimant does files a continued claim~~ weekly payment request, but:

- (i) indicates that the claimant does not wish to claim benefits; or
  - (ii) reports hours of work equal to or greater than 40; or
  - (iii) reports hours of work equal to or greater than the claimant's established customary hours; or
  - (iv) reports earnings equal to or greater than twice the claimant's weekly benefit amount.
- (2) To reactivate an inactive claim, the claimant must:
    - (a) call the claims processing center during the center's published business hours and request that the claim be reactivated; or
    - (b) access the department's Internet claims ~~application~~ system.
  - (3) A reactivated claim is effective on the ~~first day~~ Sunday of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. The department may backdate a claim when ~~If the department finds~~ determines that the claimant had good cause for the delay in reactivating the claim, ~~the claim will be backdated.~~
  - (4) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: The proposed amendment is necessary to clarify that a claimant does not qualify for benefits for a week during which the claimant works claimant's customary hours and to update terminology.

24.11.451 SIX-WEEK RULE (1) The department investigates ~~and adjudicates~~ each separation from insured work that occurred during the six weeks immediately preceding the effective date of an initial or an additional claim. ~~If the claimant was not separated from insured work during the six week period, the department investigates and adjudicates the claimant's most recent separation from insured work that occurred prior to the six week immediately preceding the effective date of the claim.~~ The department shall adjudicate all separations that occurred during the six-week period except:

(a) when the claimant separates from both full-time and part-time employment in insured work, the department shall adjudicate only the separation from full-time employment; and

(2)(b) Except as provided in ARM 24.11.454A(1) and (2), if there is more than one separation occurring within the time frames specified in (1) involving when the claimant separates from insured work with the same employer more than once, the department shall adjudicate only the last separation involving that employer is investigated and adjudicated.

(2) If the claimant did not separate from insured work during the six-week period, the department shall investigate and adjudicate the claimant's most recent separation from insured work that occurred prior to the six weeks immediately preceding the effective date of the claim.

~~(3) Each employer involved in a claimant's separation is allowed eight days to respond to the claimant's statement of the reasons for the separation. If the information obtained from any employer is substantially different from that provided~~

~~by the claimant, the claimant is allowed eight days to respond to the employer's statement. The eight days allowed for the employer's or the claimant's response begins on the day following the date the information is mailed, faxed, or communicated by telephone to the employer or to the claimant. In the interest of making timely determinations and redeterminations, department personnel may attempt to provide the parties' statements to each other by telephone and obtain their responses at that time or request that they respond at sometime sooner than the expiration of the eight days allowed for them to respond. Either party may waive the eight days by providing their response prior to the expiration of the eight days.~~

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASON: The proposed amendment is necessary to avoid the inequity that has occurred when a claimant qualified for benefits on the basis of claimant's separation from full-time employment but was denied benefits due to claimant's separation from part-time employment during the six-week period immediately preceding the filing of a claim. The department determines it is reasonable to adjudicate only the separation from full-time employment in order that a claimant qualified for benefits on the basis of the separation from primary, full-time employment is not disqualified by operation of the six-week rule when the claimant leaves a comparatively insignificant part-time job during the six-week period. The department determines that it is reasonable to eliminate the portion of the rule that describes the time allowed for claimant and employer responses to department requests for information because those time frames are outlined thoroughly in ARM 24.11.450A.

24.11.452A ELIGIBILITY FOR BENEFITS (1) through (3) remain the same.

(4) The department shall determine a claimant to be actively seeking work when the claimant is:

(a) ~~making a reasonable independent search for suitable work in a manner appropriate for conditions in the claimant's labor market area~~ an active, good faith effort to secure insured work during each week for which the claimant requests payment of benefits or waiting week credit, unless the claimant is exempt from this requirement pursuant to [NEW RULE I];

(b) and (c) remain the same.

(5) The department shall determine a claimant to be ineligible for benefits when, without good cause, the claimant:

(a) fails to participate in a scheduled job interview ~~required by the department;~~

(b) and (c) remain the same.

(d) withdraws temporarily or permanently from the labor market. Withdrawal from the labor market includes but is not limited to:

(i) and (ii) remain the same.

(iii) an employer-approved leave of absence, per ARM ~~24.11.476~~ 24.11.490;

or

(iv) and (v) remain the same.

(6) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: The proposed amendment is necessary to reference the department's new requirements for reporting work search contacts outlined by NEW RULE I and to correct a citation to rule.

24.11.459 ADMINISTRATIVE PENALTY (1) through (4) remain the same.

(5) A week is counted as a week of disqualification for the purposes of 39-51-3201(1)(a), MCA, only if:

(a) the claimant has filed a ~~biweekly claim~~ weekly payment request for the week;

(b) through (d) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-3201, MCA

REASON: The department determines it is reasonable to replace the term "biweekly claim" with the phrase "weekly payment request" to increase clarity and avoid confusion. The phrase "weekly payment request" serves to distinguish a claimant's weekly filings seeking benefits from the filing of a "claim," which initiates a qualified claimant's access to available benefits during the subsequent year.

24.11.470 QUALITY CONTROL (1) remains the same.

(2) This program includes, but is not limited to:

(a) a review of the ~~claim~~ weekly payment request forms;

(b) remains the same.

(c) verifications of wages, statements, and ~~worksearches~~ work search contacts.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-301, MCA

REASON: The department determines it is reasonable to replace the term "biweekly claim" with the phrase "weekly payment request" to increase clarity and avoid confusion. The phrase "weekly payment request" serves to distinguish a claimant's weekly filings seeking benefits from the filing of a "claim," which initiates a qualified claimant's access to available benefits during the subsequent year.

24.11.471 ELIGIBILITY REVIEW PROGRAM (1) A program has been established by the department to review a claimant's eligibility to receive benefits and to evaluate the claimant's need for reemployment services. The purpose of the program is to review the work search contacts made by the claimant and to help the claimant in further work searches become reemployed. Any claimant may be selected to participate in the program.

(2) A claimant who is selected to participate in the program receives a written notice to report for an interview at the ~~local~~ designated job service office. Failure to report to the ~~local~~ job service office at the scheduled time, ~~or failure to notify the office and reschedule the interview, or failure to provide documentation of work search contacts, as required by [NEW RULE I],~~ may result in denial of benefits.

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-2104, 39-51-2304, MCA

REASON: The proposed rule amendment is necessary to provide a reference to NEW RULE I, which outlines in detail the requirements for a claimant to document one work search contact during each week for which the claimant requests benefit payment or waiting week credit.

24.11.2504 RENTAL OF EQUIPMENT OR CAPITAL ASSETS--NOT WAGES (1) through (5) remain the same.

(6) Passenger vehicle expenses may be reimbursed either on the basis of actual receipts or upon mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for ~~the preceding~~ that year, provided that the individual actually furnishes the vehicle.

(7) remains the same.

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed amendment is necessary to bring the rule into conformance with Internal Revenue Service (IRS) regulation 26 CFR 1.274-5(g) and provide consistency with the mileage rate reimbursement allowed by ARM 24.11.2511(1)(e)(v).

24.11.2707 REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE FOR CERTAIN EMPLOYERS (1) through (3) remain the same.

(4) ~~Prior to January 1, 2014, if an employer has~~ wages reported ~~wages~~ for an employee to another state, ~~these wages~~ may be used in calculating the employee's taxable wage in Montana.

(5) Beginning January 1, 2014, only wages reported to the Montana unemployment insurance program may be used to calculate an employee's taxable wage in Montana.

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-203, 39-51-1108, 39-51-1217, MCA

REASON: The proposed amendment is necessary to simplify the determination of wages paid to employees in excess of Montana's taxable wage base. Each state determines its own taxable wage base, which establishes the upper limit for wages subject to unemployment insurance taxation, and most wage bases differ from state to state. When wages paid to employees working out-of-state are reported to

Montana by multistate employers, a significant number of reporting errors have occurred. Less than 1% of employers report out-of-state wages to Montana's unemployment insurance program, but the resulting incorrect calculations constitute more than 25% of the accounting discrepancies each year. Department staff devote more than 250 hours each year to the reconciliation of out-of-state wage reporting errors. This reconciliation burden is shared by employers and payroll tax preparers who must address the audit questions raised by the department.

The department's new tax system (STAARS) capably determines the correct amount of taxable wages for an employee who works in a single state. However, commercial payroll software packages currently available on the market do not have the capacity to calculate accurately taxable wages for employees who frequently relocate to work in several states. The STAARS tax system now requires the reconciliation of employer contribution reports on a quarterly basis, rather than annually. The elimination of out-of-state wages from the calculation of an employee's taxable wage base in Montana allows for wider use of e-filing by employers and provides for much greater efficiency in all areas of Montana's unemployment insurance program.

The proposed rule amendment is reasonable because employers using out-of-state wages to determine their employees' taxable wage base in Montana have enjoyed very minor reductions in their tax contributions but have accumulated some of the largest unemployment insurance deficits. In other words, the Montana unemployment insurance program has paid out disproportionately large amounts of benefits to the employees of businesses using out-of-state wages to reduce their tax contributions. Fewer than forty employers, all with extremely large deficits, received the bulk of the tax savings from use of out-of-state wages over the past three years. The proposed rule amendment will help to reduce such extreme deficits over time. The department determines the proposed amendment will allow more employers to begin to submit electronic quarterly filings and provide employers with greater certainty regarding how to correctly calculate taxable wages for employees in Montana.

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

NEW RULE I WORK SEARCH CONTACTS (1) The department shall determine a claimant is making an active, good faith effort to secure insured work when the claimant documents at least one valid work search contact made during the week for which claimant requests the payment of benefits or waiting week credit. A valid work search contact requires a claimant to:

- (a) directly contact an employer or an authorized agent of an employer who hires workers in the claimant's occupation(s);
- (b) possess the prior work experience, knowledge, skills, and abilities to qualify for the specific job opening;
- (c) complete a job application or submit a resume that enables the employer to contact the claimant to arrange an interview or to commence employment;



(d) make the work search contact in person, unless the normal method of applying for work in the industry or occupation is submission of an application or resume by mail, Internet, or facsimile; and

(e) make a work search contact with a different employer for each consecutive week.

(2) Seeking self-employment or work as an independent contractor does not constitute a valid work search for unemployment insurance purposes.

(3) The claimant must maintain a separate log of valid work search contacts and accurately report at least one work search contact to the department in the designated section of the claimant's weekly payment request form, whether filing by mail, e-mail, facsimile, or using the Internet claim system. Failure to provide a verifiable work search contact for a week or failure to answer fully all questions related to a work search contact may result in the denial of benefits.

(4) Claimants must retain separate documentation of all work search contacts for three calendar years following claimants' benefit year.

(5) Documentation of work search contacts consists of the following information:

(a) date of the work search contact;

(b) name of the employer;

(c) name of the employer's contact person or employer's web address (URL);

(d) telephone number of employer;

(e) position applied for by claimant;

(f) result of the work search contact;

(g) copy of confirmation of receipt of application or resume by the employer for an online application; and

(h) copy of job advertisement in newspaper or trade magazine, when applicable.

(6) The department may exempt a claimant from the requirement to complete work search contacts and maintain a work search log when the claimant is:

(a) engaged in state-approved training, pursuant to ARM 24.11.475 or 24.11.476;

(b) "union attached" as defined in ARM 24.11.452A; or

(c) "job attached" as defined in ARM 24.11.452A.

(7) The department may deny benefits and determine that a claimant must pay back previously paid benefits when a claimant fails to:

(a) complete required work search contacts;

(b) fully report work search contacts on weekly payment request forms;

(c) provide documentation of work search contacts upon department request;

(d) participate in the Benefits Accuracy and Measurement audit authorized by ARM 24.11.470; or

(e) participate in the Eligibility Review Program authorized by ARM 24.11.471.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

REASON: The department determines proposed NEW RULE I is necessary to clarify the responsibility of each nonexempt claimant to document and report work search contacts for each week that the claimant requests payment of unemployment insurance benefits. Proposed NEW RULE I outlines explicit documentation of work search contacts that will permit the department to exercise greater oversight of a claimant's efforts to secure employment in insured work. The retention of documentation of all work search contacts by each claimant is necessary for auditing by the department's Benefits Accuracy Measurement audit and Eligibility Review Program. The department determines that three years is a reasonable period of time to permit the department to audit a claimant's work searches.

5. The department proposes to repeal the following rules:

24.11.440 DEFINITIONS

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-2101 through 39-51-2601, MCA

REASON: The department determines it is reasonable to consolidate all definitions commonly used in the administration of unemployment insurance benefits into a single administrative rule. The department incorporates all pertinent definitions of this rule as part of ARM 24.11.204. Therefore, repeal of this rule is necessary.

24.11.513 DEFINITIONS

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-504, MCA

REASON: The department determines it is reasonable to consolidate all definitions commonly used in the administration of unemployment insurance benefits into a single administrative rule. The department incorporates all pertinent definitions of this rule as part of ARM 24.11.204. Therefore, repeal of this rule is necessary.

24.11.605 DEFINITIONS

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-1103, 39-51-1213, MCA

REASON: The department determines it is reasonable to consolidate all definitions commonly used in the administration of unemployment insurance benefits into a single administrative rule. The department incorporates all pertinent definitions of this rule as part of ARM 24.11.204. Therefore, repeal of this rule is necessary.

24.11.1223 DEFINITIONS

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The department determines it is reasonable to consolidate all definitions commonly used in the administration of unemployment insurance benefits into a single administrative rule. The department incorporates all pertinent definitions of this rule as part of ARM 24.11.204. Therefore, repeal of this rule is necessary.

24.11.2001 DEFINITIONS

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-201, 39-51-1103, MCA

REASON: The department determines it is reasonable to consolidate all definitions commonly used in the administration of unemployment insurance benefits into a single administrative rule. The department incorporates all pertinent definitions of this rule as part of ARM 24.11.204. Therefore, repeal of this rule is necessary.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Rachel Bawden, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-2582; fax (406) 444-2993; Montana Relay Service at 711; or e-mail rbawden@mt.gov and must be received no later than 5:00 p.m., March 13, 2014.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, adoption, and repeal of the above-referenced rules will not have a significant adverse impact on small businesses. The proposed amendment of ARM 24.11.2707 requires multistate employers to use only Montana-reported wages to determine the taxable wages for employees. Less than one-tenth of one percent of the affected employers have 49 or fewer employees. The department has prepared a small business impact statement, which is available for review upon request.

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

/s/ JUDY BOVINGTON  
Judy Bovington  
Alternate Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 3, 2014.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On March 11, 2014, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice (board) no later than 5:00 p.m., on March 4, 2014, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdotp@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as an occupational therapist or occupational therapy assistant.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an occupational therapist or occupational therapy assistant. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov), and must be received no later than 5:00 p.m., March 14, 2014.

5. An electronic copy of this notice of public hearing is available at [www.ot.mt.gov](http://www.ot.mt.gov) (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the

person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov).

9. Mark Jette, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
NATE NAPRSTEK, CHAIR

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 3, 2014

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

In the matter of the amendment of )  
ARM 24.216.502 minimum standards )  
for sanitarians and sanitarians in )  
training, 24.216.503 examination and )  
the adoption of NEW RULE I military )  
training or experience )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On March 11, 2014, at 10:30 a.m., a public hearing will be held in the Large Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Sanitarians (board) no later than 5:00 p.m., on February 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Melissa Billman, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2330; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdsan@mt.gov (board's e-mail).

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

24.216.502 MINIMUM STANDARDS FOR SANITARIANS AND  
SANITARIANS IN TRAINING (1) and (2) remain the same.

~~(3) A holder of a current National Environmental Health Association (NEHA) registration, who also has not completed a general microbiology course, is qualified to be a sanitarian in training. A holder of a current NEHA registration, who has taken the required general microbiology course, is qualified to be registered as a sanitarian in the state of Montana.~~

AUTH: 37-1-131, 37-40-203, MCA  
IMP: 37-40-302, MCA

REASON: The board determined it is reasonably necessary to strike (3) from this rule, after determining that the National Environmental Health Association (NEHA) credential requirements do not meet or exceed the requirements of the board. The board concluded, therefore, that under 37-1-304, MCA, the board cannot grant licenses to NEHA credential holders, unless they also meet the licensure requirements of the board.



24.216.503 EXAMINATION (1) Except as provided in (6), all applicants must pass an examination approved by the board prior to licensure. Upon approval of the application set forth in ARM 24.216.501 and 24.216.506, unless the applicant has already passed the examination as provided in (7), the applicant shall submit an examination fee and make an appointment with the board office to sit for the written examination within 30 days of the application approval, or once the applicant receives an admissions letter from the board office, the applicant shall submit the examination fee and schedule a time to sit for the written examination with the vendor testing service within 30 days of the application approval. Examination candidates must present photo identification prior to being admitted to the examination pay the examination fee and make arrangements to take the examination approved by the board. Examination candidates are responsible for complying with any requirements of the testing agency.

(2) through (5) remain the same.

(6) A sanitarian in training is subject to examination rules set forth in ARM 24.216.2103 24.216.506.

(7) An applicant who provides proof the applicant has already achieved the score provided in (2) on the board-approved examination is not required to retake the examination.

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-1-131, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) to reflect changes in the way the board's examination is currently administered, since most applicants no longer take the examination at the board office. The board is amending (6) to reflect the correct location of the sanitarian-in-training rule, which was renumbered from ARM 24.216.2103 to ARM 24.216.506 in May of 2011.

The board is adding (7) to allow a person who has already met or exceeded the minimum passing score on the board-approved examination to use their prior passing score to satisfy the board's examination requirement. The board concluded that requiring applicants who already passed the examination to retake it would not significantly enhance applicants' competence or promote the board's mission to protect the health, safety, and welfare of the public.

4. The proposed new rule provides as follows:

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education for consideration toward the requirements for licensure as registered sanitarians and sanitarians in training.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as registered sanitarians and sanitarians in training. At a minimum, satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov), and must be received no later than 5:00 p.m., March 14, 2014.

6. An electronic copy of this notice of public hearing is available at [www.sanitarian.mt.gov](http://www.sanitarian.mt.gov) (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may

be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov); or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.216.502 and 24.216.503 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations are available upon request to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2330; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov) (board's e-mail).

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

BOARD OF SANITARIANS  
JIM ZABROCKI, RS, CHAIRPERSON

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 3, 2014

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

In the matter of the adoption of New ) AMENDED NOTICE OF PUBLIC  
Rule I and the amendment of ARM ) HEARING ON PROPOSED  
37.5.304, 37.50.1101, 37.50.1102, ) ADOPTION AND AMENDMENT  
and 37.50.1103 pertaining to the )  
adoption of federal statutes for )  
guardianship )

TO: All Concerned Persons

1. On December 12, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-659 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2278 of the 2013 Montana Administrative Register, Issue Number 23.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on February 19, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The notice is amended to address comments from Legislative Services on the department's statement of reasonable necessity. All rules remain as proposed.

4. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

ARM 37.50.1102

The department is proposing to update (2) to reflect the most current guardianship statute. Section 41-3-421, MCA, currently referenced in (2), was renumbered as 41-3-444, MCA, in 2001.

Section (7) reflects the fact that the department serves children up to the age of 18 19 under certain circumstances. ~~The definition of a "child" in 41-3-102(7), MCA, is "any person under 18 years of age."~~ The department is currently able to continue foster care payments for children who until a child turns 18 19 while in care but are as long as the child is still enrolled in secondary education. ~~Limiting the age creates a barrier to guardianship for some families and as a result, permanency for these children. Research indicates that due to the delays caused by the trauma~~

~~these children experience early on, very few of our children are able to accomplish completion of their secondary education by their 18th birthday. The department recommends that the child's age be proposes to extended to the state subsidy for age 19 for state-subsidized guardianships for purposes of retaining financial eligibility while completing their secondary education until age 19 under the same circumstances as available to foster parents.~~

For purposes of clarity for the reader, the above paragraph will read as follows:

Section (7) reflects the fact that the department serves children up to the age of 19 under certain circumstances. The department currently continues foster care payments until a child turns 19 while in care as long as the child is still enrolled in secondary education. The department proposes to extend the state subsidy for guardianships until age 19 under the same circumstances as available to foster parents.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on February 27, 2014. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphslegal@mt.gov](mailto:dphslegal@mt.gov).

/s/ Mark Prichard  
Mark Prichard  
Rule Reviewer

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

Certified to the Secretary of State February 3, 2014.

BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.55.320 and 2.55.502, )  
pertaining to classifications of )  
employments and the individual loss )  
sensitive dividend distribution plan )

TO: All Concerned Persons

1. On November 27, 2013, the Montana State Fund published MAR Notice No. 2-55-43 pertaining to the proposed amendment of the above-stated rules at page 2200 of the 2013 Montana Administrative Register, Issue Number 22.

2. The Montana State Fund has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler  
Nancy Butler, General Counsel  
Rule Reviewer

/s/ Elizabeth Best  
Elizabeth Best  
Chair of the Board

/s/ Michael P. Manion  
Michael P. Manion, Chief Legal Counsel  
and Rule Reviewer

Certified to the Secretary of State February 3, 2014.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 23.12.1203 through 23.12.1208, )  
23.12.1301, and 23.12.1411 through )  
23.12.1413 pertaining to Montana Law )  
Enforcement Academy Preservice )  
Applicants )

TO: All Concerned Persons

1. On December 26, 2013, the Department of Justice published MAR Notice No. 23-12-237 pertaining to the proposed amendment of the above-stated rules at page 2371 of the 2013 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: The Montana Academy of Physician Assistants expressed support for the amended rules and noted the rules incorrectly refer to "Physician's Assistant(s)," when the correct term is "Physician Assistant(s)."

RESPONSE #1: The department appreciates the comment and acknowledges the error. The incorrect term was used in the rationale and not in the rule itself, and thus, the error will not appear in the adopted rules.

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

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

Certified to the Secretary of State February 3, 2014.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
 ARM 32.15.601, 32.15.602, )  
 32.18.104, 32.18.105, 32.18.106, )  
 32.18.107, 32.18.108, 32.18.109, )  
 32.18.110, 32.18.111, 32.18.201, )  
 32.18.202, 32.18.203, 32.18.204, )  
 32.18.205, 32.18.207, and 32.22.103 )  
 pertaining to brand mortgages, )  
 renewal requirements, placement of )  
 digits, brand ownership and transfer, )  
 sale of branded livestock, change in )  
 brand recording, equine breed )  
 registry mark, freeze branding, )  
 recording and transferring of brands, )  
 rerecording of brands, brand )  
 inspection, county line grazing )  
 permits, import transportation permit, )  
 livestock market releases, sheep )  
 permit, domestic bison permit, and )  
 duration of permits )

TO: All Concerned Persons

1. On December 12, 2013, the Department of Livestock published MAR Notice No. 32-13-238 regarding the proposed amendment of the above-stated rules at page 2268 of the 2013 Montana Administrative Register, Issue Number 23.

2. The department has amended the following rules as proposed: ARM 32.15.601, 32.15.602, 32.18.104, 32.18.106, 32.18.107, 32.18.108, 32.18.109, 32.18.110, 32.18.111, 32.18.201, 32.18.202, 32.18.203, 32.18.204, 32.18.205, 32.18.207 and 32.22.103.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

32.18.105 BRAND OWNERSHIP AND TRANSFER (1) through (2)(a) remain as proposed.

(b) A brand recorded in "x and y" designates tenants in common.

(c) A brand recorded in "x or y" designates joint tenancy with right of survivorship.

(3) A brand may be transferred only if the signatures of all recorded owners appear on the transfer ~~regardless if~~ whether or not "and" or "or" is between the names.



(4) In order to own a Montana brand, a corporation, LLC limited liability company, limited liability partnership, or trust, or any other business that is required to must be registered with the office of the Montana Secretary of State must be registered with the Secretary of State to own a brand in the name of the organization.

AUTH: 81-1-102, MCA  
IMP: 81-1-102, 81-3-102, 81-3-103, MCA

REASON: The additional changes were made to keep department rules in compliance with state property laws. Section (4) was amended to more clearly define requirements regarding brand applications by business entities.

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ Robert Stutz  
Robert Stutz  
Rule Reviewer

Certified to the Secretary of State February 3, 2014.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.3.138, 32.3.139, 32.3.140, )  
Deputy Veterinarians; ARM 32.3.224, )  
Domestic Bison )

TO: All Concerned Persons

1. On December 26, 2013, the Department of Livestock published MAR Notice No. 32-13-239 regarding the proposed amendment of the above-stated rules at page 2384 of the 2013 Montana Administrative Register, Issue Number 24.

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

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ Robert Stutz  
Robert Stutz  
Rule Reviewer

Certified to the Secretary of State February 3, 2014.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.108.507 pertaining to HEDIS )  
components of quality assessment )  
activities )

TO: All Concerned Persons

1. On December 12, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-660 pertaining to the proposed amendment of the above-stated rule at page 2286 of the 2013 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

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

/s/ Francis X. Clinch  
Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State February 3, 2014.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.40.830 pertaining to hospice )  
reimbursement )

TO: All Concerned Persons

1. On December 26, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-661 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2394 of the 2013 Montana Administrative Register, Issue Number 24.

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

3. No comments or testimony were received.

4. The increase in hospice rates will be retroactive to October 1, 2013. The decrease in hospice rates will be effective upon adoption of the rule. If any provider would experience a decrease in hospice rates, the decrease will not be applied retroactively. It will begin on the final adoption of this proposed rule. Therefore, there will be no retroactive negative impact to any hospice program.

/s/ Valerie A. Bashor  
Valerie A. Bashor  
Rule Reviewer

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

Certified to the Secretary of State February 3, 2014.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

- |               |   |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2013. This table includes those rules adopted during the period October 1, 2013, through December 31, 2013, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2013, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2013/2014 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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