

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-55-35 (State Compensation Insurance Fund)  
Notice of Proposed Amendment - Classifications of  
Employments. No Public Hearing Contemplated. 1944-1946

STATE AUDITOR, Title 6

6-163 (Classification Review Committee) Notice of  
Proposed Amendment - Updating References to the  
NCCI Basic Manual for New Classifications for  
Various Industries. No Public Hearing Contemplated. 1947-1953

COMMERCE, Department of, Title 8

8-94-50 Notice of Public Hearing on Proposed  
Adoption and Repeal - Administration of Grants  
Awarded by the 2005 Legislature - Treasure State  
Endowment Program (TSEP). 1954-1956

ENVIRONMENTAL QUALITY, Department of, Title 17

17-232 (Board of Environmental Review and the  
Department of Environmental Quality) (Water  
Quality) (Subdivisions) (CECRA) (Underground  
Storage Tanks) Notice of Public Hearing on  
Proposed Amendment and Adoption - Department  
Circular WQB-7 - Outstanding Resource Waters. 1957-1994

ENVIRONMENTAL QUALITY, Continued

17-233 (Board of Environmental Review) (Water Quality) Amended Notice of Public Hearing on Proposed Amendment - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ-9 (Montana Technical Standards for CAFOs). 1995-2001

17-234 (Board of Environmental Review and the Department of Environmental Quality) (Public Water and Sewage System Requirements and Subdivisions) Notice of Public Hearing on Proposed Amendment - Adoption by Reference, Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection. 2002-2015

17-235 (Board of Environmental Review) (Solid Waste) Notice of Public Hearing on Proposed Adoption - State Solid Waste Management and Resource Recovery Plan. 2016-2017

JUSTICE, Department of, Title 23

23-16-174 Notice of Public Hearing on Proposed Amendment - Effective Date for Forms Relating to Investigation of Applicants, Disclosure from Noninstitutional Lender, Dealer Licenses, and Gambling Operator Licenses. 2018-2020

LABOR AND INDUSTRY, Department of, Title 24

24-301-191 Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Building Codes. 2021-2051

RULE SECTION

COMMERCE, Department of, Title 8

NEW Submission and Review of Applications to the Treasure State Endowment Program (TSEP). 2052-2055

EDUCATION, Department of, Title 10

AMD (Superintendent of Public Instruction) Special Education. 2056-2057

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Board of Environmental Review) (Air Quality) Air Quality Permit Application, Operation and Open Burning Fees. 2058

TRANSPORTATION, Department of, Title 18

TRANS Motor Carrier Safety Assistance Program. 2059

CORRECTIONS, Department of, Title 20

Corrected Notice of Adoption - Establishment  
of a Residential Methamphetamine Treatment  
Center - Sentence Suspension. 2060

JUSTICE, Department of, Title 23

NEW Operation of the Identity Theft Passport  
Program. 2061-2062

NEW Administration of the Forensic Rape  
Examination Payment Program. 2063

LABOR AND INDUSTRY, Department of, Title 24

AMD Prevailing Wage Rates for Public Works  
Projects - Building Construction Services -  
Heavy and Highway Construction Services. 2064-2076

AMD (Board of Architects) Business Entity  
NEW Practice - Fee Abatement. 2077

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD Low Income Energy Assistance Program (LIEAP). 2078

NEW Montana Clean Indoor Air Act. 2079-2093

SECRETARY OF STATE, Title 44

AMD (Commissioner of Political Practices)  
Limitations on Receipts from Political  
Committees to Legislative Candidates. 2094

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2095-2096

How to Use ARM and MAR. 2097

Accumulative Table. 2098-2108

Boards and Councils Appointees. 2109-2116

Vacancies on Boards and Councils. 2117-2129

BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 2.55.320	)	AMENDMENT
pertaining to classifications	)	
of employments	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 9, 2005, the Montana State Fund proposes to amend ARM 2.55.320 pertaining to classifications of employments.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m., November 28, 2005, to advise us of the nature of the accommodation that you need. Please contact the Montana State Fund, attn: Nancy Butler, PO Box 4759, Helena, Montana 59604-4759; telephone (406) 444-7725; TDD (406) 444-5971; fax (406) 444-1493; e-mail nbutler@montanastatefund.com.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual issued July 1, ~~2004~~ 2005, and assign new or changed classifications as approved by the board. That section of the manual is ~~hereby~~ incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: 39-71-2315 and 39-71-2316, MCA  
IMP: 39-71-2311 and 39-71-2316, MCA

REASONABLE NECESSITY: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual that are now available up to July 1, 2005.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759,

Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address [nbutler@montanastatefund.com](mailto:nbutler@montanastatefund.com). Any comments must be received no later than November 28, 2005.

5. If persons who are directly affected by the proposed amendment wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address [nbutler@montanastatefund.com](mailto:nbutler@montanastatefund.com). A written request for hearing must be received no later than November 28, 2005.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,800 persons based on an estimated 28,000 policyholders.

7. The Montana State Fund maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana State Fund administrative rules. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, MT 59601-4759, faxed to the office at (406) 444-1493, or may be made by completing a request form at any rules hearing held by the State Fund.

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

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

/s/ Ed Henrich  
ED HENRICH  
Chairman of the Board

/s/ Dal Smilie  
DAL SMILIE, Chief Legal Counsel  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 6.6.8301, )	AMENDMENT
concerning updating references )	
to the NCCI Basic Manual for )	NO PUBLIC HEARING
new classifications for )	CONTEMPLATED
various industries )	

TO: All Concerned Persons

1. On December 22, 2005, the Montana Classification Review Committee proposes to amend ARM 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 2001 ed., and revisions to classifications that apply to various industries.

2. The Montana Classification Review Committee will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Classification Review Committee no later than 5:00 p.m., on November 28, 2005, to advise us of the nature of the accommodation needed. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; e-mail tim\_hughes@ncci.com.

3. The rule shown below was recently amended, and no changes will be made to that rule. However, there are codes referenced by this rule that are being updated.

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) and (2) remain the same.

AUTH: 33-16-1012, MCA  
IMP: 2-4-103, 33-16-1012, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to various industries. The proposed classifications changes are grouped by industry as follows:

A. Audio or Visual Recording Media Mfg  
Eliminate two cross-reference phraseologies for Code 4923

1. AUDIO OR VISUAL RECORDING MEDIA MFG
2. RECORDING TAPE OR DISK MFG

Create two new phraseologies for existing codes

1. Code 4360-DUPLICATION AND REPLICATION SERVICE OF PRERECORDED AUDIO, VIDEO OR DATA. (This just makes what was an analogy assignment before official cross-reference phraseology.)

2. Code 4431-MAGNETIC AND OPTICAL RECORDING MEDIA MFG. (This new primary phraseology more accurately reflects the evolution of this industry. Some operations that may previously have been classed to Code 4923 are reassigned to Code 4431 for a better fit of hazards and exposures.)

Update phraseology for Code 4923-PHOTOGRAPHIC SUPPLIES MFG.

B. Building Raising or Moving

Amend Code 5703 from an all-inclusive code, to one where payroll separation is allowed when verifiable payroll records are maintained for each type of construction work performed.

Eliminate UNDERPINNING BUILDINGS OR STRUCTURES & DRIVERS as cross-reference phraseology for Code 5703.

C. Confection Mfg.

Eliminate three cross-reference phraseologies for Code 2041, which are incorporated into main phraseology wording.

1. CHEWING GUM MFG
2. CHOCOLATE OR COCOA MFG
3. COCOA OR CHOCOLATE MFG

Update phraseology for Code 2041-CONFECTION MFG to CANDY, CHOCOLATE, AND CONFECTION MFG

D. Dock and Seawall

Create new cross-reference phraseology for existing Code 6003-WRECKING-MARINE

Eliminate WRECKING; BUILDING OR STRUCTURES-NOT MARINE-ALL OPERATIONS-PIERS OR WHARFS as cross-reference phraseology for Code 6003.

Eliminate three cross-reference phraseologies for Code 6005, which are incorporated into main phraseology wording.

1. BREAKWATER OR JETTY CONSTRUCTION-ALL OPERATIONS TO COMPLETION & DRIVERS
2. DIKE OR REVETMENT CONSTRUCTION & DRIVERS
3. REVETMENT OR DIKE CONSTRUCTION & DRIVERS

Update phraseologies for Code 6003-PILE DRIVING and Code 6005-JETTY OR BREAKWATER CONSTRUCTION.

E. Executive Supervisors

Revise name of Code 5606 to CONTRACTOR-PROJECT MANAGER, CONSTRUCTION EXECUTIVE, CONSTRUCTION MANAGER, OR CONSTRUCTION SUPERINTENDENT to match industry terminology. Updates Basic Manual rules to reflect this revision.

Update wording to more clearly define the criteria for assignment of Code 5606 and the conditions required to use it. Adds criteria dealing with subcontractors to point out they also need to be considered when determining whether an insured qualifies for the code.



Restrict the division of payroll for this class to allow division only with Code 8227, the contractors permanent yard code; Code 7421, the aviation code for transporting personnel in the conduct of the employer's business; or when the employee has a distinct change in duties and is assigned to another job site. This more closely reflects the national treatment, which does not allow for a division of payroll with Code 5606 and other codes.

F. Floor Coverings Installation

Create new cross-reference phraseology for existing Code 5221-STONE AND BRICK PAVER INSTALLATION-OUTSIDE

Eliminate five cross-reference phraseologies for Code 5348 and combines them into one single principle phraseology for the code.

1. MOSAIC, STONE, TERRAZZO, OR CERAMIC TILE WORK-INSIDE
2. TERRAZZO, MOSAIC, STONE, OR CERAMIC TILE WORK-INSIDE
3. TILE-CERAMIC, STONE, MOSAIC, OR TERRAZZO WORK-INSIDE
4. MARBLE OR STONE SETTING-INSIDE
5. STONE OR MARBLE SETTING-INSIDE

Eliminate the term 'inside' from the remaining phraseology for Code 5348, except for stonework. Amended phraseology is Code 5348-CERAMIC TILE, INDOOR STONE, MARBLE, OR MOSAIC WORK

Eliminate one cross-reference phraseology for Code 5437-CARPENTRY-INSTALLATION OF FINISHED WOODEN FLOORING and consolidate it into existing cross-reference phraseology for Code 5437-FLOOR INSTALLATION, SANDING OR SCRAPING-WOOD FLOORS

Eliminate two cross-reference phraseologies for Code 5478 and combines them into a single principle phraseology for the code.

1. CARPET, LINOLEUM, VINYL, ASPHALT, OR RUBBER FLOOR TILE INSTALLATION
2. LINOLEUM, CARPET, VINYL, ASPHALT, OR RUBBER FLOOR TILE INSTALLATION

Update phraseology for Code 5478, which will now be FLOOR COVERING-INSTALLATION

Move terrazzo operations from Code 5348 to Code 5221.

G. Grain Milling and Mfg

Eliminate three cross-reference phraseologies for Code 2014 and combine them into a single principle phraseology for the code.

1. FEED MFG
2. GRIST MILL
3. MILLING GRAIN

Update phraseology for Code 2014 to GRAIN OR FEED MILLING and clarify that grain storage away from plant and not directly connected by piping is separately rated to Code 8304-Grain Elevator Operation

Update Code 2016 and assign the manufacture of various types of bars such as cereal, power or energy bars, to Code 2016-CEREAL OR BAR MFG from Food Sundries, Code 6504 where we think they were assigned by default.

H. Home Healthcare

Eliminate one cross-reference phraseology for Code 8835-BABY-SITTING SERVICE

Modernize and clarify the two remaining phraseologies for Code 8835. The principal phraseology will be HOME, PUBLIC, AND TRAVELING HEALTHCARE-ALL EMPLOYEES. Cross-reference phraseology HOMEMAKER SERVICE-PHYSICAL ASSISTANCE now provides more delineation as far as who is assigned to Code 8835 versus one of the Domestic codes. Employees who provide physical assistance in the activities of daily living should be classified to Code 8835.

Amend Rule 3-C-1 in NCCI's Basic Manual on Domestic to remove the term 'nurse' so this type of exposure is instead assigned to Code 8835.

I. Juice Mfg

Amend the two phraseologies for Code 2143 (Fruit Juice Mfg & Wineries) to include drivers.

J. Messenger/Courier Service

Eliminate three cross-reference phraseologies and consolidate them into other phraseology.

1. CHAUFFEURS, DRIVERS & THEIR HELPERS NON-COMMERCIAL
2. COLLECTORS, MESSENGERS, OR SALESPERSONS-OUTSIDE
3. MESSENGERS, COLLECTORS, OR OUTSIDE-OUTSIDE

Amend three phraseologies for Codes 7380 and 8742 to modernize and move the term 'messenger' out of Code 8742 and into Code 7380. A messenger is generally classified to Code 7380 now. This is not a change in classification treatment, but rather an update of the wording to reflect the correct usage.

Update Code 7231 by removing the term 'Trucking' from the phraseology so it will now be MAIL, PARCEL, OR PACKAGE DELIVERY AND COURIER OR MESSENGER SERVICE COMPANIES-ALL EMPLOYEES & DRIVERS.

Remove the 100 pound weight limitation in Code 7231.

Update Basic Manual rules to reflect these classification wording changes to Standard Exception codes.

K. Newsprint Mills

Make a very slight change to wording in note of Code 4239-PAPER MFG

L. Parking Lots

Eliminate AUTOMOBILE PARKING LOT & DRIVERS as cross-reference phraseology for Code 8392. This wording is incorporated into the primary phraseology, which will be AUTOMOBILE STORAGE GARAGE, PARKING LOT OR PARKING STATION, VALET SERVICE, CASHIERS OR COUNTER PERSONNEL & DRIVERS

Clarify the classification treatment of valet service, cashiers and counter employees by putting them in the filed phraseology.

M. Pet and Pet Supply Stores

Create a new phraseology for existing Code 8018-STORE-PET AND PET SUPPLY-WHOLESALE

Update the phraseology of Code 8017-STORE-PET AND PET SUPPLY-RETAIL to include the term 'and pet supply'

Add the term 'training' to Code 8831-PET GROOMING OR TRAINING & DRIVERS and clarify Code 8831 should apply to groomers or trainers when a veterinary office employs them or they operate their own business. Pet or pet supply store employees who groom or train are included in the applicable store code.

N. Tanning & Fur Mfg.

Eliminate three cross-reference phraseologies for Code 2623 and combine them into one single principle phraseology of LEATHER MFG.-INCLUDING TANNING, LEATHER EMBOSSING, AND WOOL PULLING

1. LEATHER EMBOSSING
2. TANNING
3. WOOL PULLING

Eliminate HATTERS' FUR MFG cross-reference phraseology from Code 2326. This type exposure is reassigned to Code 2600 where it is a better fit based on the process and exposures.

Update Code 2600 from FUR MFG.-PREPARING SKINS to FUR PROCESSING-PREPARING SKINS

O. Tree Pruning, Spraying, and Repairing

Transfer cross-reference phraseology of STUMP REMOVAL OPERATIONS-BY SPECIALIST CONTRACTOR & DRIVERS from Code 5507 to Code 0106.

Create new phraseology for existing Code 0106-TREE PRUNING AND REMOVAL-ALL OPERATIONS & DRIVERS-NATURAL CATASTROPHE

Update phraseology for Code 0106 to include 'all operations' and expand on when the code applies.

Amend wording for Code 9102-LAWN MAINTENANCE to expand on when code applies. Specifies that above ground level tree pruning work is assigned to Code 0106.

P. Addendum to Prior Class Filing B-1387

Make some minor wording changes that were inadvertently overlooked in Item Filing B-1387.

Q. Addendum to Prior Class Filing B-1391

Make some minor wording changes that were inadvertently overlooked in Item Filing B-1391.

5. This amendment is intended to be effective March 1, 2006.

6. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail

to [tim\\_hughes@ncci.com](mailto:tim_hughes@ncci.com) and must be received no later than 5:00 p.m., November 28, 2005.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to [tim\\_hughes@ncci.com](mailto:tim_hughes@ncci.com) no later than November 28, 2005.

8. If the committee receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 150 persons based on the 15 businesses who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to [tim\\_hughes@ncci.com](mailto:tim_hughes@ncci.com), or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

CLASSIFICATION  
REVIEW COMMITTEE

By: /s/ Dave Wilson  
Dave Wilson  
Review Committee Chairperson

By: /s/ Alicia Pichette  
Alicia Pichette  
Rule Reviewer

Certified to the Secretary of State on October 17, 2005.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of a new rule for the ) PROPOSED ADOPTION AND  
administration of grants ) REPEAL  
awarded by the 2005 )  
Legislature and the repeal of )  
8.94.3801 and 8.94.3803 )  
pertaining to the Treasure )  
State Endowment Program (TSEP) )

TO: All Concerned Persons

1. On November 17, 2005, at 1:30 p.m., a public hearing will be held in Room 202, 301 South Park Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the Treasure State Endowment Program (TSEP) grants awarded by the 2005 Legislature and the repeal of the above-stated rules.

2. The Department of Commerce 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 Community Development Division no later than 5:00 p.m., on November 10, 2005, to advise us of the nature of the accommodation that you need. Please contact Jim Edgcomb, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620; telephone (406) 841-2785; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to jedgcomb@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS AWARDED BY THE 2005 LEGISLATURE (1) The department of commerce adopts and incorporates by reference the Montana Treasure State Endowment Program 2005 Project Administration Manual published by it as rules for the administration of grants awarded by the 2005 legislature to fund TSEP projects.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) project start up;
- (b) environmental requirements;
- (c) procurement requirements;
- (d) financial management;
- (e) civil rights;
- (f) labor requirements;
- (g) property acquisition;
- (h) public facilities construction management;
- (i) involving the public;

- (j) project monitoring;
- (k) project closeout;
- (l) preliminary engineering grants; and
- (m) emergency grants.

(3) Copies of the manual adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must be made aware of the department's requirements for obtaining the funds that have been awarded by the 2005 Legislature, administering the TSEP funds during the construction of their projects, and managing their construction projects in general. The rule is also reasonably necessary to set out the requirements for administering preliminary engineering and emergency grant funds appropriated to the department.

4. The department proposes to repeal the following rules:

8.94.3801 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE TREASURE STATE ENDOWMENT PROGRAM (TSEP) found on page 8-3429 of the Administrative Rules of Montana.

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

8.94.3803 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1996 TREASURE STATE ENDOWMENT PROGRAM found on page 8-3430 of the Administrative Rules of Montana.

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

REASON: Both rules were applicable to projects that were funded by the 1993 and 1997 Legislatures that have now been completed. The requirements related to applying to the program and administering the awarded grants for those projects are no longer required.

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 Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620; by facsimile to (406) 841-2771; or by e-mail to jedgcomb@mt.gov to be received no later than 5:00 p.m., November 28, 2005.

6. An electronic copy of this Notice of Proposed Adoption and Repeal is available through the department's site on the World Wide Web at <http://commerce.mt.gov>. The Department strives to make the electronic copy of this Notice

of Proposed Adoption and Repeal 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. Jim Edgcomb has been designated to preside over and conduct this hearing.

8. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list may make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rules relating to the Treasure State Endowment Program. This request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, Helena, Montana 59620, transmitted by facsimile to (406) 841-2771, or made by completing a request form at any rules hearing held by the Division.

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

COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE  
ANTHONY J. PREITE, DIRECTOR  
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State October 17, 2005



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

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.30.502, 17.30.516, )	PROPOSED AMENDMENT AND
17.30.602, 17.30.607, )	ADOPTION
17.30.608, 17.30.610, )	
17.30.615, 17.30.619 through )	(WATER QUALITY)
17.30.629, 17.30.635, )	(SUBDIVISIONS)
17.30.641, 17.30.645, )	(CECRA)
17.30.650 through 17.30.658, )	(UNDERGROUND STORAGE TANKS)
17.30.702, 17.30.705, )	
17.30.706, 17.30.708, )	
17.30.715, 17.30.716, )	
17.30.1001, 17.30.1006, )	
17.30.1007, 17.36.331, )	
17.36.335, 17.36.336, )	
17.36.345, 17.55.102, )	
17.55.111, 17.56.507, )	
pertaining to Department )	
Circular WQB-7 and the )	
adoption of new rules I and II )	
pertaining to outstanding )	
resource waters )	

TO: All Concerned Persons

1. On November 29, 2005, at 10:30 a.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 and adoption 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 the Board no later than 5:00 p.m., November 21, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

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

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

(1) "Acute toxicity" means a condition in which ambient water concentrations exceed the applicable acute aquatic life standards given in department Circular ~~WQB~~ DEQ-7.

(2) "Chronic toxicity" means a condition in which ambient

water concentrations exceed the applicable chronic aquatic life standards given in department Circular ~~WQB~~ DEQ-7.

(3) and (4) remain the same.

(5) "Human health standard" means the parameters listed as human health standards in department Circular ~~WQB~~ DEQ-7.

(6) and (7) remain the same.

(8) "Narrative standards" means those parameters listed as narrative standards in department Circular ~~WQB~~ DEQ-7.

(9) "Numeric acute standards" means the parameters listed as acute aquatic life standards in department Circular ~~WQB~~ DEQ-7.

(10) "Numeric chronic standards" means the parameters listed as chronic aquatic life standards in department Circular ~~WQB~~ DEQ-7.

(11) through (13) remain the same.

(14) The board ~~hereby~~ adopts and incorporates by reference department Circular ~~WQB~~ DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~January 2004~~ February 2006 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Circular ~~WQB~~ DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing revisions to Montana's water quality rules in response to the requirements of 75-5-301(3), MCA, which requires the review and, whenever appropriate, the revision of rules relating to water quality at intervals not to exceed three years. Most of the revisions proposed by the Board fall into one of the following categories: (1) revisions to certain numeric water quality criteria and required reporting values in Circular ~~WQB~~-7 (renamed Circular DEQ-7 in this rulemaking); (2) corrections of the longitude and latitude of certain stream classifications; (3) revisions to Montana's surface water quality standards for fecal coliform; (4) corrections and revisions to the mixing zone rules and nondegradation rules in ARM Title 17, chapter 30, subchapters 5 and 7; and (5) adoption of new rules pertaining to outstanding resource waters (ORWs).

In this rulemaking, the Department is proposing to amend its subdivision rules, rules implementing the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), and underground storage tank rules in order to incorporate the Board's revisions to DEQ-7. The Department's CECRA program is also proposing to adopt Department Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems. These amendments are necessary to ensure that the Department's programs for the regulation of remediation sites, underground storage tanks, and subdivisions will use the most current Circulars adopted by the Board on these subjects.

The proposed amendments to ARM 17.30.502 adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized below. Copies of DEQ-7 may be obtained by contacting Chris Levine, Water Quality Planning Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 444-0371; or at <http://www.deq.mt.gov/wqinfo/Standards/Index.asp>.

#### Circular DEQ-7

1. The Board is proposing to change the title of Circular WQB-7 to "Circular DEQ-7". The change will make the title consistent with other Department circulars. In addition, the Board is generally revising the introduction and footnotes in DEQ-7 to eliminate repetitive information and to present the information in a more structured order. There are no substantive changes in these revisions.

2. The Board is proposing to revise 73 water quality standards in DEQ-7 to reflect changes to the human health-based criteria published by the U.S. Environmental Protection Agency (EPA) under section 304(a) of the federal Clean Water Act (CWA). Specifically, in 2002, EPA published a list of nationally recommended water quality criteria (NRWQC) for human health that were revised using a new freshwater fish consumption rate of 17.5 grams/day. In 2003, EPA recalculated 15 of the NRWQC by applying a relative source contribution factor obtained from primary drinking standards developed by EPA under the Safe Drinking Water Act or new cancer potency information. See 68 Fed. Reg. 75507-75515 (2003). EPA's revised NRWQC, published under section 304(a) of the CWA, are to be used by states for purposes of developing and revising state water quality standards. In order to be consistent with and not less stringent than EPA's recommended criteria, states may either adopt water quality standards based on the revised NRWQC or adopt standards using state-specific fish consumption rates and state-sponsored research. Since the Board and Department do not have the resources to conduct a statewide fish-consumption survey or to conduct the research necessary to develop human health standards, it is necessary to revise the 73 water quality standards in DEQ-7 using EPA's updated NRWQC.

3. The Board is proposing to revise the ground water human health standard for six parameters in DEQ-7 that are known as Polycyclic Aromatic Hydrocarbons (PAH). These revisions are necessary to reflect current EPA guidance, "Provisional Guidance for Quantitative Risk Assessment of Polycyclic Aromatic Hydrocarbons" (EPA/600/R-93/089). The proposed revisions are based upon applying the relative potency factors listed in Table 8 of the EPA guidance for the following parameters: Benz[a]anthracene; Benzo[b]fluoranthene; Benzo[k]fluoranthene; Chrysene; Dibenz[a,h]anthracene; and Indeno[1,2,3-cd]pyrene. At this time, EPA has not published individual health advisory criteria for the six PAH parameters listed above; however, the Board is proposing these changes to be consistent with current

EPA guidance. The use of the relative potency factors is explained in Footnote No. 30 of DEQ-7.

4. The Board is proposing to revise the state's human health standard for arsenic in response to the statutory requirements of 75-5-301(2)(b)(i), MCA. According to that provision, the Board is directed to adopt a human health standard for arsenic based upon the more restrictive of: (1) a value based upon a lifetime cancer risk level of one to one thousand [ $1 \times 10^{-3}$ ]; or (2) the maximum contaminant level (MCL) published by EPA in 40 CFR, part 141.

Currently, the state's arsenic standard for surface and ground water is based upon a cancer risk level of one to one thousand [ $1 \times 10^{-3}$ ]. Using the risk-based formula, the Board adopted standards for arsenic at 18 ug/L for surface water and 20 mg/L for ground water. At the time the risk-based standards were adopted, EPA's promulgated MCL for arsenic was 50 ug/L. The Board is proposing to change the arsenic standard for both surface and ground water to reflect EPA's revised MCL for arsenic of 10 ug/L. Since EPA's revised MCL will take effect on January 23, 2006, the Board is proposing that Montana's revised arsenic standard of 10 ug/L become effective on that same date. Footnote 29 in DEQ-7 contains the revised standard and its effective date.

5. The Board is proposing to change the manner in which certain aquatic life standards are listed in DEQ-7. Currently, some standards are displayed at a hardness value of 50 mg/L while others are displayed using a hardness value of 100 mg/L. The Board is proposing to list all aquatic life standards that are affected by hardness at a value of 25 mg/L. This change is necessary for consistency so that all parameters in DEQ-7 are displayed at the same hardness value. The actual method of using coefficients and calculating site-specific standards based on hardness is not being changed.

6. The Board is proposing to update the required reporting value (RRV) for several parameters in DEQ-7 to reflect current analytical methodologies. In some cases, data submitted using the existing RRV fails to disclose whether or not the water quality standards are being met since the RRV is greater than the standard. The updates are necessary to ensure that data received by the Department for permit compliance, ambient water quality monitoring, and restoration activities are reported at a level that will disclose whether or not water quality standards are being achieved. In addition, the Board is proposing to revise the definition of RRV in the nondegradation rule (ARM 17.30.702) to make it consistent with the definition in DEQ-7.

7. The Board is proposing to update the method for expressing dioxin and congeners as an equivalent concentration of 2,3,7,8 TCDD to the EPA preferred method commonly referred to as the World Health Organization (WHO) TEF method (van den Berg, M: Bosveld, ATC: et al. (1998)), Toxicity equivalency factors (TEFs) for PCBs, PCDDs, PCDFs for humans and wildlife. (Environ. Health Perspect. 106(12): 775-792). These changes are necessary to be consistent with current EPA guidance. The Board is also proposing a revision to Footnote No. 10 of DEQ-7 that would

allow the use of specific low detection limit analysis methods and RRVs on a case-by-case basis with prior Department approval. This revision is necessary to allow the Department to designate the best analytical method and corresponding reporting level for dioxin and congeners for purposes of determining compliance with the dioxin standard.

8. The Board is proposing to revise certain ground water standards for carcinogens to be consistent with current EPA maximum contaminant levels (MCLs), drinking water health advisories (HA), and the NRWQC. Under 75-5-301(2)(b)(i), MCA, human health standards for carcinogens (except arsenic) must be based upon the more restrictive of: (1) a value based upon a lifetime cancer risk level of one to one hundred thousand [ $1 \times 10^{-5}$ ]; or (2) the MCLs published in 40 CFR Part 141. For ground water, the risk-based levels in the drinking water health advisories were used or, if not available, the NRWQC. In cases where EPA has not published criteria, a risk-based value was calculated using information from EPA's integrated risk information system (IRIS). These revisions are necessary to ensure that the state's ground water standards for carcinogens are the more restrictive of EPA's current risk-based criteria or the MCL, as required by the statute cited above.

17.30.516 STANDARD MIXING ZONES FOR SURFACE WATER (1) through (3)(d) remain the same.

(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 10 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 low flow. The recommended calculation to be used to determine the one-half mixing width distance for a bank discharge is described below.

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

(i) through (6) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing to amend ARM 17.30.516 in order to correct the formula used to calculate the size of a mixing zone. The amendment is necessary so that the formula in the rule is consistent with EPA's current guidance.

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) remains the same.

(2) "Bioconcentrating parameters" means the parameters listed in department Circular ~~WQB~~ DEQ-7 which have a bioconcentration factor greater than 300.

(3) "Carcinogenic parameters" means the parameters

categorized as carcinogens in department Circular ~~WQB~~ DEQ-7.

(4) through (13) remain the same.

(14) "Harmful parameters" means parameters listed as harmful in department Circular ~~WQB~~ DEQ-7.

(15) through (20) remain the same.

(21) "Outstanding resource water" or "ORW" has the meaning set out in 75-5-103, MCA.

(21) through (35) remain the same, but are renumbered (22) through (36).

~~(36)~~ (37) "Toxic parameters" means those parameters listed as toxins in department Circular ~~WQB~~ DEQ-7.

(37) through (39) remain the same, but are renumbered (38) through (40).

~~(40)~~ (41) "~~WQB~~ 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, nutrient, radioactive and harmful parameters.

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

IMP: 75-5-301, MCA

REASON: The Board is proposing to add a definition of "outstanding resource water" (ORW) to subchapter 6 in order to implement New Rules I and II, which will clarify how the ORW designation affects water quality classifications and standards. See Reason for New Rules I and II, below. The proposed amendments to ARM 17.30.602 also adopt the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.607 WATER-USE CLASSIFICATIONS--CLARK FORK COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES

(1) The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(a) Clark Fork River drainage except waters listed in (1)(a)(i) through (xv) ~~below~~. . . . . B-1

(i) Warm Springs drainage to ~~Myers~~ Myers Meyer's Dam near Anaconda . . . . . A-1

(ii) Hearst Lake drainage to the Lower Hearst Inlet (approximately at latitude ~~46.1541~~ 46.1013, longitude ~~-113.0384~~ 113.0665) and Fifer Gulch drainage to the Anaconda city limits. (Anaconda municipal water supply) . . . . . A-Closed

(iii) Silver Bow Creek (mainstem) from the confluence of Blacktail ~~Deer~~ Creek to Warm Springs Creek. . . . . I  
(The concentrator tailings pond and Silver Bow Creek drainage from this pond downstream to Blacktail ~~Deer~~ Creek and the tailings ponds at Warm Springs have no classification.)

(iv) Yankee Doodle Creek drainage to and including ~~the North Butte water supply~~ Moulton reservoir (approximately at latitude ~~46.0905~~ 46.0901, longitude ~~-113.0384~~ 112.5092) . . . . .  
. . . . . A-Closed

(v) through (xv) remain the same.

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

REASON: Based upon the Department's detailed review of the stream classifications in ARM Title 17, chapter 30, subchapter 6, the Board is proposing amendments to those rules for purposes of correcting place names and the longitude and latitude of some of the stream classifications. The proposed amendments do not result in any substantive changes to the existing rules.

17.30.608 WATER-USE CLASSIFICATIONS--FLATHEAD RIVER DRAINAGE (1) The water-use classifications adopted for the Flathead River are as follows:

- (a) Flathead River drainage above Flathead Lake except waters listed in (1)(a)(i) through (viii) ~~below~~ . . . B-1
  - (i) through (iv) remain the same.
- (v) Haskill Creek drainage to the Whitefish water supply intake (approximately at latitude ~~84.437~~ 48.4584, longitude ~~-114.328~~ 114.3054) . . . . . A-1
  - (vi) through (c)(viii) remain the same.

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

REASON: See Reason for amendments to ARM 17.30.607, above.

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) The water-use classifications adopted for the Missouri River are as follows:

- (a) Missouri River drainage to and including the Sun River drainage except tributaries listed in (1)(a)(i) through (xiii) ~~below~~ . . . . . B-1
  - (i) East Gallatin River (mainstem) from Montana Highway No. ~~293~~ 411 (Spring Hill Road, approximately at latitude 45.7256, longitude -111.0666) crossing ~~about one half mile north of Bozeman~~ to Dry Creek about 5 ~~five~~ miles east of Manhattan. . . . . B-2
    - (ii) through (c)(iv) remain the same.
  - (d) Marias River drainage except the tributaries and segments listed in (1)(d)(i) through (vi) ~~below~~ . . . . . B-2
    - (i) Cutbank Creek drainage except waters listed in (1)(d)(i)(A) and (B) ~~below~~ . . . . . B-1
      - (A) remains the same.
      - (B) Cutbank Creek (mainstem) from Old Maids ~~Miller~~ Coulee near Cut Bank to ~~Birch~~ Two Medicine Creek . . . . . B-2
        - (ii) through (iv) remain the same.
      - (v) Marias River mainstem from Tiber Dam to the county road crossing in section ~~17~~ 11, T29N, R5E . . . . . B-1
        - (vi) through (g) remain the same.
      - (h) Milk River drainage from the International Boundary to the Missouri River except the tributaries

listed in (1)(h)(i) through (iv) ~~below~~ . . . . . B-3  
(i) Sage Creek drainage to the section line  
between sections 1 and 12 T36N R5W R5E. . . . . B-1  
(ii) through (i)(iv) remain the same.

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

REASON: See Reason for amendments to ARM 17.30.607, above.

17.30.615 WATER-USE CLASSIFICATIONS AND DESCRIPTIONS -  
CONSTRUCTED DITCHES, SEASONAL AND SEMI-PERMANENT LAKES AND  
EPHEMERAL STREAMS (1) through (1)(h) remain the same.

~~(2) This rule does not classify any specific water body.~~  
Prior to reclassifying a specific water body classified in ARM  
17.30.607 through 17.30.614 under one of the water-use  
classifications identified in (1)(a) through (h) and before the  
U.S. environmental protection agency's approval of the water  
body's revised classification, a use attainability analysis must  
be conducted in accordance with 40 CFR 131.10(g), (h) and (j).

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

REASON: The first sentence of (2) is proposed to be  
deleted because it is unnecessary. It is clear from the rest of  
the rule that reclassification of a water body requires separate  
action of the Board.

17.30.619 INCORPORATIONS BY REFERENCE (1) The board  
~~hereby~~ 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 ~~WQB~~ DEQ-7, entitled "Montana  
Numeric Water Quality Standards" (~~January 2004~~ February 2006  
edition), which establishes water quality standards for toxic,  
carcinogenic, bioconcentrating, nutrient, radioactive and  
harmful parameters;

(b) through (e) remain the same.

(f) 40 CFR 136 (~~July 1, 2000~~ July 1, 2004), which  
establishes guidelines and procedures for the analysis of  
pollutants; and

(g) and (2) remain the same.

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

REASON: The proposed amendments to ARM 17.30.619 adopt the  
revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to  
the Circular, and the reasons for them, are summarized in the  
Reason for ARM 17.30.502, above. The proposed updated reference  
to 40 CFR Part 136 will incorporate EPA approved methods for  
measuring E-coli bacteria. This update is necessary to  
implement the proposed changes in the surface water standards to



substitute E-coli for fecal coliform. See Reason for ARM 17.30.620, below.

17.30.620 SPECIFIC SURFACE WATER QUALITY STANDARDS--GENERAL (1) remains the same.

(2) Standards for ~~organisms of the coliform group~~ Escherichia coli bacteria are based on a minimum of five samples obtained during separate 24-hour periods during any consecutive 30-day period analyzed by the most probable number or equivalent membrane filter methods.

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

REASON: The Board is proposing to change the human health standard for bacteria, which has been adopted for the various stream classifications in Title 17, chapter 30, subchapter 6, and for ground water in DEQ-7. The Board is proposing to change the standard from fecal coliform (or coliform group) to Escherichia coli (E-coli) in response to current EPA recommendations. EPA is recommending that states adopt human health standards for bacteria expressed in terms of E-coli or an equivalent indicator, because E-coli is considered a better indicator of potential adverse health effects than fecal coliform. The change is necessary in order to be consistent with EPA's current guidance.

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

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

(a) The geometric mean number of ~~organisms in the coliform group must~~ Escherichia coli bacteria may not exceed 50 32 colony forming units per 100 milliliters.

(b) through (i) remain the same.

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

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

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) The geometric mean number of ~~organisms in the coliform group must~~ Escherichia coli bacteria may not exceed 50 32 colony forming units per 100 milliliters if resulting from domestic sewage.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular ~~WQB~~ DEQ-7.

(c) through (f) remain the same.

(g) True color must not be increased more than two color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters ~~which would remain in the water after conventional water treatment~~ may not exceed the applicable standards set forth in department Circular ~~WQB~~ DEQ-7.

(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 department Circular ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in ~~the Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA,~~ the criteria ~~so developed~~ 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 ~~WQB~~ DEQ-7.

(k) remains the same.

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

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above. The proposed amendments also adopt the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The proposed deletion of the reference to treatment in (3)(h) is necessary to clarify that the standards in DEQ-7 apply to ambient water quality. Finally, the amendments reference Montana statute, rather than EPA guidance, as the basis for developing site-specific criteria. This change is necessary to reflect the current legal basis for site-specific criteria.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters.~~ The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:

(i) from April 1 through October 31, the geometric mean

number of E-coli may not exceed 126 colony forming units per 100 milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the ~~levels~~ applicable standards given in department Circular ~~WQB DEQ-7~~.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic radioactive, nutrient or harmful parameters ~~which would remain in the water after conventional water treatment~~ may not exceed the applicable standards set forth in department Circular ~~WQB DEQ-7~~.

(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 ~~WQB DEQ-7~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in the ~~Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994,~~ and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA, the criteria ~~so developed~~ 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 ~~WQB DEQ-7~~.

(k) remains the same.

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

IMP: 75-5-301, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters.~~ The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:

(i) from April 1 through October 31, the geometric mean

number of E-coli may not exceed 126 colony forming units per 100 milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular ~~WQB~~ DEQ-7.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters ~~which would remain in the water after conventional water treatment~~ may not exceed the applicable standards set forth in department Circular ~~WQB~~ DEQ-7.

(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 ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in the ~~Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a,~~ and ~~provided that other routes of exposure to toxic parameters by aquatic life are addressed~~ 75-5-310, MCA, the criteria ~~so developed~~ 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 ~~WQB~~ DEQ-7.

(k) remains the same.

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

REASON: See Reason for amendments to ARM 17.30.622, above.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters.~~ The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:

(i) from April 1 through October 31, the geometric mean number of E-coli may not exceed 126 colony forming units per 100

milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters ~~which would remain in the water after conventional water treatment~~ may not exceed the applicable standards set forth in department Circular ~~WQB~~ DEQ-7.

(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 ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in ~~the Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994,~~ and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA, the criteria ~~so developed~~ shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(k) remains the same.

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

IMP: 75-5-301, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters.~~ The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:

(i) from April 1 through October 31, the geometric mean number of E-coli may not exceed 126 colony forming units per 100

milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular ~~WQB~~ DEQ-7.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters may not exceed ~~levels which render the waters harmful, detrimental or injurious to public health. Concentrations of toxic parameters also may not exceed~~ the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(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 ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in ~~the Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA,~~ the criteria ~~so developed~~ 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 ~~WQB~~ DEQ-7.

(k) remains the same.

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

IMP: 75-5-301, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters.~~ The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:

(i) from April 1 through October 31, the geometric mean

number of E-coli may not exceed 126 colony forming units per 100 milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular ~~WQB~~ DEQ-7. These levels apply to all waters in the state classified C-2 except for Ashley Creek below the bridge crossing on airport road where the dissolved oxygen concentrations may not be reduced below 5 mg/l from October 1 through June 1, nor below 3 mg/l from June 2 through September 30.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters may not exceed ~~levels which render the waters harmful, detrimental or injurious to public health. Concentrations of toxic parameters also may not exceed~~ the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(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 ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in ~~the Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA,~~ the criteria ~~so developed~~ 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 ~~WQB~~ DEQ-7.

(k) remains the same.

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

IMP: 75-5-301, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

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) ~~During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per~~

~~100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The water quality standard for Escherichia coli bacteria (E-coli) varies according to season as follows:~~

~~(i) from April 1 through October 31, the geometric mean number of E-coli may not exceed 126 colony forming units per 100 milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and~~

~~(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.~~

~~(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular ~~WQB~~ DEQ-7.~~

~~(c) through (i) remain the same.~~

~~(j) Beneficial uses are considered supported when the concentrations of toxic, carcinogenic, or harmful parameters in these waters do not exceed the applicable standards specified in department Circular ~~WQB~~ DEQ-7 when stream flows equal or exceed the flows specified in ARM 17.30.635(4) or, alternatively, for aquatic life when site-specific criteria are developed adopted using the procedures given in the Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA. The limits ~~so developed~~ 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 ~~WQB~~ 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 ~~WQB~~ DEQ-7, 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, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

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) During periods when the daily maximum water temperature is greater than 60°F, the geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10% of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The water quality standard for Escherichia coli bacteria (E-coli) varies according to season, as follows:~~



(i) from April 1 through October 31, the geometric mean number of E-coli may not exceed 126 colony forming units per 100 milliliters and 10% of the total samples may not exceed 252 colony forming units per 100 milliliters during any 30-day period; and

(ii) from November 1 through March 31, the geometric mean number of E-coli may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(c) through (f) remain the same.

(g) True color must not be increased more than five color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters ~~which would remain in the water after conventional water treatment~~ may not exceed the applicable standards set forth in department Circular ~~WQB~~ DEQ-7.

(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 ~~WQB~~ DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are ~~developed~~ adopted using the procedures given in the ~~Water Quality Standards Handbook, Second Edition, EPA 823 B 94 005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed 75-5-310, MCA,~~ the criteria ~~so developed~~ shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards specified in department Circular ~~WQB~~ DEQ-7.

(k) remains the same.

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

IMP: 75-5-301, MCA

REASON: See Reason for amendments to ARM 17.30.622, above.

17.30.635 GENERAL TREATMENT STANDARDS (1) The degree of waste treatment required to restore and maintain the quality of surface waters shall be based on the surface water quality standards and the following:

(a) through (e) remain the same.

~~(f) during periods when the maximum daily water temperature is less than 60°F, the instream fecal coliform concentrations shall be limited by the department only when necessary to protect human health.~~

(2) through (5) remain the same.

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

REASON: The Board is proposing to change the standard from fecal coliform (or coliform group) to Escherichia coli (E-coli) in response to current EPA recommendations. See Reason for amendments to ARM 17.30.620, above. The proposed change includes standards based on calendar dates rather than water temperature. The proposed deletion of the temperature parameter is necessary to be consistent with the current EPA standards.

17.30.641 SAMPLING METHODS (1) Water quality monitoring, including methods of sample collection, preservation and analysis used to determine compliance with the standards must be in accordance with 40 CFR Part 136 (~~July 2000~~ July 1, 2004) or other methods allowed by the department.

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

REASON: The proposed updated reference to 40 CFR Part 136 will incorporate EPA approved methods for measuring E-coli bacteria. This update is necessary to implement the proposed changes in the surface water standards to substitute E-coli for fecal coliform.

17.30.645 RADIOLOGICAL CRITERIA (1) No person may cause radioactive materials in surface waters to exceed the standards specified in department Circular ~~WQB~~ DEQ-7.

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

REASON: The proposed amendments adopt the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.650 D-1 CLASSIFICATION STANDARDS FOR CONSTRUCTED DITCHES, SEASONAL AND SEMI PERMANENT LAKES AND EPHEMERAL STREAMS

- (1) remains the same.
- (2) No person may violate the following specific water quality standards for waters classified D-1:
  - (a) remains the same.
  - (b) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.
- (3) remains the same.

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

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

17.30.651 D-2 CLASSIFICATION STANDARDS (1) remains the same.

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

(a) the aquatic life standards for priority pollutants listed in ~~WQB DEQ-7~~;

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in ~~WQB DEQ-7~~, unless those standards are modified or removed based upon a use attainability analysis developed for a specific water body;

(c) remains the same.

~~(d) when the daily maximum water temperature is greater than 60°F, no permitted discharge may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

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

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

17.30.652 E-1 CLASSIFICATION STANDARDS (1) remains the same.

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

(a) remains the same.

~~(b) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(3) remains the same.

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

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

17.30.653 E-2 CLASSIFICATION STANDARDS (1) remains the same.

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

(a) the aquatic life standards for priority pollutants listed in ~~WQB~~ DEQ-7;

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in ~~WQB~~ DEQ-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific water body;

(c) remains the same.

~~(d) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above. The proposed amendments also adopt the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.654 E-3 CLASSIFICATION STANDARDS (1) remains the same.

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

~~(a) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period;

(b) and (3) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

17.30.655 E-4 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified E-4:

(a) the acute and chronic aquatic life standards in WQB DEQ-7 apply;

(b) remains the same.

(c) ~~when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above. The proposed amendments also adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.656 E-5 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified E-5:

(a) remains the same.

(b) ~~when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml, and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

(3) remains the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

17.30.657 F-1 CLASSIFICATION STANDARDS (1) remains the same.

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

(a) the aquatic life standards for priority pollutants listed in ~~WQB~~ DEQ-7;

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in ~~WQB~~ DEQ-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific water body;

(c) remains the same.

~~(d) when the daily maximum water temperature is greater than 60°F no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% of the samples during any 30 day period may not exceed 2,000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above. The proposed amendments also adopt the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.658 G-1 CLASSIFICATION STANDARDS (1) Waters classified G-1 are to be maintained suitable for watering wildlife and livestock, aquatic life not including fish, secondary contact recreation, and marginally suitable for irrigation after treatment or with mitigation measures. No person may violate the following specific water quality standards for waters classified G-1:

~~(a) when the daily maximum water temperature is greater than 60°F the geometric mean number of organisms of the fecal coliform group may not exceed 1000 per 100 ml and no more than 10% of the samples during any 30 day period may exceed 2000 fecal coliforms per 100 ml~~ the geometric mean number of Escherichia coli bacteria may not exceed 630 colony forming units per 100 milliliters and 10% of the samples may not exceed 1,260 colony forming units per 100 milliliters during any 30-day period;

(b) remains the same.

(c) the surface and ground water standards listed in ~~WQB~~ DEQ-7 do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The proposed amendments substitute E-coli for fecal coliform. See Reason for amendments to ARM 17.30.620, above.

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 "degradation", "existing uses", "high quality waters", "mixing zone" and "parameter."):

(1) "Bioconcentrating parameters" means the parameters listed in department Circular ~~WQB~~ DEQ-7 which have a bioconcentration factor greater than 300.

(2) "Carcinogenic parameters" means the parameters listed as carcinogens in department Circular ~~WQB~~ DEQ-7.

(3) through (5) remain the same.

(6) "Harmful parameters" means the parameters listed as harmful in department Circular ~~WQB~~ DEQ-7.

(7) remains the same.

(8) "High quality waters" is defined in 75-5-103~~(9)~~(10), MCA, and does not include ~~e~~Class I surface waters (ARM 17.30.628) or Class III or ~~e~~Class IV ground waters (ARM ~~17.30.1002(d)~~ 17.30.1006(3) through (4)).

(9) through (17) remain the same.

(18) "New or increased source" means an activity resulting in a change of existing water quality occurring on or after April 29, 1993. The term does not include the following:

(a) through (c) remain the same.

(d) activities or categories of activities causing nonsignificant changes in existing water quality pursuant to ARM 17.30.670, 17.30.715, 17.30.716, or 75-5-301(5)(c), MCA.

(19) remains the same.

(20) "Outstanding resource waters" or "ORW" ~~means all state waters that are located in national parks, national wilderness or primitive areas. ORW also means state waters that have been identified as possessing outstanding ecological, or domestic water supply significance and subsequently have been classified as an ORW by the board.~~ has the meaning set out in 75-5-103, MCA.

(21) remains the same.

(22) "Reporting values" (RRV) ~~means the values listed as reporting values in department Circular WQB 7, and are the detection levels that must be achieved in reporting ambient monitoring results to the department unless otherwise specified in a permit, approval or authorization issued by the department~~ 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 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 Circular DEQ-7.

(23) remains the same.

(24) "Toxic parameters" means the parameters listed as ~~toxins~~ toxic in department Circular ~~WQB~~ DEQ-7.

(25) "Trigger values" means the values listed as trigger values in department Circular ~~WQB~~ DEQ-7 for parameters categorized as toxic, and are used to determine if proposed activities will cause degradation.

(26) The board adopts and incorporates by reference:

(a) department Circular ~~WQB~~ DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~January 2004~~ February 2006 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters; ~~and~~

(b) department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems" (2004 edition), which establishes technical standards for construction of subsurface wastewater treatment systems; and

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

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

IMP: 75-5-303, MCA

REASON: The proposed amendments adopt the revisions to Circular ~~WQB~~-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The Board is proposing to modify the definition of "outstanding resource water" (ORW) in this Subchapter to reflect the statutory definition, which is controlling. The proposed modification of the definition of "required reporting values" is necessary for consistency with the definition in the new Circular DEQ-7, and to more clearly indicate where a person can find the specific values. The proposed amendments also adopt the current Department Circular DEQ-4, which contains siting and design standards for subsurface wastewater systems. The adoption of Department Circular DEQ-4 is necessary to make the design standards for wastewater systems in this subchapter consistent with the standards adopted by the Board for other Department programs.

17.30.705 NONDEGRADATION POLICY--APPLICABILITY AND LIMITATION LEVEL OF PROTECTION (1) remains the same.

(2) Department review of proposals for new or increased sources will determine the level of protection required for the impacted water as follows:

(a) remains the same.

(b) For high quality waters, degradation may be allowed only according to the procedures in ARM 17.30.708. These rules apply to any activity that may cause degradation of high quality waters, for any parameter, unless the changes in existing water quality resulting from the activity are determined to be nonsignificant under ARM 17.30.670, 17.30.715 or 17.30.716. If degradation of high quality waters is allowed, the department will assure that within the United States geological survey hydrologic unit upstream of the proposed activity, there shall



be achieved the highest statutory and regulatory requirements for all point and nonpoint sources. This assurance will be achieved through ongoing administration by the department of mandatory programs for control of point and nonpoint discharges.

(c) and (3) remain the same.

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

IMP: 75-5-303, MCA

REASON: The Board is amending ARM 17.30.705 to clarify that discharges of water from coal bed methane, which are determined to be "nonsignificant" under ARM 17.30.670, do not need an authorization to degrade. This amendment simply reflects existing statutory requirements, but is necessary here to provide a clear statement of the law regarding nondegradation.

17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW

(1) Any person proposing an activity that may cause degradation is responsible for compliance with 75-5-303, MCA. Except as provided in (2) and ~~(3)~~, a person may either:

(a) remains the same.

(b) submit an application to the department pursuant to ~~(4)~~ (3), for the department to make the determination.

(2) The department will determine whether a proposed activity may cause degradation based on information submitted by the applicant for all activities that are permitted, approved, licensed, or otherwise authorized by the department. If the department determines that additional information is necessary to determine whether the activity is nonsignificant according to criteria established by the board, the department may require the applicant to provide the information in (3)(a) through (e).

~~(3) Any person proposing to discharge unaltered ground water into surface or ground water for purposes of developing coal bed methane must complete a department "Application for Determination of Significance", as described in (4), unless the person applies for a permit pursuant to ARM Title 17, chapter 30, subchapter 13. The department shall review the application and determine whether the discharge is nonsignificant according to criteria established by the board. If the department determines that the discharge is nonsignificant, the department shall issue a "Determination of Nonsignificance", which must include any conditions or limitations on the discharge that are reasonably necessary to ensure compliance with its determination. No person may violate the conditions or limitations included in the department's "Determination of Nonsignificance" and any violation of those conditions or limitations constitutes degradation in violation of 75-5-605(1)(d), MCA.~~

~~(4)~~ (3) Any person proposing an activity ~~or class of~~ activities that may cause degradation and is not an activity included under (2) ~~or (3)~~ may complete a department "Application for Determination of Significance". Information required ~~on~~ for

the application includes, but is not limited to, ~~the following:~~

(a) through (c) remain the same.

(d) an analysis of the existing water quality of the receiving water, and any other downstream or downgradient waters which may be reasonably expected to be impacted, including natural variations and fluctuations in the parameter(s) which may change as a result of the proposed activity; or

(e) remains the same.

~~(5)~~ (4) The department will review an "Application for Determination of Significance" submitted under (3) and make a determination whether the proposed change in water quality is nonsignificant according to ARM 17.30.715 or 17.30.716 within 60 days of receipt of the completed application.

(6) through (8)(k) remain the same, but are renumbered (5) through (7)(k).

~~(9)~~ (8)(a) An applicant must demonstrate that the proposed activity will result in important economic or social development that exceeds the costs to society of allowing the proposed change in water quality.

(a) Factors to be addressed in the application may include, but are not limited to, the positive and negative effects of the following:

(i) through (ix) remain the same.

(b) Factors included in the demonstration required in (8)(a) ~~above~~ must be quantified whenever this can be done reliably and cost-effectively. Other factors, which cannot be quantified, may be represented by an appropriate unit of measurement. If the department determines that more information is required, the department may require additional information from the applicant or seek such additional information from other sources.

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

~~(14)~~ (13) The board ~~hereby~~ adopts and incorporates by reference ARM 17.30.1323, as amended on February 14, 2003, which sets forth signature and certification requirements for MPDES permit applications. A copy of ARM 17.30.1323 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

IMP: 75-5-303, MCA

REASON: The Board is proposing two amendments to the informational requirements in ARM 17.30.706 regarding the Department's determination of "significance" under Montana's nondegradation laws. First, the Board is proposing to delete ARM 17.30.706(3) because the requirements under that section are no longer necessary. At the time the section was adopted, it was not clear whether discharges of unaltered ground water from coal bed methane wells were subject to permit requirements under the federal Clean Water Act (CWA) and Montana's delegated CWA permit program. As a result, the Board adopted the provisions of (3) to ensure that all discharges from CBM wells complied

with Montana's nondegradation requirements. Subsequent to the Board's action, the U.S. Court of Appeals for the Ninth Circuit clarified that discharges from coal bed methane wells must be regulated under a CWA permit. Consequently, the law is now settled. All CBM dischargers must obtain a Montana pollutant discharge elimination system (MPDES) permit, which contains effluent limits that require compliance with Montana's water quality standards and nondegradation laws. Accordingly, requiring a separate nondegradation review for CBM discharges under ARM 17.30.706 is no longer necessary.

Second, the Board is proposing to amend ARM 17.30.706 to provide the Department the authority to request the information specified in the rule when issuing MPDES permits. Currently, ARM 17.30.706(2) limits the Department's ability to obtain information to the "information submitted by the applicant" under the state's MPDES permit application rules. The information required from an applicant under the MPDES rules is often inadequate for purposes of providing information on the ambient quality of the receiving stream. For this reason, the Board is amending ARM 17.30.706(2) to provide the Department the discretion to obtain additional information from a permit applicant for purposes of determining "significance" under the nondegradation rules.

The reference to February 14, 2003 is added to (13) at the request of the Office of the Secretary of State, in order to clarify that the incorporation by reference of another state rule is limited to the edition of the rule in effect at the time of its incorporation.

17.30.708 DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE

(1) remains the same.

(2) The preliminary decision must include the following information, if applicable:

(a) remains the same.

(b) the level of protection required, e.g., for high-quality waters ~~or ORW~~;

(c) through (8) remain the same.

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

IMP: 75-5-303, MCA

REASON: The Board is amending ARM 17.30.708 to strike the term "ORW" from the rule establishing procedures for the Department's decision to authorize degradation. The amendment is necessary because the Department is statutorily prohibited from authorizing degradation of ORWs.

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) ~~of this rule~~, 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 or nutrients, except as specified in (1)(d) and (e) ~~below~~, which will not cause changes that equal or exceed the trigger values in department Circular ~~WQB~~ 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 (3) remain the same.

~~(4) The board adopts and incorporates by reference department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.~~

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

IMP: 75-5-303, MCA

REASON: The proposed amendments adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. Section (4) is proposed for deletion because it is unnecessary. Circular DEQ-7 is adopted, for purposes of this subchapter, in ARM 17.30.702.

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) remains the same.

(2) Except as provided in (5), a subsurface wastewater treatment system (SWTS) that meets all of the criteria in (2)(a) and falls within one of the categories in (2)(b) is nonsignificant.

(a) The SWTS, including primary and replacement drainfields must meet all of the following criteria:

(i) through (v) remain the same.

(vi) the SWTS must meet the current design standards defined in ARM Title 17, chapter 36, subchapter 3 and department Circular DEQ-4, ~~2004 edition~~; and

(vii) through (6)(d) remain the same.

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

IMP: 75-5-303, 75-5-317, MCA

REASON: The reference to the specific edition of Circular DEQ-4 is proposed for deletion because it is unnecessary. ARM 17.30.702 specifies, for purposes of this subchapter, the edition of Circular DEQ-4 that is applicable.

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

(1) remains the same.

(2) through (14) remain the same, but are renumbered (3) through (15).

~~(15)~~(2) "~~WQB DEQ-7~~" means department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ February 2006 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

~~(16)~~(a) The board adopts and incorporates by reference department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~January 2004~~ February 2006 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

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

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

REASON: The proposed amendments adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.30.1006 CLASSIFICATIONS, BENEFICIAL USES, AND SPECIFIC STANDARDS FOR GROUND WATERS (1) Class I ground waters are those ground waters with a natural specific conductance less than or equal to 1,000 microSiemens/cm at 25°C.

(a) through (a)(v) remain the same.

(b) Except as provided in ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards in Class I ground water:

(i) the human health standards for ground water listed in ~~WQB DEQ-7~~;

(ii) for concentrations of parameters for which human health standards are not listed in ~~WQB DEQ-7~~, no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class I water. The department may use any pertinent credible information to determine these levels; and

(iii) remains the same.

(2) Class II ground waters are those ground waters with a natural specific conductance that is greater than 1,000 and less than or equal to 2,500 microSiemens/cm at 25°C.

(a) through (a)(v) remain the same.

(b) Except as provided in ARM 17.30.1005(2), a person may not cause a violation of the following specific water quality standards for Class II ground water:

(i) the human health standards for ground water listed in ~~WQB DEQ-7~~;

(ii) for concentrations of parameters for which human health standards are not listed in ~~WQB DEQ-7~~, no increase of a parameter to a level that renders the waters harmful,

detrimental or injurious to the beneficial uses listed for Class II water. The department may use any pertinent credible information to determine these levels; and

(iii) remains the same.

(3) Class III ground waters are those ground waters with a natural specific conductance that is greater than 2,500 and less than or equal to 15,000 microSiemens/cm at 25°C.

(a) through (a)(iv) remain the same.

(b) Except as provided in (5) and ARM 17.30.1005(2) ~~and 17.30.1006(5)~~, a person may not cause a violation of the following specific water quality standards for Class III ground water:

(i) the human health standards listed in ~~WQB DEQ-7~~, except that the nitrate nitrogen and nitrate plus nitrite nitrogen standards listed in ~~WQB DEQ-7~~ do not apply to ground waters with a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C. The nitrate nitrogen and nitrate plus nitrite nitrogen standards for these waters are each 50 mg/l; and

(ii) for concentrations of parameters for which human health standards for ground water are not listed in ~~WQB DEQ-7~~, no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class III water. The department may use any pertinent credible information to determine these levels.

(c) remains the same.

(4) Class IV ground waters are those ground waters with a natural specific conductance greater than 15,000 microSiemens/cm at 25°C.

(a) remains the same.

(b) Except as provided in (5) and ARM 17.30.1005(2) ~~and 17.30.1006(5)~~, a person may not cause a violation of the following specific water quality standards for Class IV ground water:

(i) the human health standards for parameters categorized as carcinogens in ~~WQB DEQ-7~~;

(ii) for concentrations of parameters in ~~WQB DEQ-7~~ which are not listed as carcinogens, no increase of a parameter to a level that would adversely affect existing beneficial uses. The nitrate nitrogen and nitrate plus nitrite nitrogen standards are each 50 mg/l;

(iii) for concentrations of parameters for which human health standards are not listed in ~~WQB DEQ-7~~, no increase of a parameter to a level that would adversely affect existing beneficial uses. The department may use any pertinent credible information to determine these levels.

(c) and (5) remain the same.

(6) The ground water quality standards for metal parameters are based on the dissolved portion (after filtration through a 0.45 micron filter) of the contaminant in the ground water. The ground water quality standards for other parameters in department Circular ~~WQB DEQ-7~~ are based upon unfiltered samples. For inorganic parameters, compliance with standards based on filtered samples must be assumed if analyses using the

total recoverable method demonstrates compliance with the numerical standards.

~~(7) The board adopts and incorporates by reference department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.~~

AUTH: 75-5-301, 80-15-105, 80-15-201, MCA  
IMP: 75-5-301, 80-15-201, MCA

REASON: The proposed amendments adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The reference to the specific edition of WQB-7 is proposed for deletion because it is unnecessary. ARM 17.30.1001 specifies, for purposes of this subchapter, the edition of DEQ-7 that is applicable.

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) Methods of sample collection, preservation and sample analysis used to determine compliance with the standards in this subchapter must be in accordance with 40 CFR 136 "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 1997), or the following:

(a) EPA-SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996), and IIIA (May 1999) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

(b) through (e) remain the same.

(2) Analyses of parameters to determine compliance with ground water standards must comply with the required reporting values given in ~~WQB~~ DEQ-7.

(3) The board adopts and incorporates by reference the following publications:

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards", January 2004 edition;~~

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

(4) Copies of the publications in (3)(a) through (e), ~~(d) above~~ are available at the Department of Environmental Quality, 1520 East Sixth Avenue, P.O. Box 200901, Helena, ~~Montana~~ MT 59620-0901.

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

REASON: The proposed amendments adopt the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The amendments also incorporate a new EPA update for the test methods for evaluating solid waste, which is necessary to be consistent with current EPA methods.

17.36.331 NON-PUBLIC WATER SUPPLY SYSTEMS: WATER QUALITY

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) The applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in department Circular ~~WQB DEQ-7, 2001 edition~~ or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) The applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of nitrate (as nitrogen) and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in department Circular ~~WQB DEQ-7, 2001 edition~~ or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems.

(i) through (f) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: This proposed amendment to Department subdivision rules adopts the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

17.36.335 NON-PUBLIC WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) remains the same.

(2) The applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) The applicant shall submit, for each existing water supply source, water quality analyses for nitrate (as nitrogen) and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrate and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable



water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water constituent exceeds the human health standards in department Circular ~~WQB DEQ-7, 2001 edition~~, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: See Reason for ARM 17.36.331, above.

17.36.336 ALTERNATE WATER SUPPLY SYSTEMS (1) through (3) remain the same.

(4) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) remains the same.

(ii) testing for parameters with human health standards listed in department Circular ~~WQB DEQ-7, 2001 edition~~;

(iii) through (5)(c) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: See Reason for ARM 17.36.331, above.

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

(a) through (d) remain the same.

(e) Department Circular ~~WQB DEQ-7~~, "Montana Numeric Water Quality Standards", ~~2001~~ February 2006 edition;

(f) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: See Reason for ARM 17.36.331, above.

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) through (5)(c) remain the same.

- (6) The department adopts and incorporates by reference:  
(a) department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems", 2004 edition, which establishes technical standards for construction of subsurface wastewater treatment systems; and  
(b) Department Circular DEQ-7, "Montana Numeric Water Quality Standards", February 2006 edition.

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

REASON: This proposed amendment to Department CECRA rules adopts the revisions to Circular WQB-7 (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The proposed amendments also adopt the current Department Circular DEQ-4, which contains siting and design standards for subsurface wastewater systems. The adoption of DEQ-4 and the revised DEQ-7 are necessary to make the CECRA subsurface wastewater system design standards and water quality standards consistent with the standards used by other Department programs.

17.55.111 FACILITY RANKING (1) remains the same.

(2) A maximum priority designation must be given to a facility that exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~November 1998 edition~~) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to ground water in a drinking water well that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~November 1998 edition~~) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a drinking water line that is part of a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~November 1998 edition~~) or a standard established as a drinking

water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to surface water in a drinking water intake that is a domestic or commercial drinking water supply~~7~~ with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" ~~(November 1998 edition)~~ or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(e) documented release to ground water in a drinking water well that is a domestic or commercial drinking water supply~~7~~ with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" ~~(November 1998 edition)~~ or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(f) documented release into a drinking water line that is a domestic or commercial drinking water supply~~7~~ with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" ~~(November 1998 edition)~~ or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(g) through (i) remain the same.

(3) A high priority designation must be given to a facility whose release does not exhibit any of the characteristics provided in (2) but exhibits one or more of the following characteristics:

(a) documented release to surface water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" ~~(November 1998 edition)~~ or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a drinking water supply intake; and

(ii) for substances whose parameters for human health are

not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), no concentration at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply intake;

(b) documented release to ground water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular ~~WQB DEQ-7~~, entitled "Montana Numeric Water Quality Standards" (~~November 1998 edition~~) or a standard established as drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a drinking water supply well; and

(ii) for substances whose parameters for human health are not listed in ~~WQB DEQ-7~~ or 40 CFR 141 (1997), no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply well;

(c) through (8) remain the same.

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

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

REASON: This proposed amendment to Department CECRA rules adopts the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above.

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

(a) Department Circular ~~WQB DEQ-7~~, "Montana Numeric Water Quality Standards" (~~January 2002~~ February 2006);

(b) through (3) remain the same.

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

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

REASON: This proposed amendment to the Department's underground storage tank rules adopts the revisions to Circular ~~WQB-7~~ (renamed DEQ-7). The revisions to the Circular, and the reasons for them, are summarized in the Reason for ARM 17.30.502, above. The adoption of the revised DEQ-7 is necessary to make the tanks program water quality standards consistent with the standards used by other Department programs.

4. The proposed new rules provide as follows:

NEW RULE I OUTSTANDING RESOURCE WATERS -- DESIGNATION

(1) All state surface waters located wholly within the boundaries of designated national parks or wilderness areas as of October 1, 1995, are outstanding resource waters (ORWs). Other state waters may be designated an ORW by the board following the procedures in 75-5-316, MCA, subject to approval by the legislature.

AUTH: 75-5-301, 75-5-316, MCA

IMP: 75-5-316, MCA

REASON: The Board is proposing the adoption of New Rules I and II, pertaining to outstanding resource waters (ORWs), which will be included in the rules establishing a state-wide stream classification system (ARM Title 17, chapter 30, subchapter 6). New Rule I is proposed as a means of acknowledging that certain waters within the state's stream classification system have been specially designated as an ORW in Montana's water quality statutes. The rule does not change the statutory provisions for ORWs. However, the rule is necessary to inform the regulated community, agencies of the state and federal government, and the public at large that all waters "wholly within" national parks or wilderness areas have been statutorily designated as ORWs. New Rule I also serves the purpose of establishing a "placeholder" within the Board's stream classification rules for waters that may in the future be listed as ORWs pursuant to 75-5-316, MCA.

NEW RULE II OUTSTANDING RESOURCE WATERS -- PROHIBITIONS

(1) Any new or increased point source discharge that would result in a permanent change in water quality is prohibited.

AUTH: 75-5-301, 75-5-316, MCA

IMP: 75-5-316, MCA

REASON: The Board is proposing to adopt New Rule II as part of ARM Title 17, chapter 30, subchapter 6. New Rule II simply reflects the statutory prohibition against any "new or increased" point sources from discharging into waters designated as ORWs. The reference to the statutory prohibition in subchapter 6 is necessary in order to provide a complete list within the subchapter of the various classifications of state waters.

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 the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., December 6, 2005. 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 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. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@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 notice requirements of 2-4-302, MCA, do not apply.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: Richard H. Opper  
RICHARD H. OPPER, Director

Certified to the Secretary of State October 17, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	AMENDED NOTICE OF PUBLIC
of ARM 17.30.1303, 17.30.1304, )	HEARING ON PROPOSED
17.30.1310, 17.30.1322, )	AMENDMENT
17.30.1330, 17.30.1341 and )	
17.30.1343 pertaining to )	(WATER QUALITY)
concentrated animal feeding )	
operations (CAFOs) and )	
adoption of Department )	
Circular DEQ-9 (Montana )	
Technical Standards for CAFOs) )	

TO: All Concerned Persons

1. On December 16, 2004, the Board of Environmental Review published MAR Notice No. 17-222 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2962, 2004 Montana Administrative Register, issue number 24. The public comment period closed on February 4, 2005. On June 16, 2005, the Board published an amended notice of proposed amendment on the above-stated rules at page 864, 2005 Montana Administrative Register, issue number 11, to provide a six-month extension of time for the Board to take final action in this rulemaking.

2. On November 17, 2005, at 9:30 a.m. the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules, as modified in this notice. All comments that were received during the public comment period for MAR Notice No. 17-222 will be retained as part of the record, and commentors will not be required to resubmit those comments for them to be considered by the Board.

3. This amended notice of public hearing is being published to provide the public an opportunity to comment on the amendments proposed in MAR Notice No. 17-222 as that proposal is being modified by this notice. MAR Notice No. 17-222 proposed to amend Montana's water quality discharge permit regulations for concentrated animal feeding operations (CAFOs). The proposed amendments update the Board's CAFO rules by adopting new federal CAFO requirements promulgated in 2003 by the U.S. Environmental Protection Agency (EPA), by adopting a Department CAFO guidance circular (DEQ-9) as required by the federal rules, and by making other minor changes to the state CAFO rules.

In February of 2005, after the Board had held the public hearing for MAR Notice No. 17-222, a federal court vacated some of the provisions in EPA's 2003 CAFO rulemaking. The court vacated the provisions that: (a) allowed permitting authorities to issue permits without reviewing the terms of nutrient management plans; (b) allowed permitting authorities to issue

permits that did not include the terms of the nutrient management plans and that did not provide for adequate public participation; and (c) required CAFOs to apply for discharge permits or otherwise demonstrate that they have no potential to discharge. Waterkeeper Alliance, et al., v. USEPA, 399 F.3d 486, 524 (2d Cir. 2005).

In this amended notice the Board is proposing to go forward with the CAFO rule amendments as originally proposed in MAR Notice No. 17-222, except that the Board will not adopt those sections of the federal CAFO rules that were vacated by the federal court. In order to ensure that the new state CAFO rules do not contain any provisions vacated by the federal court, the Board is proposing to adopt the federal CAFO rules by reference, instead of publishing the full text of the rules in the state register, as originally proposed. As originally proposed in MAR Notice No. 17-222, the Board is again proposing to adopt Department Circular DEQ-9 and to make several minor corrections to the Board's CAFO rules.

The Board proposes to adopt, exactly as proposed in MAR Notice No. 17-222, minor changes to ARM 17.30.1304, 17.30.1310, and 17.30.1341. The Board proposes to amend ARM 17.30.1303, 17.30.1322, 17.30.1330, and 17.30.1343, as set out below, in order to adopt the federal CAFO rules by reference and to adopt Department Circular DEQ-9.

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

17.30.1303 INCORPORATIONS BY REFERENCE (1) and (2) remain the same.

(3) Where the department has adopted a federal regulation or statute by reference, the following shall apply:

(a) ~~References~~ references in the federal regulations to "administrator", "regional administrator", "director", or "U.S. environmental protection agency", or the like, should be read to mean "department";

(b) ~~Where~~ where the department incorporates by reference a subpart of a federal regulation, both the subpart and its constituent sections and subsections are also incorporated by reference.

(4) All of the incorporations by reference of federal agency regulations listed in the table in (7) ~~of this rule~~ shall refer to federal agency regulations as they have been codified in the July 1, 1991, edition of Title 33 and 40 of the Code of Federal Regulations (CFR), unless another codification date is specified.

(5) and (6) remain the same.

(7) The list of incorporations by reference follows:

ARM 17.30.... 33 CFR ... Description of Regulation

(a) through (i) remain the same.

ARM 17.30.... 40 CFR ...



(j) 1330 ~~Appendix B of Part 122 Part 412 (July 1, 2004 edition)~~ Criteria for determining whether a facility or operation merits classification as a concentrated Concentrated animal feeding operation (CAFO) point source category effluent limitations and guidelines.

(k) through (at) remain the same.

ARM 17.30.... Clean Water Act

(au) 1322 40 CFR 122.21(i)(1) (July 1, 2004 edition) Application requirements for concentrated animal feeding operations (CAFOs).

(av) 1330 40 CFR 122.23 (July 1, 2004 edition) Definitions and permit requirements for concentrated animal feeding operations (CAFOs).

(aw) 1343 40 CFR 122.42(e) (July 1, 2004 edition) Additional conditions applicable to concentrated animal feeding operations (CAFOs).

REASON: The proposed amendments to ARM 17.30.1303 would amend the rule as originally proposed in MAR Notice No. 17-222, except that the publication date for 40 CFR Part 412 is changed to refer to the 2004 edition instead of the 2003 edition of the CFR. The change does not have substantive effect, but is necessary to reflect the most recent edition of the CFR. The proposed amendments would also incorporate by reference the 2003 federal requirements for CAFOs in 40 CFR Part 122. Some of the provisions of the 2003 federal CAFO rules were vacated in 2005 by a federal court decision. Waterkeeper Alliance, et al., v. USEPA, 399 F.3d 486, 524 (2d Cir. 2005). The proposed incorporation by reference of the federal CAFO rules is intended to adopt all the provisions of the federal CAFO rules that were not vacated by the Waterkeeper decision. As stated in the reasons for MAR Notice No. 17-222, the adoption of the new federal CAFO requirements is necessary to prohibit the discharge of manure and other process wastewater pollutants to state waters, and to maintain the state's primacy for administering the federal Clean Water Act discharge permit program.

17.30.1322 APPLICATION FOR A PERMIT (1) through (8) (h) remain the same.

(9) New and existing ~~concentrated animal feeding operations CAFOs~~, ~~(defined in ARM 17.30.1304(3))~~ 17.30.1330, and concentrated aquatic animal production facilities, ~~(defined in~~

ARM 17.30.1304(6) shall provide the following information to the department, using the application form provided by the department:

(a) ~~for concentrated animal feeding operations: CAFOs, the information specified in ARM 17.30.1322(6) (a) through (f) and 40 CFR 122.21(i) (1), including a topographic map; and~~

~~(i) the type and number of animals in open confinement and housed under roof;~~

~~(ii) the number of acres used for confinement feeding; and~~

~~(iii) the design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor;~~

(b) through (17) (i) remain the same.

REASON: The proposed amendments to ARM 17.30.1322 are substantively the same as those proposed in MAR Notice No. 17-222, except that the application requirements are incorporated by reference from the federal rules instead of being set out in the text of the state rules. The reference in (9) to ARM 17.30.1304(3) would be deleted because no definition of CAFO exists in that section. A proposed clause in (1) has been deleted because it implemented the "duty to apply" provisions that were vacated by the federal court. The use of the incorporation by reference method is necessary to ensure that, until EPA promulgates new rules in response to the Waterkeeper decision, the state CAFO rules will contain only those provisions of the federal CAFO rules that were not vacated by the federal court.

#### 17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) "Concentrated animal feeding operation" (CAFO) means an animal feeding operation which meets the criteria in ~~Appendix B of 40 CFR Part 122.23~~, or which the department designates under (3) ~~of this rule~~. CAFOs that are required to obtain a permit shall either apply for an individual MPDES permit or submit an application for coverage under an MPDES CAFO general permit. A permit application for an individual permit or application for coverage under a general permit must include the information specified in ARM 17.30.1322(6) (a) through (f) and 40 CFR 122.21(i) (1), including a topographic map. If the department has not made a general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the department.

(2) and (3) remain the same.

(4) No animal feeding operation with less than the numbers of animals set forth in ~~Appendix B of 40 CFR Part 122.23~~ may be designated as a ~~concentrated animal feeding operation~~ CAFO unless:

(a) through (5) remain the same.

(6) The board ~~hereby~~ adopts and incorporates ~~herein~~ Appendix B of 40 CFR Part 122.23 (July 1, 2004 edition), which is ~~an appendix to~~ a federal agency rule setting forth criteria for determining whether a facility or operation merits

classification as a ~~concentrated animal feeding operation~~ CAFO. See ARM 17.30.1303 for ~~complete~~ additional information about all materials incorporated by reference.

REASON: The proposed amendments to ARM 17.30.1330 are substantively the same as those proposed in MAR Notice No. 17-222, except that the definitions and requirements applicable to CAFOs are incorporated by reference from the federal rules instead of being set out in the text of the state rules. See Reason for amendments to ARM 17.30.1322, above.

17.30.1343 ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS (1) The following conditions, in addition to those set forth in ARM 17.30.1342, apply to all MPDES permits within the categories specified below:

- (1) remains the same, but is renumbered (a).
- (a) remains the same, but is renumbered (i).
- (i) through (iv) remain the same, but are renumbered (A) through (D).
- (b) remains the same, but is renumbered (ii).
- (i) through (iv) remain the same, but are renumbered (A) through (D).
- (2) remains the same, but is renumbered (b).
- (a) through (c) remain the same, but are renumbered (i) through (iii).
- (i) and (ii) remain the same, but are renumbered (A) and (B).

(c) All permits issued to concentrated animal feeding operations (CAFOs), in addition to meeting those requirements set forth in ARM 17.30.1322, 17.30.1330, 17.30.1341 and 17.30.1342 must include the requirements set out in 40 CFR 122.42(e). The design, monitoring, recordkeeping, reporting, and specifications for CAFOs must be prepared in accordance with and comply with the criteria set forth in the technical standards for nutrient management and effluent limit guidelines established in 40 CFR Part 412 and department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations".

(3) The board ~~hereby~~ adopts and incorporates ~~herein~~ by reference:

(a) 40 CFR 122.44(f), which is a federal agency rule setting forth "notification levels" for dischargers of pollutants that may be inserted in a permit upon a petition from the permittee or upon the initiative of the department;

(b) 40 CFR Part 412, which establishes the effluent limitation guidelines and best management practices for CAFOs; and

(c) department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations," 2005 edition.

(4) See ARM 17.30.1303 for ~~complete~~ additional information about all materials incorporated by reference. All material that is incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

REASON: The proposed amendments to ARM 17.30.1343 are substantively the same as those proposed in MAR Notice No. 17-222, except that the additional conditions applicable to CAFOs are incorporated by reference from the federal rules instead of being set out in the text of the state rules. See Reason for amendments to ARM 17.30.1322, above. The proposed amendments also adopt Department Circular DEQ-9, which contains technical standards for CAFOs. The statement of necessity for adoption of DEQ-9, as well as a summary of the provisions of DEQ-9, is set out in MAR Notice No. 17-222. Copies of proposed Department Circular DEQ-9 may be obtained by contacting Carrie Greeley, Water Protection Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 444-0574; or at [http://www.deq.mt.gov/ber/2005\\_Agendas/Sept\\_05/webagenda93005.pdf](http://www.deq.mt.gov/ber/2005_Agendas/Sept_05/webagenda93005.pdf).

5. 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 the Board no later than 5:00 p.m., November 7, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email [ber@mt.gov](mailto:ber@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 the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at [ber@mt.gov](mailto:ber@mt.gov) and must be received no later than 5:00 p.m., November 25, 2005. 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 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. Such

written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@mt.gov, or may be made by completing a request form at any rules hearing held by the Board.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State October 17, 2005.

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

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.36.345, 17.38.101, )	PROPOSED AMENDMENT
17.38.106, 17.38.208, and )	
17.38.229 pertaining to )	(PUBLIC WATER AND SEWAGE
adoption by reference, plans )	SYSTEM REQUIREMENTS AND
for public water supply or )	SUBDIVISIONS)
wastewater system, fees, )	
treatment requirements, and )	
disinfection )	

TO: All Concerned Persons

1. On November 18, 2005, at 9:30 a.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 the Board no later than 5:00 p.m., November 7, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@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 ~~hereby~~ 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", ~~1999~~ 2006 edition;
- (b) remains the same.
- (c) Department Circular DEQ-3, "Standards for Small Water Systems", ~~1999~~ 2006 edition;
- (d) through (h) remain the same.
- (i) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water", ~~1999~~ 2002 edition;
- (j) through (2) remain the same.

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

REASON: The Board is proposing amendments to Administrative Rules of Montana (ARM) Title 17, Chapter 38,

subchapters 1 and 2 and the Department is proposing amendments to Title 17, Chapter 36 to update the existing rules regarding public water supplies to make them consistent with the statutes, by revising Department Circular DEQ-1, by modifying existing rules for clarification purposes, by adopting new rules, by adopting new fees or modifying existing fees to address the proposed changes, and by adopting checklists for "extensions", which are currently used as a policy. These proposed amendments are necessary to allow the Department to meet the legislative intent, streamline the Department processes, and to clarify the rules for the benefit of the regulated public.

PROPOSED UPDATES TO DEPARTMENT CIRCULAR DEQ-1 "STANDARDS FOR WATER WORKS"

Revisions to Circular DEQ-1, Standards for Water Works, are being proposed for adoption. DEQ-1 is based on the Ten States Standards, 1982 edition. The Ten States Standards were updated in 2003. The proposed changes are needed to keep DEQ-1 current with the revised Ten States Standards.

The Forward section includes language that allows generally accepted industry standards for review of new technologies to treat water until a new policy is adopted.

The proposed revisions to major sections of DEQ-1 are summarized below. Copies of DEQ-1 may be obtained by contacting Jenny Chambers, Public Water Supply and Subdivisions Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 444-2691; or at [www.deq.mt.gov/wqinfo/Circulars.asp](http://www.deq.mt.gov/wqinfo/Circulars.asp).

Chapter 1: Submission of Plans A change is proposed to require the applicant to submit three copies of design plans and specifications signed and stamped by the engineer at submittal instead of two. This is necessary because some County Health Departments are asking that the Department provide them with a copy of approved signed and stamped plans. Proposed revisions in Chapter 1 also include requiring fire flow demand based on local fire department recommendations and requiring completion of the Appendix A checklist for significant improvements with economic impacts. Fire flow demand is typically based on local fire department limitations and recommendations, rather than the requirements of the State Fire Marshal. Significant improvements may require reevaluation of technical, managerial and operational capacity. Proposed changes also include requiring that proposed deviations be submitted on a Department-approved form and be stamped by the design engineer. It is often difficult to determine the exact deviation requested by an engineer. This will also ensure consistency with Subdivision Section deviation processes.

Chapter 2: General Design Considerations The major change proposed is that all equipment must operate within manufacturer's recommendations. This change will ensure that all equipment is operated within manufacturers' recommended

ranges.

Chapter 3: Source Development A new requirement is proposed that gravity or pumped storage must meet maximum day demand with the largest producing well out of service. Typically, this can be done by either doubling pump capacity or drilling a third well. This change was adopted by the Ten States Standards to ensure adequate source capacity if a well goes out of service. A requirement is proposed that hydropneumatic storage must meet peak instantaneous demand with the largest producing well out of service. A reduction from peak instantaneous demand is proposed for systems with less than 50 living units if adequate pressures can be maintained.

Chapter 4: Treatment All equipment must be designed to operate within manufacturers' recommended parameters. A revision is proposed for disinfection requiring pretreatment if certain water quality parameters are exceeded. This change is necessary because poor water quality can greatly increase chlorine demand. Further proposed changes are the addition of an anion exchange section and moving the former waste section to Chapter 9. Proposed changes include consolidating some former Department policies into a general section covering all ion exchange processes.

Reverse Osmosis, Bag and Cartridge Filters, Membrane Filtration, and Ozone Policies were moved out of the policies section and into Chapter 4. New Ultra-violet (UV) and Point-of-Use/Point-of-Entry policies have been added. The reason for this change is that technologies for Reverse Osmosis, Bag and Cartridge Filters, Membrane Filtration and Ozone are now sufficiently confirmed and documented to allow the establishment of specific design parameters. Ultra-violet disinfection and Point-of-Use/Point-of-Entry policies are added as policies until all design parameters can be documented and confirmed.

Chapter 5: Chemical Application Proposed changes include new sections on sodium hypochlorite and ammonia. These changes are necessary to clarify chemical application for hypochlorite (as opposed to gas chlorination) and ammonia.

Chapter 6: Pumping Facilities A proposed change states that subsurface pits are not allowed and changes booster pump automatic shutoff from 10 to 20 psi. These changes are necessary to ensure safety of the water system operator and distribution system.

Chapter 7: Finished Water Storage A proposed change clarifies that AWWA Standards apply to all tank materials. This change clarifies Department policy. Storage tanks are often made of material other than steel. Revisions further require two manholes on all tanks. This change is necessary to ensure safety of the operator during cleaning or maintenance. There is a further addition of a section on cisterns that references Circular 17. This change is consistent with current department



policy and clarifies standards for construction of cisterns.

Chapter 8: Transmission Mains and Distribution System A section is proposed to be added regarding external corrosion. This section was moved from Policy on Internal Corrosion, as adopted by Ten States Standards. A revised section is proposed to allow water mains to be installed closer than ten feet to a gravity sewer if laid in a separate trench. This change is necessary for situations where horizontal separation cannot be achieved, but equivalent protection is still possible. A section is proposed to be added clarifying that temporary piping during construction is subject to MDEQ review. This change is necessary to ensure protection of the distribution system during construction.

In Appendix A, a new self-assessment checklist is proposed that is required for new systems or existing systems with significant improvements with economic impacts. This change is necessary because significant improvements may require reevaluation of technical, managerial and operational capacity.

Water and sewer checklists are proposed that require an independent professional engineer review (not the design engineer), except when the project is a replacement or an extension that has previously received Master Plan approval within the past ten years. Any deviations must be submitted on the Deviation Form. This is consistent with an informal Department policy held for the past decade that is necessary to decrease review time for projects that are already reviewed by an independent engineer.

PROPOSED UPDATES TO DEPARTMENT CIRCULAR DEQ-3 "STANDARDS FOR SMALL WATER SYSTEMS"

Amendments are proposed to Department Circular DEQ-3, Standards for Small Water Systems, to incorporate the proposed changes to DEQ-1 and to provide consistency and clarity with existing statutory requirements in implementation and enforcement of existing rules. The proposed revisions to DEQ-3 are summarized below. Copies of the proposed revisions may be obtained by contacting Jenny Chambers, Public Water Supply and Subdivisions Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 444-2691; or at [www.deq.mt.gov/wqinfo/Circulars.asp](http://www.deq.mt.gov/wqinfo/Circulars.asp).

Chapter 1: Submission of Plans A change is proposed to require the applicant to submit three copies of design plans and specifications at submittal instead of two. This is necessary because some County Health Departments are asking that the Department provide them with a copy of approved signed and stamped plans. Proposed revisions in Chapter 1 requiring fire flow demand based on local fire department recommendations and requiring completion of the Appendix A checklist for significant improvements with economic impacts for non-transient non-community systems. Fire flow demand is typically based on local fire department limitations and recommendations, rather than the

requirements of the State Fire Marshal. Significant improvements may require reevaluation of technical, managerial and operational capacity. Proposed changes also include requiring that proposed deviations be submitted on a Department-approved form. It is often difficult to determine the exact deviation requested. This will also ensure consistency with Subdivision Section deviation processes.

Chapter 2: General Design Considerations The major change proposed is that all equipment must operate within manufacturers' recommendations. This change will ensure that all equipment is operated within manufacturers' recommended ranges. Provisions are also proposed to ensure that materials are disinfected in accordance with AWWA Standards, where applicable, and that consideration be given to other federal, state or local requirements. The purpose of this change is to ensure consistency of the systems under DEQ-3.

Chapters 3-8: Changes to DEQ-3 are proposed to ensure consistency with DEQ-1 requirements.

Chapter 9: Deviations Procedures for deviations are proposed to be removed from Chapter 9 and placed in Chapter 1 to ensure consistency with the language of DEQ-1.

The proposed amendments to ARM 17.36.345 are necessary to adopt the correct edition of the documents that are being adopted by reference within this section. Failure to adopt the correct version of the documents in this section may place a system in violation with the requirements identified in ARM Title 17, chapter 38, subchapter 1.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (3)(j)(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 wastewater system<sup>7</sup> 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. ~~Two~~ 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 wastewater 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.

(a) The design report, plans and specifications for community water systems must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works", ~~1999~~ edition.

(b) The design report, plans and specifications for non-community water systems must be prepared in accordance with the format and criteria set forth in Circular DEQ-3, "Montana Department of Environmental Quality Standards for Small Water Systems", ~~1999 edition~~. 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, ~~or~~ pressure booster/reduction stations, ~~or disinfection facilities~~). 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 treatment processes and equipment, subject to review under DEQ-1, "Montana Department of Environmental Quality Standards for Water Works", is proposed. 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) The design report, plans and specifications for all wastewater systems, except public subsurface sewage treatment systems, must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for Wastewater Facilities", ~~1999 edition~~. The design report, plans and specifications for a wastewater system must also be designed to protect public health and ensure compliance with the Montana Water Quality Act, Title 75, chapter 5, MCA, and rules adopted under the Act, including ARM Title 17, chapter 30, subchapter 7.

(d) The board adopts and incorporates by reference ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345 and in accordance with the format and criteria set forth in department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems", ~~2004 edition~~.

(e) The design report, plans, and specifications for water extensions or replacements which meet the criteria in "Water Main Certified Checklist" may be submitted under that abbreviated process.

(f) The design report, plans, and specifications for sewer extensions or replacements which meet the criteria in "Sewer Main Certified Checklist" may be submitted under that abbreviated process.

~~(e)~~(g) The department may grant a deviation from the standards referenced in (4)(a) through ~~(e)~~ (f) when the applicant has demonstrated to the satisfaction of the department that strict adherence to the standards of this rule is not necessary to protect public health and the quality of state waters. Deviations from the standards may only be granted by the department.

(f) remains the same, but is renumbered (h).

(5) To resume review of plans and specifications for a project that has been inactive for more than a year after issuance of a denial letter by the reviewing authority, the applicant must resubmit plans and specifications and fees as required in ARM 17.38.106.

(6) Plans and specifications for a project that would violate the approval of a public water supply will not be approved by the reviewing authority.

(5) through (13) remain the same, but are renumbered (7) through (15).

~~(14)~~ (16) The board adopts and incorporates by reference the following 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 of Environmental Quality Circular DEQ-1, ~~1999~~ 2006 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, ~~1999~~ 2006 edition, which sets forth minimum design standards for small water systems;

(d) Department of Environmental Quality Circular DEQ-4, 2004 edition, which sets forth standards for subsurface wastewater treatment systems; ~~and~~

(e) Department of Environmental Quality Water Main Certified Checklist, 2006 edition, which sets forth minimum criteria and design standards for water main extensions and replacements;

(f) Department of Environmental Quality Sewer Main Certified Checklist, 2006 edition, which sets forth minimum criteria and design standards for sewer main extensions and replacements; and

(e) remains the same, but is renumbered (g).

~~(15)~~ (17) A copy of any of the documents adopted under ~~(14)~~ (16) may be obtained from 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: The proposed amendment to (4) is necessary to require an applicant to supply three certified copies of submitted plans and specifications for final approval. The current requirement of two meets department needs, but we have been asked by local counties to supply them with a copy of the final plans and specifications for their records.

The proposed amendment to (4)(a) is necessary to remove the "edition" information for the document identified. As existing ARM 17.38.101(14) adopts by reference the specific edition of each document adopted by reference, the Department proposes to remove the "edition" information from all other references within the rules so as to simplify the process for updating

those documents. Future modifications to the adopted documents will only require modification of ARM 17.38.101(14).

The proposed amendments to (4)(b) are necessary to remove the edition information from the referenced document and to clarify when a professional engineer will be required to submit plans and specifications for projects submitted under DEQ-3. In addition, the proposed change would allow standard plans and specifications previously approved by the department to be used for such a system in place of those submitted by a professional engineer, thus reducing the costs associated with such submissions to the applicant.

The proposed amendments to (4)(c) and (d) are necessary to remove the edition information from the referenced documents.

The proposed additions of new (4)(e) and (f) are necessary to adopt "checklist" plan and specification submission criteria for water and sewer main extensions and replacements. These checklist adoptions allow existing systems that have been previously reviewed and approved to follow a much shortened and less expensive path in getting plans and specifications for extensions reviewed. The checklist process is currently conducted as Department policy.

The proposed adoption of new (5) limits the amount of time that submitted plans and specifications might be left in an inactive status. This is necessary to correct the situation in which a denied submission remains within the department with no action by the applicant only to be reactivated at a later date when the review fees and standards may have changed. This amendment will also ensure consistency with subdivision section processes.

The proposed adoption of new (6) is necessary to allow the department to deny an application solely on the grounds that approval of that application would place an existing system in violation.

The proposed amendment to (14) is necessary to clarify the specific edition of the identified documents as being the official document and that any reference to those documents within the chapter is to the edition listed within this section.

The proposed amendments to (14)(a) and (c) are necessary to update the "edition" information for the documents identified.

The proposed adoptions of new (14)(e) and (f) are necessary to allow applicants to use the checklist process for main extensions. The checklist process is faster and less expensive than the standard review process. The checklist process is currently used as a Department policy.

The changes to the earlier editions of DEQ-1 and DEQ-3 are described above in the Reason for the amendments to ARM 17.36.345.

17.38.106 FEES (1) remains the same.

(2) Fees for review of plans and specifications are based on (2)(a) through (e) and (3). The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or sub-parts listed in these citations. ~~Approval will not be given~~ Department review will not be

initiated until fees calculated under this rule have been received by the department.

(a) The fee schedule for designs requiring review for compliance with department Circular DEQ-1, ~~1999 edition~~, is set forth in Schedule I, as follows:

SCHEDULE I

<u>Policies</u>	
<u>Ultra Violet Disinfection</u> .....	\$ 400
<u>Point-of-Use/Point-of-Entry Treatment</u> .....	\$ 200
Section 3.1 Surface water	
quality and quantity.....	\$ 200
structures.....	\$ 100
Section 3.2 Ground water.....	\$ 600
Section 4.1 Clarification	
standard clarification.....	\$ 500
solid contact units.....	\$ 1,000
Section 4.2 Filtration	
rapid rate.....	\$ 1,250
pressure filtration.....	\$ 950
diatomaceous earth.....	\$ 950
slow sand.....	\$ 950
<u>direct filtration</u> .....	\$ 950
<u>biologically active filtration</u> .....	\$ 950
<u>membrane filtration</u> .....	\$ 600
<u>micro and ultra filtration</u> .....	\$ 600
<u>bag and cartridge filtration</u> .....	\$ 300
Section 4.3 Disinfection.....	\$ 400
Section 4.4 <del>Cation exchange s</del> Softening.....	\$ 500
Section 4.5 Aeration	
natural draft.....	\$ 200
forced draft.....	\$ 200
<u>spray/pressure</u> .....	\$ 200
<u>packed tower</u> .....	\$ 500
Section 4.6 Iron and manganese	
<del>control sequestering</del> .....	\$ 200
<u>Section 4.7 Fluoridation</u> .....	\$ 300
Section 4.8 Stabilization	
<del>CO<sub>2</sub> addition</del> .....	\$ 300
Section 4.9 Taste and odor control	
<del>powdered activated carbon</del> .....	\$ 400
<u>Section 4.10 Microscreening</u> .....	\$ 200
Section 4.11 <del>Waste disposal</del> <u>Ion Exchange</u> .....	\$ 500
<del>alum sludge</del> .....	\$ 250
<del>lime softening sludge</del> .....	\$ 250
<del>red water waste</del> .....	\$ 250
<u>Section 4.12 Adsorptive Media</u> .....	\$ 500
Chapter 5 Chemical application.....	\$ 700
Chapter 6 Pumping facilities.....	\$ 700
Section 7.1 Plant storage.....	\$ 500
Section 7.2 Hydropneumatic tanks.....	\$ 200
Section 7.3 Distribution storage.....	\$ 500
<u>Section 7.4 Cisterns</u> .....	\$ 200

Chapter 8 Distribution system	
< 1320 lineal feet with standard specs.....	\$ 150
< 1320 lineal feet without standard specs....	\$ 450
> 1320 lineal feet with standard specs.....	\$ 300
> 1320 lineal feet without standard specs....	\$ 600
Main extension certified checklist.....	\$ 100
<u>Chapter 9 Waste Disposal.....</u>	<u>\$ 250</u>
<u>Appendix A</u>	
<u>new systems.....</u>	<u>\$ 200</u>
<u>modifications.....</u>	<u>\$ 100</u>

(b) The fee schedule for designs requiring review for compliance with department Circular DEQ-2, ~~1999 edition~~, is set forth in Schedule II, as follows:

Schedule II remains the same.

(c) The fee schedule for designs requiring review for compliance with department Circular DEQ-4, ~~2004 edition~~, is as specified in the fee schedule in ARM 17.36.802 for wastewater disposal systems.

(d) The fee schedule for designs requiring review for compliance with department Circular DEQ-3, ~~1999 edition~~, is to be determined under Schedule III, as follows:

Schedule III remains the same.

(e) The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories, is set forth in Schedule IV as follows:

SCHEDULE IV

<del>Hypochlorinators.....</del>	<del>\$ 200</del>
<del>Ozonators up to 10 gpm.....</del>	<del>\$ 300</del>
<del>CT evaluations.....</del>	<del>\$ 200</del>
<del>Reverse osmosis up to 10 gpm.....</del>	<del>\$ 300</del>
<del>Spring box and collection lateral.....</del>	<del>\$ 250</del>
<del>Cartridge/bag filters.....</del>	<del>\$ 300</del>

(3) through (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The proposed amendment to (2) is necessary to clarify when the review fees are required. It is the intent of the legislature that the Department collect fees that are commensurate with the costs of those reviews. This clarification will ensure that the Department collects fees for all review work done as opposed to only those applications that receive an approval statement. There will be no fiscal impact from this change.

The proposed amendments and additions to (2)(a) are necessary to remove the edition information from the referenced documents so as to simplify future modifications of those documents, and to adjust the fee table in accordance with the proposed changes to DEQ-1 and DEQ-3. The changes include

relocation of existing fees and line items, addition of new fees for new line items, and clarification of existing line items. It is the intent of the legislature that the Department collect fees that are commensurate with the costs of those reviews. The fee for ultra violet disinfection was moved from general disinfection (400) to a separate line item for no net change in fees assessed.

A fee of \$200 for point-of-use/point-of-entry was added. The program receives approximately two point-of-use/point-of-entry proposals per year for a total fee increase of \$400 per year.

Fees of \$950 for direct filtration and biologically active filtrations were added. These fees are consistent with the fees charged for other filtration methods (\$950) for no net change in fees assessed.

A fee of \$500 for micro and ultra filtration was added. This fee is less than the general filtration fee of \$950. The program receives approximately one micro and ultra filtration proposal per year for a total fee decrease of \$350 per year.

A fee of \$200 for spray/pressure filtration was added. This fee is consistent with the fees charged for other aeration methods (\$200) for no net change in fees assessed.

A fee of \$600 was added for tower aeration. This is an increase of \$400 over the general aeration fee. The program receives approximately one packed tower aeration proposal every two years for a total fee increase of \$100 per year.

A fee of \$300 was added for fluoridation. The program receives approximately one fluoridation proposal every two years for a total fee increase of \$150 per year.

A fee of \$200 was added for microscreening. The program receives approximately one microscreening proposal every two years for a total fee increase of \$100 per year.

A fee of \$500 was added for ion exchange. This would previously have been billed under chemical addition (\$700). The program receives approximately 10 ion exchange proposals per year for a total fee decrease of \$2,000 per year.

A fee of \$500 for adsorptive media was added. The program receives approximately one adsorptive media proposal per year for a total fee increase of \$500 per year.

A fee of \$200 was added for cisterns. This would previously have been billed under distribution storage (\$500). The program receives approximately five cistern proposals per year for a total fee decrease of \$1,500 per year.

Fees for waste disposal were combined and moved for no net change in fees assessed.

A fee of \$200 - new, modification of \$100 - was added for Appendix A reviews. The program receives approximately ten new Appendix A proposals and five modifications for a total fee increase of \$2,500 per year.

The proposed amendments to (2)(b), (c), and (d) are necessary to remove the edition information from the referenced documents. There will be no fiscal impact from this change.

The proposed amendments to (2)(e) relocate these fee line items to proposed new locations elsewhere in the rule.



The fee for hypochlorinators of \$200 with mandatory CT evaluation of \$200 was combined under general disinfection (\$400) for no net change in fees assessed.

The fee for ozonators of \$300 was moved to general disinfection (\$400) for an increase of \$100 per review. The program receives approximately one ozone proposal per year for a total fee increase of \$100 per year.

The fee for reverse osmosis of \$300 was moved to membrane filtration (\$600) for an increase of \$300 per review. The program receives approximately three reverse osmosis proposals per year for a total fee increase of \$900 per year.

The fee for cartridge/bag filters was moved to Section 4.2 with no change in fees assessed.

17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.

(4) The board adopts and incorporates by reference the following:

(a) through (e) remain the same.

(f) 40 CFR 141.66(g) and 40 CFR 141.66(h), which sets forth BATs and small system compliance technologies (SSCT) for radionuclides, respectively;

(g) through (w) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed new addition to ARM 17.38.208 is necessary to adopt the small system compliance technologies list for radiological contaminants as allowed under the federal Safe Drinking Water Act. Failure to adopt this list of compliance technologies for small systems would limit small systems to only consider treatment options that may only be cost effective for large systems.

17.38.229 DISINFECTION (1) Full time disinfection with chlorine is mandatory where the source of water is from lakes, reservoirs, or streams, or ground water sources under the direct influence of surface water, or where the water may be exposed to a potential source of contamination including, but not limited to:

(a) losses of positive pressure within the system;

(b) unprotected or poorly protected ground water sources;

or

(c) substandard distribution, pumping or storage facilities.

(2) Full time disinfection of the water supply is mandatory whenever the water may be exposed to a potential source of contamination ~~including, but not limited to:~~ through treatment processes, as determined by the department.

~~(a) losses of positive pressure within the system;~~

~~(b) unprotected or poorly protected ground water sources;~~

~~(c) the introduction of chemicals or gases for treatment;~~

~~or~~

~~(d) substandard distribution, pumping or storage facilities.~~

(3) Full time disinfection of the water in a ground water supply system is mandatory whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in ARM 17.38.207 and 17.38.215. Full time disinfection with chlorine may be required where the history and nature of the contaminant indicate a residual is required to ensure safe water.

(4) Methods of full time disinfection must be reviewed and approved by the department prior to the installation or use of any form of treatment.

(5) The residual disinfectant concentration measured as free chlorine, total chlorine, combined chlorine, chlorine dioxide, or other department approved disinfectant(s), in the distribution system of a ground water supply system required by the department to use continuous disinfection with chlorine must not be less than 0.2mg/l using the DPD method or 0.1mg/l using the amperometric titration method. A heterotrophic bacteria concentration in water in the distribution system less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.229 are necessary to clarify when disinfection with chlorine may be required as opposed to some other form of disinfection. The proposed amendments clarify that chlorine disinfection is required when the Department determines that a residual disinfectant is required within the system.

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 the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., November 25, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. 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.

6. 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 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. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board or Department.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

BY: Richard H. Opper  
RICHARD H. OPPER, Director

Certified to the Secretary of State October 17, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of New Rule I State ) PROPOSED ADOPTION  
Solid Waste Management and )  
Resource Recovery Plan ) (SOLID WASTE)

TO: All Concerned Persons

1. On November 18, 2005, 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 adoption of the above-stated rule.

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 the Board no later than 5:00 p.m., November 7, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

3. The proposed new rule will provide as follows:

NEW RULE I STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN (1) The board adopts and incorporates by reference the Integrated Waste Management Plan (IWMP), 2006 edition, as the state solid waste management and resource recovery plan. Copies of the plan may be obtained by contacting the Air, Energy and Pollution Prevention Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by phone at (406) 841-5200; or at <http://www.deq.mt.gov/Recycle/intewastemanag.asp>.

AUTH: 75-10-106, MCA  
IMP: 75-10-111, 75-10-807, MCA

REASON: The Department of Environmental Quality is required to prepare a proposed final solid waste management plan for submission to the Board of Environmental Review for the Board's consideration pursuant to the Montana Integrated Waste Management Act, Title 75, chapter 10, part 8, MCA, and the Montana Solid Waste Management Act at 75-10-111, MCA. The proposed plan would adopt the targets set by the Legislature in section 2, Ch. 62, Laws of 2005 (which amended 75-10-803, MCA), for rates of recycling and composting as follows: (a) 17% of the solid waste that is generated by households, businesses, and governments and that is either disposed of in landfills or burned in an incinerator in Montana by 2008; (b) 19% by 2011; and (c) 22% by 2015. The plan also proposes policy and provides guidance for the state of Montana as it seeks to improve the landfills in the state to better protect the public health and

as it moves toward a more integrated approach to waste management. More specific rationales for various plan components are contained within the plan itself. Upon adoption by the Board, the Department is to implement the plan.

4. The proposed final plan can be obtained either in hard copy or on compact disc by all interested persons upon request from the Air, Energy and Pollution Prevention Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, or at <http://www.deq.mt.gov/Recycle/intewastemanag.asp>.

5. 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.

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 the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to [ber@mt.gov](mailto:ber@mt.gov), no later than 5:00 p.m., November 25, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. 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 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. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to [ber@mt.gov](mailto:ber@mt.gov); or may be made by completing a request form at any rules hearing held by the Board.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

John F. North BY: Joseph W. Russell  
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.,  
Rule Reviewer Chairman

Certified to the Secretary of State October 17, 2005.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 23.16.103, ) ON PROPOSED AMENDMENT  
23.16.401, and 23.16.502, )  
concerning the effective date )  
for forms relating to )  
investigation of applicants, )  
disclosure from noninstitutional )  
lender, dealer licenses, and )  
gambling operator licenses )

TO: All Concerned Persons

1. On November 16, 2005, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 10, 2005, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or email rask@mt.gov.

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

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS TO BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) and (2) remain the same.

(3) The department may require any noninstitutional lender to complete a document (Form 13) authorizing examination and release of information and (Form 10) a personal history statement on the lender, fingerprints on a form provided by the department, as well as any contract, statement or other document from the lender deemed necessary to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. Forms 13, 10 and FD-258 as the forms read on ~~September 12, 2003,~~ December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-118, MCA

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (3) remain the same.

(4) The application for a dealer license is incorporated in these rules by reference as Forms 4 and FD-258, as those forms read on ~~September 12, 2003~~, December 1, 2005, and are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-308, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on Forms 30 and FD-258, as those forms read on ~~September 12, 2003~~, December 1, 2005, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424:

(a) through (2) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

4. RATIONALE AND JUSTIFICATION The Gambling Control Division has adopted various application forms in rule by reference to the date of the form. Changes in the form require the new form to be referenced in the rule. The changes in the forms clarify language and instructions for the forms. One change in the form will be that combined liquor and gambling applications will request the applicant to indicate if the new business will be a smoking or smoke free facility. This change is a result of changes in law made by the 2005 Legislature. The changes in the forms will affect approximately 3,000 applicants each year and will have no fiscal impact.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or email rask@mt.gov, and must be received no later than November 25, 2005.

6. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central

Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or email rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: <u>/s/ Mike McGrath</u>	<u>/s/ Jon Ellingson</u>
MIKE McGRATH	JON ELLINGSON
Attorney General	Rule Reviewer
Department of Justice	

Certified to the Secretary of State October 17, 2005.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.301.138,	)	ON PROPOSED AMENDMENT,
24.301.146, 24.301.161,	)	ADOPTION AND REPEAL
24.301.172, 24.301.209,	)	
24.301.301, 24.301.401,	)	
24.301.421, 24.301.431,	)	
24.301.441, 24.301.451,	)	
24.301.461, 24.301.481,	)	
24.301.501, 24.301.558,	)	
24.301.711, 24.301.718,	)	
and 24.301.801,	)	
the proposed adoption of	)	
NEW RULES I through IX, and	)	
the proposed repeal of ARM	)	
24.301.471, 24.301.601,	)	
24.301.612, 24.301.613,	)	
24.301.614, 24.301.615,	)	
24.301.621, and 24.301.622,	)	
pertaining to building codes	)	

TO: All Concerned Persons

1. On November 18, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 301 North Roberts Ave., Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Building Codes Bureau of the Department of Labor and Industry (BCB/DOLI) 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., November 14, to advise us of the nature of the accommodation that you need. Please contact Ms. Traci Collett at P.O. Box 200517, Helena, Montana 59620-0517; (406) 841-2062 (telephone); (406) 841-2050 (fax); (406) 841-0532 (TTD); or, tcollett@mt.gov (e-mail).

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

24.301.138 CALCULATION OF FEES (1) through (1)(b) remain the same.

~~(c) For the period between January 1, 2003, and December 31, 2004, both the building permit fee and plan review fee shall be reduced by 35%. Upon written application to the department, on forms as prescribed by the department, a refund of the 35% reduction shall be given to the project owner.~~

(d) remains the same but is renumbered (c).

(2) through (8) remain the same.

AUTH: 50-60-104, 50-60-203, MCA  
IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: It is reasonably necessary to amend this rule to remove obsolete provisions as the time frame referred to in subsection (1)(c) has passed.

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (6) remain the same.

~~(7) Subsection 101.4.7, Energy, is modified by deleting "International Energy Conservation Code" and replacing with "Model Energy Code."~~

(8) through (10) remain the same but are renumbered (7) through (9).

~~(11) Footnote c, Table 415.3.1 is amended with the addition of the following sentence: "A magazine which is regulated by the United States bureau of alcohol, tobacco and firearms, may be considered as in compliance with the International Building Code distance provisions if distances are determined by utilizing either Table 415.3.1 of the International Building Code or applicable table in the fire code, at the discretion of the building official."~~

(12) through (14)(a) remain the same but are renumbered (10) through (12)(a).

(i) Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, ~~1999~~ 2002 edition.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, ~~1999~~ 2002 edition.

(b) Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, ~~2000~~ 2003 edition.

(c) remains the same.

~~(15)~~ (13) Delete subsection 903.2.7 and replace with the following:

"1. An approved automatic sprinkler system installed in accordance with Section 903.3 shall be provided in all Group R buildings meeting any of the following criteria:

"a. 20 or more transient guests or 10 or more transient guestrooms;

"b. 20 or more occupants in other than dwelling units;

"c. 16 or more dwelling units; or

"d. more than 2 stories.

"2. In lieu of the above required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each transient guestroom may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

"3. "Transient guest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

"4. The requirements for automatic sprinkler systems for R-4 occupancies are found in ARM 24.304.146(36)."

(16) and (17) remain the same but are renumbered (14) and (15).

~~(18) Subsection 1301.1.1 is modified by deleting and replacing with the following: "In order to comply with the purpose of this subsection, buildings shall be designed to comply with the requirements of the energy code as adopted in ARM 24.301.160."~~

~~(19) (16)~~ Subsection 1608.2 is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified ~~local government~~ city, county, and town jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke, Civil & Agricultural Engineering Department, Montana State University, ~~August 1989~~ 2004 revised edition. The minimum design roof snow load after allowed reductions shall be 30 psf unless justified by a Montana licensed design professional to the satisfaction of the building official. ~~Note: Other coefficients~~ Coefficients and factors other than those specified in the building code may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(20) through (25) remain the same but are renumbered (17) through (22).

~~(26) Delete chapter 32 in its entirety.~~

(27) remains the same but is renumbered (23).

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

(b) A community residential facility ~~does not include an assisted living facility as defined in 50-5-101, MCA, with eight or fewer persons for which the building is designed or for which it is licensed.~~ as defined in 76-2-411, MCA, includes an assisted living facility licensed under 50-5-227, MCA. Residential building codes are applicable to assisted living facilities with eight or fewer persons and a building permit will not be required by the department. Within the jurisdictional area of a local government that is certified to enforce the International Residential Code for single family dwellings, residential building codes shall be applied to assisted living facilities with eight or fewer persons.

(c) A licensed adult foster care home, as defined in ~~50-60-101(3)~~ 50-5-101, MCA, which by definition is limited to four or fewer residents, is the equivalent to a licensed adult foster family care home referenced in 76-2-411, MCA, and is therefore a community residential facility. Within the jurisdictional area of a local government that is certified to enforce building codes for single family dwellings, a licensed adult foster care home will be classified as a Group R, Division 3 structure for building permit and construction standard purposes. Within the state's jurisdictional area a licensed adult foster care home will be treated as a residential building exempt from the state building code as provided in 50-60-102, MCA.

(29) through (32) remain the same but are renumbered (25) through (28).

~~(33)~~ (29) A private storage structure ~~used only for the owner's own use~~ is a building used only:

(a) for storage of personal effects of the owner; and

(b) is not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business items relating to any venture which intends or contemplates any transfer or exchange of the stored items.

(34) through (40) remain the same but are renumbered (30) through (36).

(a) Category A assisted living facilities with ~~one~~ nine to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standard purposes. Automatic fire sprinkler systems are not required.

(b) Category B assisted living facilities with ~~one~~ nine to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standards purposes. In addition, a category B assisted living facility shall have an automatic fire sprinkler system and provide an accessible sleeping room or space for each category B resident.

(c) remains the same.

(41) and (42) remain the same but are renumbered (37) and (38).

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: There is reasonable necessity to delete section (7) as this section excluded references to the International Energy Conservation Code, which the Department has since adopted in ARM 24.301.161. ARM 24.301.160, which formerly adopted the Model Energy Code, was repealed on September 3, 2004. The proposed change has the effect of incorporating the references to the International Energy Conservation Code into the International Building Code, and makes those provisions enforceable by the Department and certified local government enforcement programs.

There is reasonable necessity to delete section (11) of the rule as the sections covering requirements of explosives in the adopted International Building Code, 2003 edition, are a reference requiring compliance with the adopted fire code. Furthermore, the adopted NFPA 1 Uniform Fire Code references specific standards, such as the NFPA 495, Explosive Materials Code, which provides the distance tables for the specific explosive types. This clear and concise reference to specific standards makes the current rule 24.301.146(11) obsolete and eliminates any need for discretionary contribution from the building official.

It is reasonably necessary to amend subsections (12)(a)(i), (ii) and (b) of the rule in order to update to a more current automatic sprinkler standard, in order to remain current with industry standards and to take advantage of technology improvements.

It is reasonably necessary to amend section (13), definition 4, to clarify where to find the requirements for automatic sprinkler systems in R4, assisted living facilities, in coordination with the updating of fire sprinkler standards.

It is reasonably necessary to delete section (18) of the rule because the reference to the energy code is now found in the International Energy Conservation Code adopted by the Department in ARM 24.301.172. The Department notes that ARM 24.301.160 was repealed by the Department on September 4, 2004.

There is reasonable necessity to amend section (19) [to be renumbered as section (16)] to update the publication used for determining snow loads for construction. The new 2004 edition of the publication incorporates new snow load data and will provide for more accuracy in determining the proper snow load for the location of the project.

There is reasonable necessity to delete section (26) in response to recent requests by certain certified cities, counties, and towns, who have stated that they need the ability to use section 32 of the International Building Code, which addresses building projections and encroachments into the public right of way. The Department notes that it intends to continue its practice of allocating its own limited resources to address building code matters that implicate a significant risk of harm to the public.

Subsection (24)(b) is amended to reflect changes to 76-2-411(5), MCA in the 2003 legislative session which changed the definition of "community residential facility" to include assisted living facilities. Subsection (24)(c) is amended to correct the reference to the MCA that defines a licensed adult foster care home. The rule referenced an incorrect MCA prior to amendment.

It is reasonably necessary to amend new section (29) as 50-60-102, MCA, exempts private storage structures from permit requirements and the Bureau has determined it is therefore necessary to clarify that buildings used by non-profit and/or charitable organizations to store inventory items prior to shipment or distribution are not private storage structures and therefore are not exempt.

It is reasonably necessary to amend (36)(a) and (b) due to legislative changes to 76-2-411, MCA, in the 2003 legislature. The Department sees a need to clarify that residential building codes apply to assisted living facilities with 8 or fewer persons. The R-4 occupancy requirements will only apply to assisted living facilities with 9 to 19 residents.

24.301.161 INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) through (1)(d) remain the same.

(e) Subsection 503.3.3.1, Piping insulation, is amended by adding a fourth exception as follows: "4. Pipe insulation is not required in heated or conditioned areas."

(f) Table 503.3.3.3, Minimum duct insulation, is amended by adding footnote e as follows: "e. In locations where annual heating degree days exceeds 7500, minimum R-value for ducts in all areas need not exceed R-8."

(2) and (3) remain the same.

AUTH: 50-60-203, 50-60-803, MCA  
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: It is reasonably necessary to amend this rule to allow reasonable options to pipe insulating requirements, as recently requested by the Department of Environmental Quality and endorsed by the Building Codes Council. The requirements found in the International Energy Conservation Code (IECC) are at times not feasible to implement or exceed the insulation levels which the Department believes will provide adequate piping and duct insulation factors. The requirements for duct insulation are also being amended due to the lack of availability of the insulation required by the IECC. The IECC specifies that R-12 insulation must be used, but research with vendors in Montana has found that it is not readily available in this state.

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) through (1)(a) remain the same.

(b) Subsection 101.2 is amended to delete exceptions 1 and 2 in ~~their~~ its entirety.

(c) through (6) remain the same.

AUTH: 50-60-203, MCA  
IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-303, MCA

REASON: It is reasonably necessary to amend this rule for the purpose of allowing mechanical systems undergoing repair, alterations or additions to comply with the provisions of either the International Mechanical Code or the International Existing Building Code adopted by the Department on March 12, 2004. This amendment will provide designers more flexibility when designing the mechanical system by allowing either of the two codes to be used. In addition, the proposed amendment will decrease the financial imposition that has been objected to by some contractors and developers, due to the need to purchase more than one series of building code publications. Accordingly, the Department has concluded that there is reasonable necessity to make the proposed amendment at the same time as other building code rules are being amended.

24.301.209 SPECIAL REPORTS (1) remains the same.

(a) where a code enforcement program provides any part of its services in accordance with or through contractual

arrangements, any material changes in such contracts must be reported, including but not limited to:

- (i) breach~~;~~
- (ii) reformation~~;~~
- (iii) rescission~~;~~ or
- (iv) modification ~~must be reported; or~~

(b) when building officials or supervisory personnel are no longer employed in those capacities within the certified code enforcement programs~~;~~ or

(c) when the jurisdictional area changes due to annexation of additional parcels of land.

(2) A city, county, or town must provide a map to the department showing any changes to the local government's jurisdictional area within 45 days of any change.

AUTH: 50-60-302, MCA

IMP: 50-60-106, 50-60-302, MCA

REASON: It is reasonably necessary to amend this rule to ensure that the Department is receiving the necessary information vital to its supervisory interests in a timely manner whenever a certified city, county, or town makes changes to their jurisdictional area. When the jurisdictional boundary is unclear or unknown it becomes increasingly difficult for the department to differentiate between which projects the department inspectors should be inspecting and those over which certified city, county, and town building code programs have authority. There is reasonable necessity to amend the rule to avoid duplicate permits being issued and to avoid the inefficiency of department employees inspecting work that is not within the department's jurisdiction. In addition, there is reasonable necessity to update the IMP citation, while this rule is otherwise being amended, with an additional statute that the rule implements.

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) through (1)(h) remain the same.

(i) Subsection 6.2, Prohibited Urinals, is amended by adding the following: "Exception: Non-water supplied urinals may be installed and shall be maintained in accordance with manufacturer's installation instructions and required maintenance schedule. A properly sized drain, vent and water supply line, permanently capped, shall be installed for future use in the event the owner decides or is ordered to replace the non-water supplied urinal with a water supplied urinal."

(i) remains the same but is renumbered (j).

(k) Subsection 508.14, paragraph one is amended to read as follows: "Gas utilization equipment, or any equipment that generates a glow, spark or flame, in residential garages and in adjacent spaces that open to the garage and are not part of the living space for a dwelling unit shall be installed so that all burners, burner-ignition devices, and heating elements are located not less than 18 in. (450 mm) above the floor unless listed as flammable vapor ignition resistant."

(j) through (ac) remain the same but are renumbered (1) through (ae).

(2) remains the same.

AUTH: ~~50-60-201~~, 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: There is reasonable necessity to add new subsection (1)(i) to include the exception added to subsection 6.2 of the Uniform Plumbing Code, which will allow the installation of waterless urinals, pursuant to a recent request by the Department of Environmental Quality. Waterless urinals are an acceptable alternative to water supplied urinals to provide reasonable opportunity to utilize water conservation technology and meet the minimum requirements for the Leadership in Energy and Environmental Design (LEED) program. The proposed change is being made following consultation with the Building Codes Council, the advisory group provided for by 50-60-115, MCA.

New subsection (k) is reasonably necessary to prevent ignition of flammable vapors and fumes which may collect in low areas of a garage floor due to storage of flammable products or leakage and spills of gas cans, fuel tanks, etc. Gas utilization equipment was already required to be 18" above the floor, by requiring the same of electrical equipment the safety factor will be increased as electrical equipment can also cause ignition of flammable liquid and gases. The proposed change is being made following consultation with the Building Codes Council, the advisory group provided for by 50-60-115, MCA.

In addition, there is reasonable necessity to correct the AUTH and IMP cites for the rule while the rule is otherwise being amended.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department of labor and industry, by and through the building codes bureau, adopts and incorporates by reference ~~herein~~ the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2002~~ 2005 Edition referred to as the National Electrical Code unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

AUTH: ~~50-60-201~~, 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: It is reasonably necessary to amend this rule for the purpose of adopting the most current edition of the National



Electrical Code (NEC). The NEC is updated every three years, to account for and allow the use of new building materials and construction techniques. New editions also incorporate advances in safety standards relative to electrical construction. The Building Codes Bureau strives to stay up-to-date by continually adopting more current codes relating to the programs the Department regulates. In addition, there is reasonable necessity to correct the AUTH and IMP cites for the rule while the rule is otherwise being amended.

24.301.421 ELECTRICAL INSPECTORS (1) remains the same.

(2) ~~The inspector~~ Inspectors shall give information as to the meaning or application of the code, but shall not ~~lay out work or act as a consultant for contractors, electricians, owners, or users~~ perform duties for or assume the responsibilities of a consultant or advisor with respect to contractors, electricians, owners, or users for whom the inspectors perform compliance inspections under the authority granted to them by virtue of their employment as department inspectors.

(3) State electrical inspectors shall not inspect any electrical work in which ~~the inspector has~~ they have any financial or personal interest, or ~~has been installed by him or by any electrical contractor by whom he is employed which~~ they have installed or repaired.

(4) remains the same.

(5) ~~State~~ A state electrical ~~inspectors shall have~~ inspector has the right, during reasonable hours ~~and after~~ while showing proper identification, to enter any building or premise in the discharge of ~~his~~ the inspector's official duties to make any inspection or test of electrical equipment that is necessary to protect the public health, safety, and welfare.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 2-2-101, 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: It is reasonably necessary to amend the above rule for the purpose of clarifying the duties of a state electrical inspector performing inspections for the department and to prevent any perception of impropriety that might arise. In addition, there is reasonable necessity to update the IMP citation, while this rule is otherwise being amended, with additional statutes that the rule implements.

24.301.431 ELECTRICAL PERMIT (1) and (2) remain the same.

(3) The term "owner" listed in ARM 24.301.431 applies to owners doing electrical work on their own residence, farm, or ranch property ~~or residence~~ provided that said property ~~or residence~~ is maintained for their ~~own~~ personal, private use. The property or residence shall ~~be intended for the owner's personal use and~~ not be built on speculation of resale or

intended as rental property. On farm and ranch installations used in conjunction with an agricultural or livestock raising operation, the term "owner" applies to the owner, owner's agent and/or person(s) employed by the owner on a full time basis as a farm or ranch employee(s) at the farm or ranch involved.

(4) remains the same.

(5) The requirements listed in 50-60-605, MCA, requiring an "electrical permit" before the energizing of an electrical installation by a power supplier means the power supplier may energize said installation, before an inspection has been performed by the department, after issuing a power supplier limited service certificate as allowed in [NEW RULE IX], or upon receipt of the power supplier's copy of the electrical permit issued by the department.

(6) remains the same.

(7) The permittee shall be responsible for, ~~and shall insure that,~~ all work performed under the electrical permit, and shall ensure that all work meets the requirements of ~~the state building code, including~~ the National Electrical Code, as amended by the version of ARM 24.301.411 in effect at the time the permit was issued. No permittee shall allow any other person to do, or cause to be done, any work under an electrical permit issued to the permittee, except the permittee or his licensed employees.

(8) Electrical permits on which the fees, as provided in ARM 24.301.461, are under ~~\$250~~ \$350 are valid for a period of ~~one year~~ eighteen months from the date of issuance. ~~Extensions Renewals of up to one year may be granted on a case by case basis by the department as long as the application for renewal is made not more than 30 days following expiration of the original permit. for good cause provided such extension is requested prior to expiration of the permit, and payment is made of the renewal fee.~~

(9) through (11) remain the same.

AUTH: 50-60-203, 50-60-603, 50-60-607, MCA

IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, 50-60-605, MCA

REASON: It is reasonably necessary to amend this rule for the purpose of clarifying the permit application process. These changes have been made in response to the common mistakes and problems found among permit applications received by the department. These clarifications should reduce the number of application mistakes received by the department and therefore make processing of those applications more efficient.

Extending the amount of time the permit is valid in new section (9) will allow homeowners a more reasonable amount of time to finish their project. Homeowners installing their own wiring often do not finish their home in less than 12 months and extending the period to 18 months should help make timely completion more possible. The Department notes that the permit fees are not increasing as a result of the proposed

amendment. The increase from \$250 to \$350 is only the ceiling for determining whether a permit is eligible for the 18 month completion period.

In addition, there is reasonable necessity to amend the IMP cite, while this rule is otherwise being amended, to indicate that 50-60-201, and 50-60-605, MCA, are also being implemented by this rule.

24.301.441 COVER (ROUGH-IN) INSPECTIONS (1) Cover (rough-in) inspections are made by a state electrical inspector wherever possible. Insulation and wallboard shall not be applied ~~before~~ prior to inspection unless 48 hours, excluding Saturdays, Sundays and holidays, have expired after the electrical installation is complete and notice to inspect has been received.

~~(2)~~(3) Whenever violations are found upon inspection, the inspector will notify the installer verbally, ~~or~~ with a written inspection report, or a written compliance order as to the nature of the violations.

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

AUTH: 50-60-203, 50-60-603, 50-60-604, MCA  
IMP: 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: It is reasonably necessary to amend this rule as the state electrical inspectors currently experience a large number of calls from electrical installers requesting inspection before installations are complete and ready for inspection. Specifying that inspections must be made after the electrical installations are complete is intended to reduce the number of unnecessary trips made by inspectors to inspect jobs that are not ready to be inspected.

New section (3) is amended to include the use of an inspection report to notify the installer of violations on a project. This report, which has been used by department inspectors over the past two years experimentally, has been found to be an effective tool in communicating what the problems are and what needs to be done for projects to comply with the electrical code. In addition, there is reasonable necessity to amend the IMP cite, while this rule is otherwise being amended, to indicate that 50-60-103 and 50-60-201, MCA, are also being implemented by this rule.

24.301.451 FINAL INSPECTION ~~(1)~~(2) Upon completing final inspections, ~~the~~ state inspectors will date and sign the inspection ~~permit~~ reports, ~~either approving or disapproving the installation.~~ Inspectors will apply a green "approved" tag or an orange "conditionally approved" tag to installations. Green "approved" tags will be applied when installations have been inspected and approved by the department. Orange "conditionally approved" tags will only be applied to those installations that violate the cover inspection provision as provided in ARM 24.301.441. If the

installation is disapproved, notice thereof, together with reasons for disapproval, will be given by inspectors to installers of record. After removal or repair of the cause of for disapproval, installers must make a request for reinspection by of the inspector, who issued the disapproval. and upon payment of a reinspection fee, as provided in ARM 24.301.461, and approval of the inspector, the inspector will issue an approved inspection permit, and so tag the installation. When the inspector approves the corrected installation as identified on the permit and inspection documents, an appropriate tag will be applied to the installation.

~~(2)~~(1) The permittee of record, whether an electrical contractor or a homeowner, shall notify the area electrical inspector when the electrical installation is ready for final inspection, ~~whether or not an inspection is subsequently performed.~~ and provide access to the installation for inspection or furnish the necessary information as to who can provide access to the installation.

AUTH: 50-60-203, 50-60-603, 50-60-604, MCA  
IMP: 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: It is reasonably necessary to amend this rule as the department's electrical inspectors have found a significant number of projects that no inspection was performed before the wiring was covered up inside the walls. When final inspections are performed on these projects the electrical installations will be tested to ensure everything is working properly and the inspector will apply an orange "conditionally approved" tag. This tag indicates the project did not have a "rough-in" inspection performed before being covered but appears to be a safe installation based upon the final inspection. In addition, there is reasonable necessity to amend the IMP cite, while the rule is otherwise being amended, to indicate that 50-60-103 and 50-60-201, MCA, are also being implemented by this rule.

24.301.461 ELECTRICAL INSPECTIONS FEES (1) The following is the schedule of electrical inspection fees as charged by the department. As provided in ARM 24.301.203 local governments certified to enforce the electrical code may establish their own electrical permit fees.

<u>Type of Installation</u>	<u>Permit Fee</u>
<del>(a) temporary construction service — no separate charge</del>	
<del>(b)</del> (a) single-family dwellings or cabins (includes <u>attached or detached</u> garage <u>if</u> wired at the same time as the house or cabin)	
(i) 100 to 300 amp service	\$150*
(ii) 301 or more amp service	300*

\*Fee includes maximum of three inspections.

Additional inspections charged at requested electrical inspection rates.

<del>(e)</del> (b) private property accessory buildings (includes new service or upgrade of existing service for supply of power to garages, barns, sheds, etc.)	
(i) up to 200 amp panel	60
(ii) 201 to 300 amp panel	120
(iii) 301 or more amp panel	150
(d) and (e) remain the same but are renumbered (c) and (d).	
<del>(f)</del> (e) interior rewire only or new addition to a home (includes change of service if installed at the same time)	80
(g) remains the same but is renumbered (f).	
<del>(h)</del> (g) mobile home installations (in a court) modular homes, mobile homes, and recreational vehicles	25*
<del>(i)</del> mobile home installation (outside a court)	60*
(i) wiring to a mobile or modular home with wiring of a basement and/or garage at the same time	100
(ii) wiring to a mobile, modular, or RV only on privately owned property	60*
(iii) wiring to a mobile or RV on rental space at a licensed court with previously existing electrical service	25*
*Fee includes only one inspection; reinspections require new permit.	
<del>(j)</del> modular homes	
<del>(i)</del> no basement	60
<del>(ii)</del> with a basement and/or garage	100
(k) remains the same but is renumbered (h).	
(i) and (ii) remain the same.	
<del>(l)</del> (i) new service only and wiring for utilization equipment, such as (livestock well, irrigation well, etc.)	40
(m) through (o) remain the same but are renumbered (j) through (l).	
<del>(p)</del> (m) all other installations (commercial, industrial, institutional, or for public use). <u>Fees are based on total cost to the owner of all labor and materials to complete the electrical project. Electrical materials furnished by the owner must be included in the total electrical project cost:</u>	

Cost of Electrical Installation

Fee

\$ 0 - \$1,000	\$45 for 1st \$500 plus 6.0% of balance of construction cost
\$ 1,001 - \$10,000	\$75 for 1st \$1,000 plus 2.0% of balance of construction cost
\$10,001 - \$50,000	\$255 for 1st \$10,000 plus 0.5% of balance of construction cost

\$50,001 or more                      \$455 for 1st \$50,000 plus 0.3%  
of balance of construction cost

~~(g)(n)~~ temporary construction service (~~for~~  
~~commercial, industrial, institutional~~  
~~or public use for non-residential~~ jobs only)                      25  
NOTE: this additional \$25 fee is required  
in addition to the above inspection  
fees if a temporary service will be used,  
and is to be paid at the same time as  
the regular permit fee before construction  
begins.

~~(r)(o)~~ permit issuance fee\*                      20  
\*This fee does not apply to permits issued  
pursuant to (1) ~~(n)(k)~~ or ~~(3)(2)~~.

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

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

~~(4) The payment of the \$20 permit issuance fee is  
temporarily suspended from October 1, 2001, through December  
31, 2002. Upon written application to the department, on  
forms which may be prescribed by the department, a refund of  
the \$20 permit issuance fee shall be given to the person who  
paid the permit issuance fee, and the fee was received by the  
department during this period.~~

AUTH: 50-60-104, 50-60-203, 50-60-603, 50-60-604, MCA  
IMP: 50-60-104, 50-60-203, 50-60-603, 50-60-604, ~~50-60-607,~~  
MCA

REASON: The changes to this rule are reasonably necessary to  
clarify the fees charged for electrical permits due to common  
errors made on the applications. The Department receives  
several permit applications each week that have been submitted  
with the incorrect fee amount. The proposed changes are  
intended to assist applicants in selecting the proper fees for  
their projects. No changes have been made to the fees  
charged; they have been reworded and/or rearranged for clarity  
only. Accordingly, the Department believes that there is no  
fiscal impact resulting from the proposed changes.

There is reasonable necessity to delete section (4) as  
the time frame referred to within the section has passed.  
Finally, there is reasonable necessity to delete a  
nonapplicable IMP citation while the rule is otherwise being  
amended.

24.301.481 CARNIVALS, FAIRS, OUTDOOR CONCERTS AND  
SIMILAR AMUSEMENT ESTABLISHMENTS AND OTHER PUBLIC ASSEMBLIES  
OF A TEMPORARY NATURE (1) through (3) remain the same.

~~(4) The major areas of concern include but are not  
limited to:~~

~~(a) All exterior boxes, cabinets, panels, controls,  
outlets and switches shall be weatherproof.~~

~~(b) All cords, wire, etc. shall be approved by a recognized testing agency and in good repair.~~

~~(c) All grounding shall comply with Articles 250, 445 and 525 of the National Electrical Code.~~

~~(d) All cords, caps and plugs shall be of the grounding type.~~

~~(e) All panels, boxes and cabinets shall have all unused openings plugged.~~

~~(f) All panels, boxes, cabinets, outlets and switches shall have covers, dead fronts or doors.~~

~~(g) All electrical equipment shall have physical protection where necessary.~~

~~(h) All splices in electrical wires must occur in approved boxes, apparatus or equipment.~~

~~(i) All open conductors, open front panels, boxes, switches, etc. must be adequately protected from pedestrian and vehicular traffic, or made inaccessible to the public.~~

AUTH: 50-60-203, 50-60-603, ~~50-60-604~~, MCA

IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: It is reasonably necessary to amend this rule as the stricken material is published in the 2005 edition of the National Electrical Code (NEC) as adopted by the Department in ARM 24.301.401. This topic has always been addressed in the NEC book but is clearer now than in past editions. The inclusion of this subject in the 2005 NEC makes section (4) of this rule unnecessary. In addition, there is reasonable necessity to amend the AUTH and IMP cites, while the rule is otherwise being amended, to more accurately reflect the statutes authorizing the rule and being implemented by the rule.

24.301.501 APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) through (2)(d) remain the same.

(e) the latest adopted edition of the ~~Model Energy Code~~ International Energy Conservation Code.

(3) remains the same.

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-201, 50-60-203, 50-60-401, MCA

REASON: It is reasonably necessary to amend this rule to reference the current energy code, which was adopted by the Department in March of 2004. The Model Energy Code was repealed by the Department on September 3, 2004. In addition, there is reasonable necessity to amend the IMP cite, while the rule is otherwise being amended, to indicate that 50-60-201, MCA, is also being implemented by this rule.

24.301.558 APPLICATION FOR INSIGNIA PURSUANT TO PLAN REVIEW (1) and (2) remain the same.

(3) Manufacturers that possess insignias issued by the department shall provide monthly insignia reports. Monthly

insignia report forms shall be completed and submitted to the ~~bureau~~ department no later than the tenth of ~~the following~~ each month whether or not insignias were issued during the month being reported following issuance of the insignia by the department, until all such insignia have been lawfully affixed to the manufactured products for which they were issued.

(4) through (6) remain the same.

AUTH: 50-60-203, 50-60-401, 50-60-402, MCA

IMP: 50-60-201, 50-60-203, 50-60-401, 50-60-402, MCA

REASON: It is reasonably necessary to amend this rule to eliminate reporting requirements for manufacturers that no longer possess unused Department issued insignias in order to eliminate unnecessary workload (on the part of both the manufacturers and the Department). In addition, there is reasonable necessity to amend the IMP cite, while the rule is otherwise being amended, to indicate that 50-60-201, MCA, is also being implemented by this rule.

24.301.711 DEFINITIONS For the purposes of this subchapter, the following definitions ~~shall~~ apply:

(1) through (10) remain the same.

(11) "Internal inspection" means as complete an examination as can reasonably be made of the internal ~~and external~~ surfaces of a boiler while it is shut down, when such manhole plates, handhole plates or other inspection opening closures are opened or removed for cleaning or repair as required by the department.

(12) through (29) remain the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-103, 50-60-201, 50-60-203, ~~50-74-101~~ 50-74-209, 50-74-215, MCA

REASON: It is reasonably necessary to amend this rule to clarify that an internal inspection is limited to the areas of the boiler accessible only when the boiler is shut down. In addition, there is reasonable necessity to amend the lead-in language of the rule while the rule is otherwise being amended, to make it consistent with the style and usage recommended by the Secretary of State's office and as used in other rules of the Department. Finally, there is reasonable necessity to amend the IMP citations, while the rule is otherwise being amended, to update and correct the list of statutes being implemented.

24.301.718 BOILER INSPECTIONS (1) remains the same.

(2) Steam heating boilers and power boilers must be inspected internally:

(a) on an annual basis; or

(b) during a scheduled maintenance shutdown, with prior approval from the department.



AUTH: 50-60-203 and 50-74-101, MCA  
IMP: 50-60-203, 50-74-206, ~~and~~ 50-74-209, 50-74-215, 50-74-217, MCA

REASON: There is reasonable necessity to amend this rule to specify the interval of internal boiler inspections to ensure that all steam heating and power boilers are inspected on an annual basis. The Department has recently become aware that some of these boilers have not been shut down for an internal inspection for several years and the Department believes this situation exists because the rule was not sufficiently specific. The internal inspection is extremely important to ensure the safe operation of these boilers. In proposing the amendment, the Department has provided for exceptions to the "annual" requirement to be made on a case-by-case basis, to accommodate where feasible, commercial and industrial operations. In addition, there is reasonable necessity to amend the IMP citations while the rule is otherwise being amended, to more accurately cite the statutes implemented by the rule.

24.301.801 ADOPTION BY REFERENCE OF ARM 37.111.1105 1115--REVIEW OF PLANS (1) Pursuant to 50-53-103, MCA, the building codes bureau of the department of labor and industry hereby adopts by reference ARM 37.111.11051115, regarding swimming pool licensure barrier and area requirements, deck area requirements, and handhold requirements as they relate to swimming pool construction. ~~Said rule, ARM 37.111.1115 is to be utilized~~ enforced by the department of public health and human services, ~~and~~ will not be enforced by the building codes bureau.

(2) In accordance with ARM 37.111.1105, the building codes bureau of the department of labor and industry retains all other building regulation authority provided to it by 50-60-101, MCA, et seq. and by ARM 24.301.101, et seq.

~~(2)~~(3) Copies of ARM 37.111.11051115 can be obtained by contacting the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

AUTH: ~~50-53-103~~, 50-60-203, MCA  
IMP: 50-53-103, 50-60-104, MCA

REASON: It is reasonably necessary to amend this rule for the purpose of correctly referencing the rule that addresses certain swimming pool construction requirements and to clarify that the department retains its authority relating to all other code requirements pertaining to swimming pool installations. In addition, there is reasonable necessity to amend the AUTH and IMP citations, while the rule is otherwise being amended, in order to correct and update those citations.

4. The new rules proposed to be adopted provide as follows:

NEW RULE I INCORPORATION BY REFERENCE OF ELEVATOR CODE

(1) The department of labor and industry, referred to as department, adopts and incorporates by reference:

(a) Safety Code for Elevators and Escalators, ASME A17.1 2000;

(b) Safety Code for Existing Elevators and Escalators, ASME A17.3 2002;

(c) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-1999 and A18.1a-2001 Addenda; and

(d) ASME A17.1 2000, Appendix N, Table N1, Recommended Inspection and Test Intervals in Months, for required testing intervals. This table is to be used for testing interval requirements only. Inspection intervals are to be performed as specified in 50-60-711, MCA.

(i) Existing elevators with a capacity of 1400 pounds or less are to be tested according to the requirements of limited-use/limited-application elevators as specified in (1)(d).

(2) The purpose of the elevator code is to provide safety standards for the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of permanently installed hoisting and lowering mechanisms.

(a) Devices covered by the elevator code include but are not limited to:

- (i) elevators;
- (ii) platform lifts;
- (iii) stairway chair lifts;
- (iv) dumbwaiters;
- (v) escalators;
- (vi) automated people movers;
- (vii) inclined lifts; and
- (viii) moving walks and their hoistway.

(b) The elevator code does not apply to self-powered, mobile equipment including, but not limited to:

- (i) material hoists and man lifts;
- (ii) mobile scaffolds, towers, and platforms;
- (iii) powered platforms and equipment for exterior and interior maintenance;
- (iv) conveyors and related equipment;
- (v) cranes, derricks, hoist, hooks, jacks and slings;
- (vi) industrial trucks;
- (vii) portable equipment, except for portable escalators;
- (viii) tiering or piling machines used to move materials to and from storage that are located and operated entirely within one story;
- (ix) equipment for feeding or positioning materials at machine tools, printing presses, and similar locations;
- (x) furnace hoists; and
- (xi) railroad car lifts or dumps which are typically used on a temporary basis on construction sites.

(3) Inspection, code compliance and enforcement of hoistway (shaft) standards is the responsibility of the appropriate authority having jurisdiction for inspection and enforcement of the building code.

(4) The codes, standard and appendix referenced in (1) are collectively referred to as the elevator code. A copy of the elevator code may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA

IMP: 50-60-201, 50-60-704, 50-60-705, 50-60-715, MCA

REASON: It is reasonably necessary to adopt NEW RULE I for the purpose of adopting an elevator code to regulate elevator safety in Montana in order to implement the provisions of Chapter 303, Laws of 2005 (Senate Bill 412). This rule establishes inspection intervals, testing requirements and the types of elevators to which this code applies.

NEW RULE II PLAN REVIEW AND PERMIT FEE (1) An elevator contractor may not erect, construct, install or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of Title 50, chapter 60, MCA, unless the elevator contractor has first obtained a permit from the department and paid the requisite permit fee.

(2) The plan review and permit fee for new installations and alterations of an elevator, escalator, moving walk and other conveyance covered within the scope of the elevator code and subject to the inspection requirements of Title 50, chapter 60, MCA, is:

- (a) valuation up to and including \$40,000 \$55
- (b) valuation over \$40,000 55,  
plus \$1  
for each \$1,000  
or fraction  
thereof over  
\$40,000

(3) Plans, applications and fees for new units must be submitted to the department at least 30 days prior to commencement of construction and installation of the unit. Plan approval and issuance of permits must be obtained from the department prior to the commencement of construction and installation.

(4) No elevator permit will be issued until a building permit is issued, unless it is determined by the department that a building permit is not required.

(5) Building code related drawings as required by 50-60-709, MCA, must also be submitted to certified cities, counties, and towns if an elevator is being installed within their building codes jurisdictions.

(6) Private residential elevators are only allowed in buildings that are not accessible to the general public or to other occupants of the building.

(7) Permits will expire six months after issuance.

(8) Permits may be revoked for cause including but not limited to:

(a) unprofessional conduct, as defined in 37-1-410, MCA, which conduct materially relates to work done under a lawfully issued permit;

(b) not following the plans approved by the department;  
or

(c) failure to obtain or maintain insurance on an installation as required in 50-60-716, MCA.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-201, 50-60-709, 50-60-711, MCA

REASON: It is reasonably necessary to adopt NEW RULE II to specify the requirements for installing new elevators or altering existing elevators in Montana, to set forth the fees charged for a permit to do this work, in order to implement the provisions of Chapter 303, Laws of 2005 (Senate Bill 412). The fees are the same as the Bureau has previously charged for elevator installations as found in ARM 24.301.601 that is proposed for repeal in this notice (valuation up to and including \$40,000 - \$55; valuation over \$40,000 - \$55 plus \$1 for each \$1,000 or fraction thereof over \$40,000). In fiscal year 2005, 95 elevator applications were received by the Department for permits to construct, install, or alter elevators. The Department estimates about the same number will be received in fiscal year 2006 at an average cost of \$58.00 per application, for total annual revenue of \$5,510.00.

NEW RULE III CERTIFICATE OF INSPECTION - FEES (1) The department shall inspect hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:

(a) elevators, platform lifts and stairway chair lifts;

(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:

(i) escalators; and

(ii) moving walks;

(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to carrying only materials by its limited size or limited access to the car, including but not limited to:

(i) dumbwaiters;

(ii) material lifts and dumbwaiters with automatic transfer devices; and

(d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.

(2) Each installation shall be inspected at least once every 12 months, except as provided in [NEW RULE V], and

freight elevator inspections must be conducted at least every two years.

(3) If the inspection by the department reveals a unit complies with the requirements of the code and the inspection fee has been paid, a certificate of inspection will be issued.

(4) If the inspection by the department reveals a unit has minor deficiencies that do not cause imminent hazard to life and safety but that should be corrected before the next inspection, a conditional certificate may be issued after the certificate of inspection fee has been paid. Only one conditional certificate will be issued for each specified deficiency. Upon the next scheduled inspection, if the same deficiencies exist, the department will require those deficiencies be corrected before a certificate of inspection will be issued.

(5) New or upgraded elevators cannot be placed in operation prior to an inspection by the department and the issuance of a temporary certificate of inspection. Installers shall call the department for an inspection a minimum of 10 working days prior to the scheduled or anticipated date for placing the elevator in use. A temporary certificate may be withdrawn at any time, for cause, by the department.

(6) A duplicate certificate of inspection will be issued for a \$10 fee.

(7) The annual certificate of inspection fee is:

(a) when inspections are performed by the department:

(i) for each elevator, escalator, and moving walk (also applies to follow-up inspections performed after a licensed inspector's inspection) \$100

(ii) for each lift (also applies to follow-up inspections done after certified inspector's inspection) 70

(b) when inspections are made by certified inspectors and no follow-up is required by the department:

(i) for each elevator, escalator and moving walk 10

(8) When an inspection reveals an unsafe condition, the inspector shall immediately file with the owner and the department a full and true report of such inspection and such unsafe condition.

(a) If the department finds that the unsafe condition endangers human life, it shall cause the elevator, escalator, moving walk, or other conveyance to be posted with a notice, in a conspicuous place, stating that the conveyance is unsafe. The owner shall see to it that such notice is legibly maintained where placed by the department.

(b) The department shall also issue an order in writing to the owner requiring the repairs or alterations to be made to the conveyance, which is necessary to render it safe. The department may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed.

(c) Only the department may remove a posted notice of unsafe conditions when the department is satisfied that the unsafe conditions have been corrected.

(d) The certificate fee will be charged even though the unit is not certified for operation, and at such time as the deficiencies are corrected, a reinspection fee will be charged.

(9) It is unlawful to operate any elevator, escalator, moving walk, or other conveyance without a current certificate of inspection or authorization from the department. These certificates shall be issued upon payment of prescribed fees and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspection was made within the previous six months. Certificates shall not be issued when the conveyance is posted as unsafe. Obtaining current certificates of inspection is the responsibility of the owners of the conveyance.

(10) Elevator certificates of inspection, or signs indicating that a copy of the certificate is available upon request and where one can be obtained, must be posted in each elevator.

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA  
IMP: 50-60-103, 50-60-211, 50-60-706, 50-60-711, 50-60-715, MCA

REASON: It is reasonably necessary to adopt NEW RULE III to describe the Department's responsibility to inspect elevators and to detail how the Department will regulate elevators that are out of compliance with the code adopted in NEW RULE I, in order to implement the provisions of Chapter 303, Laws of 2005 (Senate Bill 412).

The fees in this rule are the same as the Bureau has previously charged for inspection of elevators. The only change concerns freight elevators, which are now required to be inspected every two years. Prior to passage of SB412 in 2005, freight elevators were inspected every three years.

There are 371 elevators in Montana that are inspected every year at \$70 per inspection (\$25,970 annually), 1669 elevators that are inspected every year at \$100 per inspection (\$166,900 annually) and 137 freight elevators that are charged \$70 per inspection (\$9,590 every two years). The Department anticipates additional freight elevators will be added to the program as they are found, and estimates there could be as many as 400 additional freight elevators in Montana; the additional 263 freight elevators would be inspected every two years at \$70 per inspection (\$18,410 every two years). There are no data to show the number of duplicate certificates issued. The Department estimates that it receives approximately 30 requests per year for duplicate certificates at \$10 each (\$300 per year). The Department estimates that approximately 263 persons will be affected per biennium, for a total of approximately \$18,410 in additional revenue for the Department. Currently there are no licensed private elevator

inspectors in Montana, and the Department does not expect that situation to change in the near future. However, while the department estimates that no persons will be charged the \$10 fee, it lists the fee to put the public and industry on notice of the estimated administrative cost of processing private sector condition reports, as described in NEW RULE VIII (2)(e).

The Department estimates the total biennial revenue of \$404,340 under this rule, for an average for \$202,170 per year. The Department estimates that approximately 2000 persons will be affected by this rule, due to the fact that some persons own more than one elevator.

This rule also addresses how the Department will regulate elevators that do not comply with this code or that have serious safety violations. It is necessary to address these situations as a means of preventing injuries or deaths due to operation of unsafe elevators.

Section (10) of this rule requires elevator owners to post certificates of inspection in a conspicuous place inside the elevator to inform passengers that the elevators they use have been inspected by the Department and are safe.

NEW RULE IV REINSPECTION - FEE (1) Reinspection may be required when deficiencies discovered during regular inspections are of such a nature that, in the department's opinion, the deficiencies must be corrected before the next annual inspection. The department alone shall make this determination.

(2) When reinspections are required by the department, the owner shall be charged a fee equal to one-half the original annual inspection fee provided for in [NEW RULE III].

(3) When reinspections are requested by the elevator owner, the elevator owner shall be charged a fee equal to the regular inspection fee provided for in [NEW RULE III] for the type of equipment being inspected.

(4) The plan review and permit fee also covers the cost of the initial inspection performed when installation is complete. If an installer requests an inspection on a new or modified installation and the inspector determines the installation is not complete and ready for inspection at the time of the initial inspection, the department may assess the installer an additional inspection fee equal to the annual inspection fee for that type of conveyance. In addition to the inspection fee, the department may charge \$45 per hour for travel time to and from the inspection site. Fees must be submitted to the department before subsequent inspections will be performed.

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA  
IMP: 50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to adopt NEW RULE IV to address reinspection under varying circumstances and the fees

to be charged for such inspections, in order to implement the provisions of Chapter 303, Laws of 2005 (Senate Bill 412). Sections (1) and (2) address inspections required by the department when a violation is found that is of a serious nature and must be reinspected to ensure it was corrected to the Department's satisfaction. In this case the elevator owner is charged one half of the regular inspection fee since the Department is requiring the inspection for safety's sake and the inspector is most likely in that inspection area and doesn't have to travel to do the reinspection.

Section (3) addresses a reinspection requested by the elevator owner. The full inspection fee of \$100.00 is charged since the inspection is being performed at the request of the elevator owner.

Section (4) addresses inspections performed on alterations and new installations. When an installation or alteration is complete the installer is to call for an inspection before putting the elevator into service. The Department has run into situations where installers have called for an initial inspection only to find that the unit is not complete or ready for inspection. Because these elevators are often times outside of the regularly scheduled inspection area the inspector may drive several hours only to find the inspection cannot be performed. The Department has developed this rule and inspection fee to deter installers from calling for inspection prematurely.

The Department estimates that it will perform approximately 15 reinspections a year, and that the number of persons directly affected by the rule will be slightly smaller than the number of reinspections. The Department estimates that approximately \$1,000 in revenue will be generated a year from reinspections. The Department does not have a basis for estimating the number of persons affected by the \$45 per hour travel time charge, nor the annual revenue that will be generated by those charges. The Department hopes that the number persons affected by travel time charges will be minimal.

NEW RULE V INSPECTION INTERVAL EXTENSION (1) With the approval of the owner, the department may extend the inspection interval to 18 months for elevators that have no outstanding violations or operational problems in order to provide for more efficient scheduling of inspections. The department will issue a provisional certificate of inspection to the owner to cover the period of extension.

(2) Inspection intervals will not be extended so that an elevator is not inspected during any given year.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-103, 50-60-201, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to adopt NEW RULE V in order to allow state elevator inspectors to schedule their inspection areas in such a way that all elevators within a



certain area will be due for inspection at the same time. Currently each inspection area has a number of elevators that are due for inspection several months after the due date of the majority of elevators in that area. By allowing an extension on the inspection of those elevators with a different inspection date the inspector will be able to move their inspection date to fall in to the same time period as the other elevators in the area.

NEW RULE VI ACCIDENTS (1) When a permanently installed conveyance is involved in an accident causing injury or death, such accident must be reported to the department within 72 hours. The department may then cause the site of the accident to be inspected, the cause of the accident to be determined, and if necessary, require corrective action.

AUTH: 50-60-203, 50-60-705, MCA  
IMP: 50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to adopt NEW RULE VI to ensure that the Department is aware of elevator and lift accidents that occur within the State's jurisdiction. In the interest of public safety, the Department should investigate the elevator or lift as soon as possible to help determine the cause of the accident and the condition of the device. By promptly investigating accidents, the Department believes that it is more likely that potential future accidents of a similar nature can and will be prevented.

NEW RULE VII MODIFICATIONS, APPEALS AND VARIANCES

(1) Any violation of or noncompliance with any provision of Title 50, chapter 60, MCA, these rules, or orders of the department are cause for the suspension or revocation of a certificate of inspection issued pursuant to statutes or rules, after a hearing.

(2) Any person aggrieved by an order or decision of the department or who desires to request a variance to a department order or decision may request and shall be granted a hearing on the matter as provided by 50-60-206, MCA. Such person shall file with the department a written petition requesting such hearing, and set forth a brief statement of the grounds for the request.

AUTH: 50-60-203, 50-60-705, MCA  
IMP: 50-60-201, 50-60-206, MCA

REASON: It is reasonably necessary to adopt NEW RULE VII to explain the consequences of not complying with the requirements of 50-60-704 through 50-60-720, MCA, and thus implementing Chapter 303, Laws of 2005. The most common noncompliance problem experienced by the Department is uncorrected violations. The Department currently lists 183 elevators with 554 violations. Elevator owners have 90 days

to correct the violations noted during an inspection before further action is taken to encourage them to comply. NEW RULE VII also advises elevator owners of their right to a hearing should they disagree with a decision made by the Department.

NEW RULE VIII INSPECTIONS BY LICENSED PRIVATE INSPECTORS

(1) The department shall accept inspections by licensed private elevator inspectors of permanently installed hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:

- (a) elevators, platform lifts and stairway chair lifts;
- (b) power driven stairways and walkways for carrying persons between landings, including but not limited to:
  - (i) escalators; and
  - (ii) moving walks;
- (c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including but not limited to:
  - (i) dumbwaiters;
  - (ii) material lifts and dumbwaiters with automatic transfer devices; and
- (d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.

(2) Each installation must be inspected at least once every 12 months, except that freight elevator inspections must be conducted at least every two years.

(a) A detailed report of each unit inspected must be filed with the department within 14 working days after the inspection is completed on a form approved by the department. Such report must list all failures of the installation specific in reference to the code requirements of Chapter 30 of the International Building Code, and the state elevator code.

(b) A certificate of inspection must be issued by the department upon receipt of the report of the licensed elevator inspector that the unit is in an acceptable state of repair for receiving certification, and after the inspection fee has been paid to the department.

(c) Licensed private elevator inspectors shall attempt to secure compliance with the department's rules. If unsuccessful, inspectors shall so report to the department. If it then becomes necessary for the department to make an inspection, the fee for inspecting each permanently installed hoisting and lowering mechanism will be charged to the owner as per other inspections made by the department, as provided in [NEW RULES III and IV].

(d) The department may inspect any installation, which has been or will also be inspected by a licensed private elevator inspector. Whenever the department inspection confirms that a licensed private elevator inspector's inspection report is substantially or materially incomplete,

invalid, or otherwise unacceptable, the department may assess that licensed private elevator inspector the fee for inspection by the department, as provided in [NEW RULES III and IV].

(e) The owners of units inspected by licensed private elevator inspectors shall be charged \$10 by the department. This charge covers receiving and processing the condition report for each individual piece of equipment in a building and for issuing a certificate of inspection for that equipment if the licensed private elevator inspector doing the inspection certifies to the department that there are not any deficient conditions or that all deficient conditions noted in the condition report have been corrected and that a follow-up inspection by the department is not necessary.

(3) Whenever the department has reason to believe the conduct of a licensed private elevator inspector has been unprofessional, as provided in 37-1-410, MCA, the department will report that information to the bureau of professional and occupational licensing for further investigation.

AUTH: 50-60-705, 50-60-711, MCA

IMP: 50-60-201, 50-60-211, 50-60-711, 50-60-715, MCA

REASON: It is reasonably necessary to adopt NEW RULE VIII in order to comply with the requirements of 50-60-711(2), MCA, which allows elevator inspections to be made by private licensed inspectors, and thus the rule implements the provisions of Chapter 303, Laws of 2005. Accordingly, it is also necessary to establish the fees charged by the department to issue the certificate of inspection on elevators inspected by private licensed elevator inspectors, and to describe how the department will handle unacceptable conduct of inspection by these inspectors. Currently no elevators are inspected by inspectors other than those employed by the department, and the department has no reason to believe that situation will change in the foreseeable future.

NEW RULE IX AUTHORITY FOR TEMPORARY CONNECTIONS

(1) Temporary power supply connections may be performed under the authority of power supplier limited service certificates.

(2) Power supplier limited service certificates ("service certificates") are four part forms created and provided by the department to consumers and power suppliers in Montana. These service certificates may be used to allow power suppliers to energize electrical services in Montana prior to obtaining an electrical permit and prior to inspection and approval of electrical service installations by department inspectors.

(3) Service certificates may be used only for the following purposes:

(a) to restore power to a structure for repairs after a fire, accidental damage, or natural disaster;

(b) to restore power to a mobile home to prevent damage due to freezing conditions or to prevent loss of frozen or refrigerated food items after relocation of a mobile home;

(c) to restore or establish power to a structure where power must be available to maintain conditions or equipment directly related to home health care; or

(d) to restore or establish power in situations where failure to do so would imminently and directly jeopardize real or personal property, or human life or safety.

(4) Power suppliers must be in receipt of a completed service certificate or ensure one is completed by a prospective consumer prior to or immediately coincidental with making temporary electrical connections to supply power.

(5) Power suppliers must present a copy of completed service certificates to the area electrical inspector or his supervisor within five days, excluding weekends and holidays, of the issue date of the date that temporary power was supplied, whichever is later.

(6) As provided by 50-60-605, MCA, no temporary electrical connection made in accordance with this rule may remain in effect longer than 14 days. If the 14 day time limit lapses without the consumer obtaining an appropriate permit from the department and presenting it to the power supplier, the power supplied under the authority of the service certificate must be disconnected by the power supplier no later than 72 hours following expiration of the 14 day period.

(7) Subject to the administrative (contested case) procedures set forth in the Montana Administrative Procedure Act, a power supplier that neglects, refuses, or fails to comply with the provisions of this rule and 50-60-605, MCA, shall forfeit the ability to utilize service certificates.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-603, 50-60-604, 50-60-605, MCA

REASON: There is reasonable necessity to adopt this rule, in conjunction with the repeal of ARM 24.301.471, to clarify the proper use of a power supplier limited service certificate. Power supplier limited service certificates have not always been utilized properly, so the proposed new rule is intended to better explain their proper use, as well as to clarify the power suppliers' responsibilities when issuing them. In the past some power suppliers have issued power supplier limited service certificates to a customer and have not turned off the installation or made sure the customer applied for a permit within the 14-day period referred to in section (6) of this rule. This misuse of the certificate increases the probability of electrical installations being energized without proper permits and safety inspections.

5. The rules proposed for repeal are as follows:

24.301.471 TEMPORARY ELECTRICAL CONNECTIONS found at ARM page 24-31409.

AUTH: 50-60-605, MCA  
IMP: 50-60-605, MCA

REASON: There is reasonable necessity to repeal ARM 24.301.471 to coordinate with the adoption of NEW RULE IX.

24.301.601 INCORPORATION BY REFERENCE OF ELEVATOR CODE found at ARM page 24-31973.

AUTH: 50-60-203, 50-60-701, 50-60-702, MCA  
IMP: 50-60-203, 50-60-701, 50-60-702, MCA

24.301.612 REINSPECTION found at ARM page 24-31999.

AUTH: 50-60-203, 50-60-702, MCA  
IMP: 50-60-203, 50-60-701, 50-6-702, MCA

24.301.613 CERTIFICATES OF INSPECTION found at ARM page 24-31999.

AUTH: 50-60-203, 50-60-702, MCA  
IMP: 50-60-203, 50-60-701, 50-60-702, MCA

24.301.614 ACCIDENTS found at ARM page 24-32001.

AUTH: 50-60-203, 50-60-702, MCA  
IMP: 50-60-203, 50-60-701, 50-60-702, MCA

24.301.615 VIOLATIONS, APPEALS AND VARIANCES found at ARM page 24-32001.

AUTH: 50-60-203, 50-60-702, MCA  
IMP: 50-60-203, 50-60-206, 50-60-701, 50-60-702, MCA

24.301.621 CERTIFICATION OF MAINTENANCE AND INSURANCE COMPANIES AS INSPECTORS found at ARM page 24-32017.

AUTH: 50-60-203, 50-60-702, MCA  
IMP: 50-60-203, 50-60-702, MCA

24.301.622 INSPECTIONS BY CERTIFIED MAINTENANCE OR INSURANCE COMPANIES found at ARM page 24-32018.

AUTH: 50-60-203, 50-60-701, 50-60-702, MCA  
IMP: 50-60-203, 50-60-701, 50-60-702, MCA

REASON: It is reasonably necessary to repeal the above rules in order to implement the provisions of Chapter 303, Laws of 2005 (Senate Bill 412). Senate Bill 412 repealed all existing statutes related to the elevator program. By repealing all rules associated with the elevator program and proposing new

rules, it will be easier to distinguish which statutes were in place prior to and after the changes made by Senate Bill 412 when researching elevator issues.

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 Tim Lloyd, chief of the Building Codes Bureau, at P.O. Box 200517, Helena, MT 59620-0571, by facsimile to (406) 841-2050, or by e-mail to tcollett@mt.gov, and must be received no later than 5:00 p.m., November 28, 2005.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.buildingcodes.mt.gov>. 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address 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 mailing list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, by e-mail to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or made by completing a request form at any rules hearing held by the Department of Labor and Industry.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State October 17, 2005

BEFORE THE COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of a new rule (ARM 8.94.3811) )  
for the submission and review )  
of applications to the )  
Treasure State Endowment )  
Program (TSEP) )

To: All Concerned Persons

1. On August 25, 2005, the Department of Commerce published MAR Notice No. 8-94-48 regarding the public hearing on the proposed adoption of a rule concerning the submission and review of applications to the Treasure State Endowment Program at page 1539 of the 2005 Montana Administrative Register, Issue No. 16.

2. The Department has adopted the new rule (8.94.3811) exactly as proposed, but has amended the Montana Treasure State Endowment Program Application Guidelines dated 2005 that are incorporated by reference in new rule I based on comments received.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

Comment No. 1: Two comments were received requesting that counties be allowed to submit applications for construction projects on behalf of rural improvement districts, with the requirement that the county water and sewer district be created before a grant could be awarded, or when the grant is awarded prior to the district creation, that the grant could only be used for the project once the district has been created. The reason for this request is because of the extensive amount of time it takes to form a district and complete a preliminary engineering study, and the need to adequately inform residents about the need for the project and the need to create a district. The county would administer the grant through an interlocal agreement with the newly formed county water and sewer district. Currently, a county water and sewer district must be created before applying for a construction grant.

Response: The Department agrees and will allow counties to submit applications for construction projects on behalf of rural improvement districts, with the condition that the funds could only be released for the project once a county water and sewer district has been created. The county, which was awarded the grant, would administer the grant through an interlocal agreement with the newly formed district.



Comment No. 2: The Department should add language and scoring criteria to the guidelines encouraging bridge projects that have the potential to promote healthy activities and lifestyles by providing safe facilities for the public to walk or ride bicycles.

Response: The current language in the guidelines that the commenter took exception to states "Pedestrian bridges while eligible, are not likely to score high enough to be funded unless the applicant can document that serious health or safety issues are going to be resolved." The Department is simply attempting to inform applicants about the likelihood of this type of project being funded unless the applicant can document that the project will solve a serious health or safety problem. The Department thinks that the evaluation criteria are adequate, as is, for determining whether there are urgent and serious public health and safety problems that would be resolved by the project (Statutory Priority #1). In addition, the specific scoring definitions used to score Statutory Priority #1 are not contained within the guidelines, but the Department thinks that the definitions used already take into account the language that was proposed. As a result, the Department does not believe that any changes to the guidelines are necessary.

Comment No. 3: The Department should add language clarifying the timeframe when the number of "undeveloped, vacant lots" is determined. This is potentially a factor when more than \$15,000 per benefited household or a hardship grant is requested. The commenter suggested that it be at the end of the construction project.

Response: The Department agrees that the timeframe should be clarified. The number of undeveloped, vacant lots will be based on what has been developed at the time the application is submitted unless the applicant can adequately demonstrate that development was prohibited by a county or state agency. The Department may allow some currently vacant lots to be counted as a benefited household if the applicant can document that they will be developed upon completion of the construction project.

Comment No. 4: The Department should take into account solid waste charges paid by residential users as part of the combined target rate analysis; combine solid waste charges with the water and wastewater charges currently looked at in the combined target rate analysis. The reason is to allow for a more complete look at utility charges in order to determine if there is an undue hardship.

Response: The proposal would result in major changes to the methodology used to determine financial analysis and the Department does not believe that it would have adequate time to implement such a change prior to applications being received in

2006. In addition, the Department believes that the public should be provided an opportunity to evaluate and comment on this proposal. The Department will continue to evaluate this proposal, and if it is found to have reasonable support, will propose it as part of the changes that will be made two years from now.

Comment No. 5: A comment was received in regards to a requirement that proposed projects must be comprised of "stand-alone" activities. Concern was expressed that this would be narrowly defined and would preclude some projects from being built that require a phased approach.

Response: The intent of the requirement is not to preclude phased projects, but rather to ensure that substantive improvements and public health and safety benefits result from the project that do not require additional funds to complete. It would not require the complete elimination of a particular type of problem, such as inflow and infiltration throughout the entire sewer collection system, which may only be completely eliminated after two or more phases. The intent of this requirement is to preclude preliminary-type work from being funded that would only result in a substantive improvement once additional funds were obtained and the project can be completed. As a result, the Department will include this additional language to help clarify the requirement.

Comment No. 6: A comment was received that the following note should be further explained: "If the exact same project and PER was scored through the CDBG ranking process within the two years prior to the application submittal deadline, TSEP will accept the score for health and safety awarded to the applicant." It was not clear whether this applied to a project with multiple phases, and the CDBG funded phase was different from the phase proposed to be funded by TSEP.

Response: The Department agrees that clarification is needed and will add the following: "a re-evaluation of the PER would be required if the proposed TSEP project is a different phase from the one proposed for CDBG funding. If any component of the proposed project has changed from what was proposed to CDBG, the Department reserves the right to re-evaluate the PER and/or assign a score different from the one assigned by CDBG." The reason for requiring a re-evaluation is because frequently the engineering review process focuses on the one phase proposed for funding and the other phases discussed in the application do not receive the same depth of review.

Comment No. 7: A comment was received that the match requirement for TSEP funds be changed from 50% to 25% to allow more flexibility to get projects off the ground and to allow communities that cannot use the CDBG program to have a greater grant share. An alternative was also suggested; a graduated scale based on target rate. For example, 45% cost share at

125% of target; 40% cost share at 150% of target and 35% cost share at 175% of target.

Response: The statute enabling the TSEP program refers to "matching grants", which generally is construed as a dollar-for-dollar, or equal amount. The Department believes that the original legislative intent was that local governments match each TSEP grant dollar with one local dollar, unless undue hardship could be adequately demonstrated. The application guidelines already contain a provision that allows the match to be as low as 25% if certain conditions are met; one of which is that the user rates would be 150% of target. As a result, the Department does not believe that any changes to the guidelines are necessary.

COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE  
ANTHONY J. PREITE, DIRECTOR  
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State October 17, 2005

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 10.16.3010 )  
relating to special education )

TO: All Concerned Persons

1. On September 8, 2005, the Superintendent of Public Instruction published MAR Notice No. 10-16-113 regarding the public hearing on the proposed amendment of the above-stated rule concerning special education at page 1641 of the 2005 Montana Administrative Register, Issue Number 17.

2. The Superintendent of Public Instruction has amended ARM 10.16.3010 exactly as proposed.

3. The following comments were received and appear with the Superintendent of Public Instruction's response.

COMMENTS 1 through 4: Audrey Jones, Lockwood School Psychologist; Emilie Anderson, Target Range Special Services Coordinator; Leonard Orth, Director, Eastern Yellowstone Special Services Cooperative; and, Bill Johnson, Columbia Falls Special Services Director submitted written comments. None of these comments opposed the use of the term "developmental delay" but all expressed concern about the age range for eligible children specified, three through five years. Each person questioned the restricted age range and suggested that a broader age range, three through nine years, would be more appropriate and consistent with the age range allowed by federal regulation (34 CFR 300.8 (b)).

RESPONSE: While the federal regulation allows states to specify an age range from three to nine years, or any subset within that age range, Montana's statute addressed only the term "developmental delay" and did not address the age range. Senate Bill 76 (1993 Legislative session), requested by the Office of Public Instruction, changed this provision of law. Agency testimony in support of that bill stated in part "...It is our intent to continue to maintain the current administrative rules which allow districts the option to provide special education to children with a developmental delay who are five years of age or younger...". Expanding the age range through which the developmental delay criteria is applied would be inconsistent with agency testimony and inconsistent with the understanding of the Legislature when this piece of legislation was heard.

/s/ Linda McCulloch  
Linda McCulloch  
State Superintendent  
of Public Instruction

/s/ Catherine Warhank  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT
of ARM 17.8.504, 17.8.505, and )	
17.8.514 pertaining to air )	
quality permit application, )	(AIR QUALITY)
operation and open burning )	
fees )	

TO: All Concerned Persons

1. On June 30, 2005, the Board of Environmental Review published MAR Notice No. 17-226 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 997, 2005 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. The following comment was received and appears with the Board's response:

Comment: A commentator representing several large regulated entities commented that the proposed amendments strike a reasonable balance and make modest changes that are appropriate in the present circumstances.

Response: The Board acknowledges receipt of the comment in support of the proposed amendments.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Reviewed by:

David Rusoff  
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 17, 2005.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
STATE OF MONTANA

In the matter of the transfer ) NOTICE OF TRANSFER  
of ARM 23.5.101, 23.5.102, and )  
23.5.105, pertaining to motor )  
carrier safety assistance )  
program )

TO: All Concerned Persons

1. Pursuant to Chapter 366, Laws of Montana 2005, effective October 1, 2005, the motor carrier safety assistance program was transferred from the Department of Justice to the Department of Transportation, ARM Title 18, Chapter 8.

2. The Department of Transportation has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
23.5.101	18.8.1501	Transportation of Hazardous Materials-Interstate Operation-Definitions
23.5.102	18.8.1502	Federal Motor Carrier Safety Rules and State Modifications
23.5.105	18.8.1505	Safety Inspection Program: Purpose and Out-of-Service Criteria

3. The transfer of rules is necessary because this program was transferred from the Department of Justice to the Department of Transportation by the 2005 Legislature in Chapter 366, Laws of Montana 2005.

DEPARTMENT OF TRANSPORTATION

/s/ Jim Lynch  
Jim Lynch, Director

/s/ Nick A. Roterling  
Nick A. Roterling  
Alternate Rule Reviewer

Certified to the Secretary of State October 17, 2005.

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption ) CORRECTED NOTICE  
of new rules I through VII ) OF ADOPTION  
pertaining to the establishment )  
of a residential )  
methamphetamine treatment )  
center )

TO: All Concerned Persons

1. On October 6, 2005, the Department of Corrections published a notice of adoption of the above-stated rules pertaining to the establishment of a residential methamphetamine treatment center at page 1917 of the 2005 Montana Administrative Register, Issue Number 19.

2. The reason for the corrected notice is to correct a typographical error affecting the substance of the rule. The corrected rule reads as follows, stricken matter interlined, new matter underlined:

NEW RULE VII (20.7.916) SENTENCE SUSPENSION (1) The department shall issue a certificate to eligible offenders deemed by the department to have successfully completed both the residential and aftercare portions of treatment within the first three years of the eligible offender's term of commitment. The eligible offender may then petition the sentencing court for suspension of the remainder of the term of sentence. Only offenders ~~not~~ convicted under 45-9-102(5)(a)(ii), MCA, are deemed to be eligible offenders for the purpose of sentence suspension.

AUTH: 53-1-203, MCA  
IMP: 45-9-102 and 53-1-203, MCA

BY: BILL SLAUGHTER  
BILL SLAUGHTER, Director  
Department of Corrections

BY: COLLEEN A. WHITE  
Colleen A. White, Rule Reviewer  
Department of Corrections

Certified to the Secretary of State October 6, 2005.



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through VI )  
pertaining to operation of the )  
identity theft passport program )

TO: All Concerned Persons

1. On August 25, 2005, the Department of Justice published MAR Notice No. 2-61-170 regarding the public hearing on the proposed adoption of the above-stated rules at page 1541, 2005 Montana Administrative Register, Issue No. 16.

2. The Department has adopted New Rules I through VI (ARM 2.61.601 through 2.61.606) as proposed with only the following changes to New Rule III, stricken material interlined, new material underlined:

NEW RULE III (2.61.603) ISSUANCE OF AN IDENTITY THEFT PASSPORT (1) and (2) remain as proposed.

~~(3) Upon receipt of the passport, the victim must call the office of victim services at (406) 444 3653 to activate the card. At the time of activation, the victim will be given a unique passport number. Prior to activation, the passport will not be accepted by law enforcement agencies, creditors, or consumer reporting agencies. Each identity theft passport has a unique number printed on it along with an expiration date. The expiration date will be three years from when the card was originally issued by the department.~~

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

COMMENT 1: The department received written comment requesting that the identity theft passport application contain information needed by a business. The only requested part of the application that is not already in the Rule II is the requirement of a sworn statement by the victim.

RESPONSE 1: The rules do not contain the exact format of the identity theft application, but do state what is needed at a minimum. This is to allow the department to change the form as needed to meet the needs of law enforcement, identity theft victims, and the business community. The requirement of a sworn statement is excessive, and a signed statement to the police is all that is required.

COMMENT 2: The commenter stated at the hearing, that the deactivation process was unclear and wondered how a business would know a particular identity theft passport was deactivated.

RESPONSE 2: When a card is first activated, a unique number is generated. This number is written on the card issued to the identity theft victim. If the card is lost or stolen, the old number is listed as deactivated and a new card with a new number is issued. When a card has been deactivated, there is no way to tell by looking at the card. A law enforcement agency or business will have to call the department to find out if the card is still active. If in the future, the department uses a more technologically advanced card, the deactivation process may take a different form.

COMMENT 3: The commenter stated at the hearing that the department should have a rule requiring that the office of victim services and consumer protection help identity theft victims obtain a passport.

RESPONSE 3: The department attempts to help all people not only with this particular program but also with any program that they are charged with administering. A rule to this effect does not appear necessary.

COMMENT 4: The office of victim services and consumer protection noted that changes in how the identity theft passport will be printed would require a change in Rule III eliminating the need for section (3). The identity theft passport will come with a unique number printed on it. The office of victim services and consumer protection also commented that an expiration date on the card would be needed to allow for proper record keeping at the state level. Dealing with identity theft can take a long time so three years from the date the card was issued was proposed by the office of victim services and consumer protection.

RESPONSE 4: The department has revised the rule to reflect this no-printing process eliminating all the language in Rule III(3) about activation, and in its place including language about a 3-year expiration date.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General  
Department of Justice

/s/ Jon Ellingson  
JON ELLINGSON  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through VI )  
pertaining to the administration )  
of the forensic rape examination )  
payment program )

TO: All Concerned Persons

1. On August 25, 2005, the Department of Justice published MAR Notice No. 23-15-169 regarding the public hearing on the proposed adoption of the above-stated rules at page 1545, 2005 Montana Administrative Register, Issue No. 16.

2. The Department has adopted the New Rules I through VI (ARM 23.15.401 through 23.15.406) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE V (23.15.405) ADMINISTRATION OF THE FORENSIC RAPE EXAMINATION PAYMENT PROGRAM (1) remains as proposed.

(2) FREPP will store forensic rape examination kits for a minimum of 60 days. The physician or other medical provider performing the forensic rape examination shall advise the victim that the forensic rape examination kit will be stored for a minimum of 60 days following the examination and may be destroyed thereafter. The kit provided by FREPP will inform the physician or medical provider performing the exam of the requirement to provide this information to the victim.

(3) and (4) remain as proposed.

3. The following comment was received and appears with the Department's response:

Comment 1: The commentor expressed concern that the examination kits would be destroyed after 60 days but understood the need for managing the number of kits that the office of victim services is responsible for maintaining. The commentor suggested that the victim be notified of the 60-day time restriction and that this notification be given to the victim at the time the forensic examination is given.

Response 1: The agency agrees that the victim should be notified that the kit and the evidence it contains may be destroyed after 60 days and has added language to Rule V to address this concern.

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General  
Department of Justice

/s/ Jon Ellingson  
JON ELLINGSON  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 24.17.127 )  
pertaining to prevailing )  
wage rates for public works )  
projects - building )  
construction services and )  
heavy and highway )  
construction services )

TO: All Concerned Persons

1. On July 28, 2005, the Department published MAR Notice No. 24-17-195 regarding the public hearing on the proposed amendment of the above-stated rule relating to prevailing wage rates at page 1347 of the 2005 Montana Administrative Register, issue no. 14.

2. On August 19, 2005, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of August 26, 2005.

3. The Department has thoroughly considered the comments and testimony received on the proposed prevailing wage rates. A summary of the comments received and the Department's responses are as follows:

Comment 1: Keith Allen, IBEW 233, stated his support for the prevailing wage process. He noted that the fringe benefits rate for districts 3, 4, and 5 for building automation controls electricians were lower than the rates set for other districts. He stated that the rates set forth in the collective bargaining agreement should take precedent.

Response 1: The Department has reviewed its calculations and agrees that the preliminary fringe benefits rates are incorrect. A collective bargaining agreement from the IBEW 233 is on file with the department and covers the survey period. Therefore, the fringe benefit rate specified in the collective bargaining agreement takes precedent and the rates for covered occupations are changed as noted in paragraph 4, below. As part of the review of the collective bargaining agreement, the Department noted and corrected fringe benefit rates for the related occupations of communication technician and fiber optic electrician.

Comment 2: Mr. Allen noted that the rate in district 7 for electricians had gone down and was concerned that erroneous data may have been submitted.

Response 2: The Department notes that the prevailing wage  
Montana Administrative Register

survey form specifies that the submitter's signature is "certification that the information submitted on this form is true and correct." Anomalous responses are checked for accuracy whenever the anomaly is spotted by staff. However, the Department generally accepts that the information reported in the survey response submitted is correct to the best of the submitter's knowledge. The Department notes that the survey is voluntary and that the Department does not have any enforcement authority to require that the information be reported in response to the survey.

Comment 3: Mr. Allen also questioned why the survey responses are not considered public documents.

Response 3: As noted in Response 2, the Department does not have the authority to require that employers respond to the survey. The Department is aware that many employers consider payroll and staffing information to be confidential, and would not respond to the survey if the employer's specific responses were made public. Accordingly, in order to obtain the voluntary response from as many employers as possible, the Department promises that survey responses will not be released in a form in which the name of the respondent and the data reported can be correlated. In light of the Department's obligation to obtain as accurate data as feasible, the Department believes that promising respondents that their responses will be kept confidential is reasonable and appropriate.

Comment 4: Jack L. Campbell, Jack's Technical Assistance Inc., expressed support for the rates. He also suggested that the survey responses become public documents.

Response 4: The Department acknowledges Mr. Campbell's comments. The Department believes that the response rate for prevailing wage surveys would significantly decline if respondents did not have any assurance that their responses would be kept confidential. Because statistical reliability increases with the number of survey responses, the Department concludes that the most accurate prevailing wage rates are set using the highest response rates attainable. The Department declines to adopt Mr. Campbell's suggestion at this time.

Comment 5: Dennis Danake, Carpenters Union, expressed opposition to the proposed rates. He observed that wages and costs are generally rising but the prevailing wage rates are going down. He questioned the quality of the survey data and whether it reflected the changes in wages and costs.

Response 5: The Department notes that the prevailing wage rates it establishes are minimum rates that workers employed pursuant to a public work contract must be paid. The survey is a voluntary survey and the rates established from year to year can be affected by different factors. The response rate can affect the established rate, as can the margin of error (present in any

survey), and the fact that not all employers will raise wages at the same time or in the same amounts. The guiding factor is not the perceived rise or fall of rates; rather, it is compliance with the methodology provided in statute and rule.

Comment 6: Mr. Danake suggested that the survey responses should be made public documents so they can be made available for peer review and statistical analysis.

Response 6: As noted in Responses 3 and 4, the Department believes that when more employers respond to the survey, the more accurately the Department can calculate the rates, and that the assurance of confidentiality of the responses is necessary to attract employer response. The Department does not necessarily object to the notion of peer review, provided that the peer governmental agency undertaking that review agrees to protect the confidentiality of the employers' responses.

Comment 7: Mike Boysza, Carpenters Union, stated his support for the comments made by Mr. Danake.

Response 7: The Department's substantive responses to the comments are presented in Responses 5 and 6.

Comment 8: Rion Milen, Local 400, Operating Engineers, expressed support for the heavy construction rates. He noted that the rates contained in the building construction publication varied a lot and there did not seem to be consistency between rates set for the different groups.

Response 8: This survey cycle's responses resulted in variation in the fringe benefit rates for operating engineers in Groups 2, 3 and 4. The Department believes that the rates were set in accordance to the methods described in the Administrative Rules of Montana, Title 24, chapter 17, and are supported by the data.

Comment 9: Nina Rapkoch, Swank Enterprises, commented on the use of travel rates in the prevailing wage rates. She noted that today's workforce is more mobile and routinely drives longer distances to work sites. Travel rate payments can be a significant part of the cost of any public work project, and, as such, should be reviewed.

Response 9: The Department sets travel rates and ranges based upon documented practices within the different industries or occupations.

Comment 10: Rick Toland, Local 669, Sprinklerfitters, expressed support for the prevailing wage setting process. He noted that Local 669 sets wage and benefit rates for the state of Montana; however, the proposed rates show notable differences in the fringe benefit rates and some differences in the wage rates. He requested that the proposed rates be adjusted to reflect consistency in both the hourly and the fringe benefit rates.

Response 10: The survey did not generate sufficient response to set rates in districts 1, 2, 3, and 4. Sufficient response rates were generated in districts 5 through 10. The collective bargaining agreement was used to set the fringe benefit rates for districts 1, 2, 3, and 4, while the survey response was used to set the rates for the remaining districts. The rates have been set according to the methodology provided by state law and the implementing administrative rules.

Comment 11: Mr. Toland commented that the union had a new collective bargaining agreement that was effective in April 2005 and stated the proposed rates should be adjusted accordingly.

Response 11: The Department concludes that the collective bargaining agreement cannot be accepted for setting wage rates for this survey period because it was not in effect during 2004. The agreement will be retained on file for the upcoming building construction survey.

Comment 12: David D. Warner, Carpenters Union, supported the adoption of the wage rates with exceptions noted. For building construction, Mr. Warner noted that rates had dropped in districts 6, 7, 8, and 9. He noted that no rate for fringe benefits had been set in all districts for drywallers.

Response 12: The Department received sufficient response to set rates for hourly wages and fringe benefits for carpenters in districts 6, 7, 8, and 9, and these rates were set in accordance with the methodology contained in the administrative rules.

There was not sufficient response to set fringe benefit rates for drywallers in any district surveyed. If there is insufficient response to set a rate and no current collective bargaining agreement is on file then the rates established the year before still apply. The Department notes that Mr. Warner submitted an updated collective bargaining agreement for carpenters, drywall applicators, pile drivers and millwrights. Since the prevailing wage rate cannot exceed the collectively bargained wage rate in a district, the prevailing wage rate for district 4 was decreased based on the information submitted. The wage and fringe benefit rates have been modified as shown in paragraph 4.

Comment 13: For heavy construction, Mr. Warner remarked that carpenters had been inadvertently left off of the Davis-Bacon rates established under [federal] Modification Number 12 through an administrative error. This was corrected by the federal office release of [federal] Modification Number 13. Larry Mayo, Local 112, Carpenters Union, also submitted a comment that the proposed heavy construction rates did not contain a rate for carpenters.

Response 13: For heavy construction, the Department adopts the

current Federal Davis-Bacon rates. These did not contain a listing for Carpenters. As noted by Mr. Warner, this error was corrected by the federal Department of Labor. Therefore, the rates contained in Modification Number 13 are being adopted.

Comment 14: For highway construction, Mr. Warner stated that a petition was being routed to establish Davis-Bacon rates and requested that the Department delay adoption of highway rates until the petition process had been completed.

Response 14: For highway construction, the Department notes that comments and data can be only accepted during the survey and comment periods. For these purposes, the current comment period ended on August 26, 2005. The petition was not completed or adopted by the U.S. Department of Labor within the comment period. The proposed rates for highway construction are being adopted without regard to the rates contained in the petition.

Comment 15: Jim Keane, Local 400, Operating Engineers, noted that efforts were ongoing to complete the petition for changes in the federal Davis-Bacon highway construction wage rates. When this process is completed he would like the Department to recognize the new rates. He submitted an article for inclusion in the official record. This newspaper article is entitled "Study: State inexpensive place for business." It was published in the Helena Independent Record on August 17, 2005.

Response 15: As noted in Response 14, the petition for changes in the federal prevailing wages rates has not been completed or adopted so the results cannot be accepted during this public comment period.

Comment 16: Mr. Keane also stated that when the prevailing wage survey results show wages are going down that something must be wrong and perhaps there should be changes to the way the survey is conducted.

Response 16: The basic methodology of the building construction services rate survey is established in statute. The Department welcomes suggestions on how to improve the way the survey is conducted. The Department will evaluate any suggestions in light of the constraints of the law and the Department's budget.

Comment 17: Mr. Keane also submitted additional building construction data for the occupational classification of operating engineers.

Response 17: The Department accepts Mr. Keane's data and has changed certain rates for operating engineers as shown in paragraph 4, below.

Comment 18: Jeff Crisler, Ironworkers Union, provided comments on heavy construction and building construction rates. He noted that the heavy construction rates for ironworkers do not specify



districts and that the wording of the publication indicates that there might be information missing between pages 10 and 11 of the publication.

Response 18: The U.S. Department of Labor establishes Davis-Bacon rates for heavy construction and these are adopted in their entirety by the Montana Department of Labor and Industry. The federal rates adopted April 1, 2005, (General Decision MT 030001, Modification Number 9) had a separate entry for Ironworkers in Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, and Sanders counties. However, this separate rate was not present in modifications issued after April 2005. Please also see Response 14. The Department concludes that the publication does not omit appropriate information.

Comment 19: For building construction, Mr. Cristler stated that there are ironworker jobs incorrectly listed as being in several laborers' groups.

Response 19: For building construction, the occupational groupings are copied from the groupings used by the federal Davis-Bacon program. The Department concludes that the groupings should remain the same until the federal program classifies them differently. However, in reviewing ironworker rates, the Department noted an error in the per diem rates for districts 3 through 10, and has corrected those rates as noted in paragraph 4.

Comment 20: Gene Fenderson, Laborers Union, submitted general comments about the prevailing wage program. He noted that there might be problems with any program during the transition period between an experienced worker leaving the program and a new worker taking over.

Response 20: The Department has taken action to ease future staff transitions within the prevailing wage program. The Research and Analysis Bureau has been creating a prevailing wage processing guide during the conduct of the most recent survey. This guide currently contains copies of the applicable rules and regulations, survey materials, past public hearings comments, program decisions from the Department's legal staff and compliance staff, and a step-by-step guide to the many actions involved in administering the survey. The Department concludes this new guide will ease future staff transitions within the program, and allow for more timely completion of the rate calculations.

Comment 21: Mr. Fenderson also mentioned the results of the survey and raised the possibility that some contractors were submitting data for residential work instead of commercial work. He suggested the Department conduct checks on contractors to determine if they were doing residential or commercial work.

Response 21: The Department believes it has taken appropriate steps to solicit applicable data from respondents. The Department is required to survey those persons and businesses that are part of the Construction Contractors Registration list, Master Electricians list, and Master Plumbers list. The survey form and the "Frequently Asked Questions" publication specifically address the need to exclude residential work. The certification portion of the survey instrument is the submitter's declaration that the information submitted is true and correct. Please also see Response 2. Review of survey responses pertaining to the laborer classifications revealed one survey response that the Department determined was "primarily" for residential work. A similar discrepancy was noted with respect to heat and frost insulators. The Department recalculated the rates excluding the residential work, and that change is shown in paragraph 4.

Comment 22: During the comment period, additional data were furnished by the Laborers Union on behalf of a number of employers.

Response 22: As a result of the additional data, the Department has adjusted certain rates for laborers as noted in paragraph 4.

Comment 23: John Forkan, Business Manager, Local 41, Plumbers and Pipefitters, requested that the per diem rate for plumbers and pipefitters in districts 3, 4, 5, and 6 be changed from \$35 per day to \$45 per day. This is the rate from the collective bargaining agreement. He noted that the travel rates were correct.

Response 23: The Department accepts Mr. Forkan's comment and has changed the per diem rate to \$45 per day for districts 3, 4, 5, and 6, as shown in paragraph 4.

Comment 24: Bryan Cook, aBCC Erectors, Billings, Montana submitted a letter concerning the setting of fringe benefit rates for ironworkers. Mr. Cook stated the fringe benefit is too high, possibly due to the practice of calculating fringe benefits rates based on a positive response to the question on the survey form. This disregards survey form responses that have no dollar amount entered or a "zero" amount entered in the fringe benefit rate section.

Response 24: The Department notes that the Montana Code Annotated section 18-2-412(2) states that "The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions or retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor." It is the Department's conclusion that a "zero" benefit amount does not meet the criterion of plans that "provide

benefits"; therefore, "zero" amounts or negative replies are excluded from figuring the average benefit amount on the survey.

Comment 25: Local 260, Painters Union, submitted a copy of their collective bargaining agreement.

Response 25: The collective bargaining agreement covers the survey period and was reviewed by the Department. The Department has determined that rate changes were needed based upon the terms of the collective bargaining agreement, for the covered occupations of painter, glazier, floor layer, and taper [drywall tape applicator], as shown in paragraph 4.

Comment 26: John Bodine, Local 669, Sprinklerfitters Union, submitted a copy of the latest collective bargaining agreement.

Response 26: The Department notes that the effective date of the submitted collective bargaining agreement is outside of the survey period. The agreement will be retained on file for the upcoming building construction survey.

Comment 27: During the review of the comments submitted by the public and the cross-checking of rates, the Department noted minor typographical or computational errors in the preliminary building construction rate publication in a few classifications.

Response 27: The Department has corrected the errors in the occupational classifications of cement mason and roofer.

4. After considering the comments, the Department has amended ARM 24.17.127 as proposed, but with the following rate changes to the Building Construction Rate publication that is incorporated by reference, stricken matter interlined, new matter underlined:

2005 Building Construction Rate Publication:

Building automation controls electrician:

	Benefits	
District 3	<del>\$4.50</del>	<u>\$8.23</u>
District 4	<del>\$4.50</del>	<u>\$8.21</u>
District 5	<del>\$4.40</del>	<u>\$8.21</u>

Carpenter:

	Wage		Benefits	
District 3	<del>\$17.96</del>	<u>\$17.48</u>	<del>\$6.55</del>	<u>\$7.81</u>
District 4	<del>\$15.24</del>	<u>\$15.22</u>	<del>\$6.04</del>	<u>\$5.98</u>
District 6	<del>\$17.48</del>	<u>\$15.55</u>		
District 7	<del>\$12.77</del>	<u>\$13.05</u>		
District 8	<del>\$17.94</del>	<u>\$16.44</u>		
District 10	<del>\$18.20</del>	<u>\$16.44</u>	<del>\$6.55</del>	<u>\$7.55</u>

	Travel	
District 1&2	<del>0-15 mi. free zone</del>	<u>0-30 mi. free zone</u>

	<del>15-30 mi. \$.75/hr</del>	<del>30-50 mi. \$2.25/hr</del>
	<del>30-50 mi. \$1.00/hr</del>	<del>Over 50 mi. \$2.75/hr</del>
	<del>Over 50 mi. \$1.50/hr</del>	
District 4	<del>15-30 mi. \$.75/hr</del>	<u>16-30 mi. \$2.50/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>31-50 mi. \$3.75/hr</u>
	<del>Over 50 mi. \$1.50/hr</del>	<u>Over 50 mi. \$6.25/hr</u>
District 5&6	<del>15-30 mi. \$.75/hr</del>	<u>15-30 mi. \$1.00/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>30-50 mi. \$1.50/hr</u>
	<del>Over 50 mi. \$1.50/hr</del>	<u>Over 50 mi. \$2.00/hr</u>
District 7	<del>15-30 mi. \$.75/hr</del>	<u>16-30 mi. \$2.50/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>31-50 mi. \$3.75/hr</u>
	<del>Over 50 mi. \$1.50/hr</del>	<u>Over 50 mi. \$6.25/hr</u>
District 8-10	<del>0-15 mi. free zone</del>	<u>0-30 mi. free zone</u>
	<del>15-30 mi. \$.75/hr</del>	<u>31-60 mi. \$3.00/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>Over 60 mi. \$4.80/hr</u>
	<del>Over 50 mi. \$1.50/hr</del>	

Cement Mason:

	Benefits	
District 1	<del>\$3.57</del>	<u>\$5.90</u>

Communications technician:

	Benefits	
District 7	<del>\$5.98</del>	<u>\$6.32</u>
District 9	<del>\$5.98</del>	<u>\$6.32</u>
District 10	<del>\$5.98</del>	<u>\$6.32</u>

Drywall applicator:

	Wage	Benefits
District 1		<del>No Rate Set</del> <u>\$7.55</u>
District 2		<del>No Rate Set</del> <u>\$7.55</u>
District 3	<del>\$15.28</del> <u>\$17.48</u>	<del>No Rate Set</del> <u>\$7.95</u>
District 4	<del>\$16.71</del> <u>\$15.31</u>	<del>No Rate Set</del> <u>\$7.30</u>
District 5	<del>\$15.94</del> <u>\$15.55</u>	<del>No Rate Set</del> <u>\$7.30</u>
District 6	<del>\$15.16</del> <u>\$15.55</u>	<del>No Rate Set</del> <u>\$7.30</u>
District 7	<del>\$15.16</del> <u>\$15.31</u>	<del>No Rate Set</del> <u>\$7.30</u>
District 8	<del>\$13.55</del> <u>\$16.44</u>	<del>No Rate Set</del> <u>\$7.55</u>
District 9	<del>\$14.96</del> <u>\$16.44</u>	<del>No Rate Set</del> <u>\$7.55</u>
District 10	<del>\$15.16</del> <u>\$16.44</u>	<del>No Rate Set</del> <u>\$7.55</u>

	Travel
District 1&2	<del>No Rate Set</del> <u>0-30 mi. free zone</u> <u>30-50 mi. \$2.25/hr</u> <u>Over 50 mi. \$2.75/hr</u>
District 3	<del>No Rate Set</del> <u>0-30 mi. free zone</u> <u>30-50 mi. \$18/day</u> <u>Over 50 mi. \$25/day</u>

District 4&7	<del>No Rate Set</del>	<u>0-15 mi. free zone</u> <u>16-30 mi. \$2.50/hr</u> <u>31-50 mi. \$3.75/hr</u> <u>Over 50 mi. \$6.25/hr</u>
District 5&6	<del>No Rate Set</del>	<u>0-15 mi. free zone</u> <u>15-30 mi. \$1.00/hr</u> <u>30-50 mi. \$1.50/hr</u> <u>Over 50 mi. \$2.00/hr</u>
District 8-10	<del>No Rate Set</del>	<u>0-30 mi. free zone</u> <u>31-60 mi. \$3.00/hr</u> <u>Over 60 mi. \$4.80/hr</u>

Fiber optics electrician:

	Wage		Benefits	
District 4	<del>\$22.76</del>	<u>\$23.73</u>	<del>\$8.46</del>	<u>\$8.21</u>
District 5	<del>\$22.76</del>	<u>\$23.73</u>	<del>\$8.46</del>	<u>\$8.21</u>
District 6	<del>\$22.49</del>	<u>\$22.59</u>		

Floor layer:

	Wage		Benefits	
District 1	<del>\$18.91</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 2			<del>No Rate Set</del>	<u>\$5.04</u>
District 3	<del>\$15.00</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 4	<del>\$15.52</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 5	<del>\$17.14</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 6	<del>\$15.52</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$8.13</u>
District 7	<del>\$14.45</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 8	<del>\$15.52</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$8.13</u>
District 9	<del>\$15.52</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 10	<del>\$15.52</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$8.13</u>

	Travel	
All Districts	<del>No Rate Set</del>	<u>0-10 mi. free zone</u> <u>Over 10 mi. \$.20/mi.</u>

	Per Diem
All Districts	<del>No Rate Set</del> <u>\$32/day</u>

Glaziers:

	Wage		Benefits	
District 2	<del>\$14.60</del>	<u>\$16.37</u>	<del>\$2.21</del>	<u>\$5.04</u>
District 3	<del>\$14.69</del>	<u>\$16.37</u>	<del>\$1.72</del>	<u>\$5.04</u>
District 4	<del>\$14.90</del>	<u>\$16.37</u>	<del>\$1.85</del>	<u>\$5.04</u>
District 5			<del>\$0.92</del>	<u>\$0.97</u>
District 7	<del>\$13.13</del>	<u>\$16.37</u>	<del>\$1.45</del>	<u>\$5.04</u>
District 9	<del>\$12.63</del>	<u>\$16.37</u>	<del>\$1.75</del>	<u>\$5.04</u>
District 10	<del>\$12.63</del>	<u>\$16.52</u>		

Heat and frost insulator:

	Wage		Benefits	
District 1	<del>\$17.78</del>	<u>\$21.29</u>	<del>\$9.86</del>	<u>\$10.27</u>
District 2			<del>\$9.86</del>	<u>\$10.27</u>

District 3		<del>\$9.86</del>	<u>\$10.27</u>
District 4		<del>\$9.86</del>	<u>\$10.27</u>
District 5		<del>\$9.86</del>	<u>\$10.27</u>
District 6		<del>\$9.86</del>	<u>\$10.27</u>
District 7		<del>\$9.86</del>	<u>\$10.27</u>
District 8		<del>\$9.86</del>	<u>\$ 9.95</u>
District 9		<del>\$9.86</del>	<u>\$10.27</u>
District 10		<del>\$9.86</del>	<u>\$ 9.95</u>

Laborers group 2:

	Wage		Benefits
District 2			<del>\$4.99</del> <u>\$5.50</u>
District 3			<del>\$4.94</del> <u>\$5.35</u>
District 4	<del>\$12.39</del>	<u>\$12.96</u>	
District 6			<del>\$4.66</del> <u>\$5.35</u>
District 8	<del>\$13.86</del>	<u>\$13.84</u>	
District 9			<del>\$4.80</del> <u>\$5.35</u>
District 10			<del>\$4.32</del> <u>\$5.35</u>

Laborers group 4:

	Wage
District 5	<del>\$9.50</del> <u>\$15.54</u>

Millwright:

	Wage		Benefits
District 4	<del>\$17.22</del>	<u>\$16.31</u>	<del>\$7.55</del> <u>\$7.30</u>
District 6	<del>\$19.70</del>	<u>\$16.55</u>	<del>\$7.55</del> <u>\$7.30</u>
District 7	<del>\$19.70</del>	<u>\$16.31</u>	<del>\$7.55</del> <u>\$7.30</u>
District 8	<del>\$19.70</del>	<u>\$18.44</u>	
District 10	<del>\$19.70</del>	<u>\$18.44</u>	

	Travel	
District 1&2	<del>0-15 mi. free zone</del> <del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>0-30 mi. free zone</u> <u>30-50 mi. \$2.25/hr</u> <u>Over 50 mi. \$2.75/hr</u>
District 4	<del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>16-30 mi. \$2.50/hr</u> <u>31-50 mi. \$3.75/hr</u> <u>Over 50 mi. \$6.25/hr</u>
District 5&6	<del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>15-30 mi. \$1.00/hr</u> <u>30-50 mi. \$1.50/hr</u> <u>Over 50 mi. \$2.00/hr</u>
District 7	<del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>16-30 mi. \$2.50/hr</u> <u>31-50 mi. \$3.75/hr</u> <u>Over 50 mi. \$6.25/hr</u>
District 8-10	<del>0-15 mi. free zone</del> <del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>0-30 mi. free zone</u> <u>31-60 mi. \$3.00/hr</u> <u>Over 60 mi. \$4.80/hr</u>

Operating engineers, group 2:

	Wage		Benefits	
District 1	<del>\$18.17</del>	<u>\$19.13</u>	<del>\$6.03</del>	<u>\$8.05</u>
District 3			<del>\$6.43</del>	<u>\$8.05</u>
District 10	<del>\$17.60</del>	<u>\$19.13</u>	<del>\$4.66</del>	<u>\$8.05</u>

Operating engineers, group 3:

	Wage		Benefits	
District 1	<del>\$19.12</del>	<u>\$19.53</u>	<del>\$5.50</del>	<u>\$8.05</u>
District 6			<del>\$6.30</del>	<u>\$8.05</u>
District 7			<del>\$6.30</del>	<u>\$8.05</u>
District 8			<del>\$6.30</del>	<u>\$8.05</u>
District 9			<del>\$5.50</del>	<u>\$6.29</u>
District 10			<del>\$6.30</del>	<u>\$6.42</u>

Operating engineers, group 4:

	Wage		Benefits	
District 1	<del>\$18.92</del>	<u>\$19.95</u>	<del>\$5.32</del>	<u>\$8.05</u>
District 2	<del>\$19.82</del>	<u>\$19.95</u>	<del>\$6.59</del>	<u>\$8.05</u>
District 8			<del>\$6.85</del>	<u>\$8.05</u>
District 9			<del>\$4.66</del>	<u>\$8.05</u>

Painter:

	Wage		Benefits	
District 2	<del>\$16.92</del>	<u>\$16.37</u>	<del>\$1.88</del>	<u>\$5.04</u>
District 3	<del>\$14.80</del>	<u>\$16.37</u>	<del>\$2.39</del>	<u>\$5.04</u>
District 4			<del>\$3.25</del>	<u>\$5.04</u>
District 5	<del>\$16.59</del>	<u>\$16.37</u>		
District 7	<del>\$16.58</del>	<u>\$16.37</u>	<del>\$2.08</del>	<u>\$5.04</u>
District 9	<del>\$14.96</del>	<u>\$16.37</u>	<del>\$4.51</del>	<u>\$5.04</u>

Pile driver:

	Wage		Benefits	
District 3	<del>\$18.45</del>	<u>\$20.33</u>	<del>\$7.55</del>	<u>\$7.95</u>
District 4	<del>\$18.45</del>	<u>\$16.16</u>	<del>\$7.55</del>	<u>\$7.30</u>
District 5	<del>\$18.45</del>	<u>\$15.80</u>	<del>\$7.65</del>	<u>\$7.30</u>
District 6	<del>\$18.45</del>	<u>\$15.80</u>	<del>\$7.55</del>	<u>\$7.30</u>
District 7	<del>\$18.45</del>	<u>\$16.16</u>	<del>\$7.55</del>	<u>\$7.30</u>
District 8	<del>\$18.45</del>	<u>\$16.69</u>		
District 9	<del>\$18.45</del>	<u>\$16.69</u>		
District 10	<del>\$18.45</del>	<u>\$16.69</u>		

	Travel	
District 1&2	<del>0-15 mi. free zone</del>	<u>0-30 mi. free zone</u>
	<del>15-30 mi. \$.75/hr</del>	<u>30-50 mi. \$2.25/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	
	<del>Over 50 mi. \$1.50/hr</del>	
District 4	<del>15-30 mi. \$.75/hr</del>	<u>16-30 mi. \$2.50/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>31-50 mi. \$3.75/hr</u>
	<del>Over 50 mi. \$1.50/hr</del>	<u>Over 50 mi. \$2.75/hr</u>
District 5&6	<del>15-30 mi. \$.75/hr</del>	<u>15-30 mi. \$1.00/hr</u>
	<del>30-50 mi. \$1.00/hr</del>	<u>30-50 mi. \$1.50/hr</u>

	<del>Over 50 mi. \$1.50/hr</del>	<u>Over 50 mi. \$2.00/hr</u>
District 7	<del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>16-30 mi. \$2.50/hr</u> <u>31-50 mi. \$3.75/hr</u> <u>Over 50 mi. \$6.25/hr</u>
District 8-10	<del>0-15 mi. free zone</del> <del>15-30 mi. \$.75/hr</del> <del>30-50 mi. \$1.00/hr</del> <del>Over 50 mi. \$1.50/hr</del>	<u>0-30 mi. free zone</u> <u>31-60 mi. \$3.00/hr</u> <u>Over 60 mi. \$4.80/hr</u>

Plumbers and pipefitters:

	Per diem	
District 3	<del>\$35.00</del>	<u>\$45.00</u>
District 4	<del>\$35.00</del>	<u>\$45.00</u>
District 5	<del>\$35.00</del>	<u>\$45.00</u>
District 6	<del>\$35.00</del>	<u>\$45.00</u>

Roofer:

	Wage	
District 8	<del>\$14.05</del>	<u>\$14.69</u>

Taper [drywall tape applicator]:

	Wage		Benefits	
District 1	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 2	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 3	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 4	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 5	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 6	<del>No Rate Set</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$2.20</u>
District 7	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 8	<del>No Rate Set</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$8.13</u>
District 9	<del>No Rate Set</del>	<u>\$16.37</u>	<del>No Rate Set</del>	<u>\$5.04</u>
District 10	<del>No Rate Set</del>	<u>\$16.52</u>	<del>No Rate Set</del>	<u>\$8.13</u>

	Travel	
All Districts	<del>No Rate Set</del>	<u>0-10 mi. free zone</u> <u>Over 10 mi. \$.20/mile</u>

	Per Diem	
All Districts	<del>No Rate Set</del>	<u>\$32/day</u>

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 17, 2005



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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.114.403 regarding ) AND ADOPTION  
business entity practice and the )  
adoption of NEW RULE I pertaining )  
to fee abatement )

TO: All Concerned Persons

1. On June 16, 2005, the Board of Architects published MAR Notice No. 24-114-26 regarding the proposed amendment and adoption of the above-stated rules relating to business entity practice and fee abatement, at page 889 of the 2005 Montana Administrative Register, issue no. 11.

2. No public hearing was contemplated or conducted. No written comment was received prior to the closing of the public comment period.

3. The Board has amended ARM 24.114.403 and adopted NEW RULE I (ARM 24.114.408) exactly as proposed.

/s/ KEITH KELLY  
Keith Kelly Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 37.70.305, )  
37.70.406, 37.70.407, )  
37.70.408, 37.70.601, and )  
37.70.602 pertaining to Low )  
Income Energy Assistance )  
Program (LIEAP) )

TO: All Interested Persons

1. On September 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-356 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to Low Income Energy Assistance Program (LIEAP), at page 1657 of the 2005 Montana Administrative Register, issue number 17.
2. The Department has amended ARM 37.70.305, 37.70.406, 37.70.407, 37.70.408, 37.70.601, and 37.70.602 as proposed.
3. No comments or testimony were received.

Dawn Sliva  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 17, 2005.

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of Rules I through IV )  
pertaining to the Montana )  
Clean Indoor Air Act )

TO: All Interested Persons

1. On September 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-357 pertaining to the public hearing on the proposed adoption of the above-stated rules relating to the Montana Clean Indoor Air Act, at page 1665 of the 2005 Montana Administrative Register, issue number 17.

2. The Department has adopted new rule III (37.113.108) as proposed.

3. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.113.101] DEFINITIONS In addition to those terms defined in 50-40-103, MCA, the following terms, as used in Title 50, chapter 40, part 1, MCA, have the meaning set forth below:

(1) "Designee" means, for purposes of determining who is designated by the department to act on its behalf in enforcement of the Montana Clean Indoor Air Act of 1979, any entity with which the department has entered into an agreement outlining mutual responsibilities.

~~(1)~~(2) "Enclosed room", for purposes of the definition of "place of work" in 50-40-103, MCA, means an area with a wall on all sides reaching from floor to ceiling, exclusive of windows and doors, and does not include an area completely or partially open to the outside air such as a roofed shelter.

~~(2)~~(3) "Private residence" means the personal living quarters of an individual, regardless of the legal status of the property, such as incorporation of a ranch, unless the residence is part of a structure, such as a health care facility, where smoking is specifically prohibited by Title 50, chapter 40, part 1, MCA.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 50-40-103 and 50-40-104, MCA

RULE II [37.113.104] BARS, CERTIFICATION OF QUALIFICATION FOR EXCEPTION (1) An establishment, as defined in 50-40-103, MCA, may apply to the department for a certificate indicating that the department has determined that it is a bar qualifying for the exception from the provisions of Title 50, chapter 40,

part 1, MCA, as provided in 50-40-104(5), MCA.

(2) An application for certification may be obtained from the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) A completed application must be submitted to the department at the address cited in (2). The signature and documentation required by the application will be verified by the department or its designee.

(4) If the department or its designee determines, at the time of application or after a certificate has been granted, that the establishment does not qualify for the exception allowed by 50-40-104(5), MCA, written notice of that decision and the factual basis for the decision will be sent to the individual who submitted the application.

~~(5) A copy of each certificate that is granted, and of each decision to deny a certificate, will be filed by the department with~~ By November 30 and May 31 of each year, the department will mail to the local board of health of the each county in which the establishment is located a list of the bars in that county that have a current certificate of exception.

(6) Each bar that qualifies for an exception from the provisions of Title 50, chapter 40, part 1, MCA, must post, at the entrance to the bar, an easily readable sign that minors are not allowed in the areas where smoking is allowed.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 50-40-104 and 50-40-108, MCA

RULE IV [37.113.112] COMPLAINT PROCEDURE REGARDING SMOKING VIOLATIONS (1) An individual who believes that a violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA has occurred may file a written complaint with the department or the local health board or its designee that describes the violation, provides the date of the violation and is signed by the complaining party.

(2) If a complaint is filed with the local health board, a copy of the complaint must be forwarded within five working days ~~of its receipt~~ after the end of the month in which it was received to the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) If a complaint is filed initially with the department or a designee of the department, a copy will be forwarded within five working days to the local health board of the county in which the violation allegedly occurred.

(4) Once a complaint is filed, the department or a designee of the department, which may include the local health department, will conduct an investigation to determine if a violation occurred.

(5) If the department or its designee, after an investigation, determines that a violation did occur, it will document the violation and file the documentation and the determination of the department or its designee with the office

of the county attorney in the county where the violation occurred.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 20-1-220, 50-40-104 and 50-40-108, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The department should include language in the rules that indicates that when the department approves a bar as qualifying for a temporary exception from the Clean Indoor Air Act's smoking ban, the local county attorney would be prohibited from prosecuting a smoking complaint against that bar.

RESPONSE: While smoking is allowed in a bar that meets the statutory requirements for an exception from the Clean Indoor Air Act's smoking ban, it will still need to comply with other provisions in the law, including not allowing youth less than 18 years of age into areas where smoking is allowed and preventing infiltration of smoke into non-smoking areas. Prosecution of such violations by a bar that has received a certificate indicating that it has qualified for a temporary exception is still legally possible, and a rule stating the contrary would be invalid. Therefore, the requested rule change was not made.

COMMENT #2: The department should indicate in the rules who will act as its designees to assist in enforcement of the law.

RESPONSE: Currently, the Montana Departments of Revenue and Justice are acting as the department's designees through the mechanism of memoranda of agreement. Those two state agencies will check for Clean Indoor Air Act violations while conducting routine inspections of bars and casinos under their own statutory authority. The department chose to utilize such agreements, rather than naming the departments in the rules as our agents because it is a more appropriate and legally sound mechanism between co-equal agencies of state government. However, a definition of "designee" has been added to Rule I to indicate that any entity, to be considered a designee of the department, would have to have a memorandum of agreement outlining mutual responsibilities.

COMMENT #3: There is no mandate for public schools to enforce the law, but there should be. Section 20-1-220(3), MCA, which bans tobacco use on school property, states "the principal of an elementary or secondary school, or the principal's designee, may enforce this section." The word "may" should be changed to "shall", thereby making the duty mandatory.

RESPONSE: The department has no authority to change, by rule, statutory language. Therefore, the requested change was not made.

COMMENT #4: Although the law defines what warnings, reprimands and punishments will be instituted for violations in public places, it is still unclear if the establishment, the patron, or both will be fined as well as what constitutes multiple violations.

RESPONSE: The department disagrees. The penalties provision in the law clearly prescribes separate penalties for those who smoke where it is not allowed and those who are responsible for a work or public place but who allow a violation of the law. As for multiple violations by one responsible for a public or work place, local law enforcement is responsible for keeping track of the three-year period within which a third violation becomes a misdemeanor. Therefore, the department disagrees that the law is unclear and, in addition, does not believe it has the authority to, by rule, interpret criminal penalty provisions set by statute.

COMMENT #5: The rationale in the notice of proposed rulemaking for these Clean Indoor Air Act rules stated that Rule II establishes a non-mandatory procedure for a bar to apply for a certificate indicating it qualifies for an exception. Receiving a certificate should be mandatory before a bar is excepted from the smoking ban, and a bar should have to remain smoke-free until it receives a certificate from the department.

RESPONSE: The law by its own terms establishes the criteria for a "bar" that is exempt from the smoking ban--i.e., having a liquor license, earning at least 60% of its gross income from gambling and/or liquor sales, and preventing any infiltration of smoke to an area where smoke is not allowed. There is no mention of a requirement to get a certificate from the department before a business meeting those standards is excepted from the smoking ban. For the department to, by rule, require a certificate to be received before smoking is allowed in a bar that meets the statutory standards would unlawfully go beyond what the law requires, by imposing an additional condition a bar would have to meet. The Montana Administrative Procedure Act, in Section 2-4-305, MCA, requires agency rules to be consistent and not in conflict with the statutes they implement. The department is establishing the certificate of exception process as a mechanism to assist bar proprietors and those involved in enforcing the Clean Indoor Air Act in establishing who qualifies for the exception and who does not.

COMMENT #6: There is no mention of how the law affects private schools and public and private colleges. The status of these institutions needs to be addressed in the rules even if they are exempt.

RESPONSE: Section 50-40-104, MCA, of the revised Clean Indoor Air Act prohibits smoking in any enclosed public place, unless that section allows for an exception-which it does not in the

case of private schools and private and public colleges. Since the law is clear, there is no need for a rule on the subject.

COMMENT #7: Rule II does not describe all of the criteria that a bar must meet to qualify for a temporary exception.

RESPONSE: The law itself states the criteria, as mentioned in the response to comment #5 above. The Montana Administrative Procedure Act, in Section 2-4-305(2), MCA, states that rules "may not unnecessarily repeat statutory language."

COMMENT #8: Rule III should include more detail regarding compliance paperwork for inspections and the role of sanitarians and law enforcement in enforcement activities.

RESPONSE: The law is clear that the department, a local health board and their respective designees have the responsibility to conduct inspections of enclosed public places, work places, and public school property. Rule III states that for every inspection conducted, a written inspection report must be completed and retained by the agency conducting the inspection. Local health authorities already have experience in documenting other kinds of violations, such as those committed by food services, motels, etc., and the department felt that they are competent to develop their own forms for the purpose of enforcing Clean Indoor Air Act violations. However, the department will be developing model forms that local authorities can use if they so desire. The department wanted to prescribe the minimum standards necessary to ensure proper record keeping and communication between the state and local health agencies responsible for enforcing the law. Any additional helpful recommended, but not mandatory, procedures will be outlined in policy documents.

COMMENT #9: The rules need to clearly indicate that law enforcement will be responsible for issuing citations and designate the agencies that will be receiving the fine revenues.

RESPONSE: Violations of the Clean Indoor Air Act are misdemeanors, as stated in Section 50-40-115, MCA. The suggested additions are inappropriate for these rules, since law enforcement authority for citation and prosecution of misdemeanors are fully covered in other Montana statutes. As for who should receive the revenue from fines, the department has no authority to designate the recipients of fines levied for any criminal act, including the misdemeanor fines levied for violations of the Clean Indoor Air Act. Disposition of such fines is set by other statutes.

COMMENT #10: The rules should outline a grace period during which there is no enforcement of the law.

RESPONSE: The effective date for the law is October 1, 2005. No state agency has the authority to amend a law through a rule,

which the department effectively would be attempting by writing a rule suspending, for a grace period, the responsibility of both it and local health boards to enforce the law. Therefore, no grace period can be specified.

COMMENT #11: The rules should state who is responsible for reviewing plans for renovations to comply with the law.

RESPONSE: The department did not do so because rules are meant to set necessary standards to implement a law, rather to simply provide information. That said, for liquor and gaming licensed establishments there is a requirement for building plans to be reviewed by the Departments of Justice and Labor. In addition, any renovations would have to comply with local building codes and use existing construction review processes.

COMMENT #12: There were a number of comments that requested the department promulgate a rule defining "infiltrate", as used in Section 50-40-104(5)(a), MCA, some of which requested allowing various levels of infiltration of smoke from a smoking to a non-smoking area.

RESPONSE: The statute is clear and has granted the department no rulemaking discretion in this area. The meaning of the word "infiltrate" has a universally understood meaning, with no clarification necessary. Therefore, the requested change was not made.

COMMENT #13: A penalty should be added to the rules that revokes the exception allowed in 50-40-104(5)(a), MCA, for failure to prevent infiltration.

RESPONSE: The penalties are set in law and the department does not have authority to amend the statute. However, the department has added language to Rule II allowing it to revoke a certificate of exception, if it determines the criteria for exception outlined in the statute are not met.

COMMENT #14: The proposed rules should offer suggestions as to how business owners might take measures to reduce infiltration.

RESPONSE: Rules are regulatory provisions and are not meant to provide recommendations and suggestions to businesses. Therefore, the requested addition was not made.

COMMENT #15: Rule II should be amended to identify the criteria that must be met to qualify for an exception.

RESPONSE: The criteria are clear in the statute and should not be unnecessarily repeated in the rules. The criteria are also included on the form for requesting a certificate of exception.

COMMENT #16: There should be a signage requirement for bars with an exception that states that youth are not permitted in an



area where smoking is permitted.

RESPONSE: We agree and are adding language to Rule II requiring signs be posted to identify smoking areas and state that minors are not permitted.

COMMENT #17: Comments were received regarding how the law affects personal living quarters within health care facilities such as nursing homes and assisted living facilities. Recommendations were provided to change the definition of private residence so that living quarters in these facilities will be considered private residences.

RESPONSE: The Clean Indoor Air Act specifically requires any health care facility to be smoke-free, including nursing homes and assisted living facilities. Section 50-5-101(23)(a), MCA, defines "health care facility" as meaning "all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual." Therefore, the department does not have the authority to, by rule, define a personal living area in any health care facility as a "private residence" where smoking is allowed. To clarify that point, the definition in Rule I of "private residence" now includes language indicating that living areas in health care facilities cannot be "private residences" in which the law allows smoking.

COMMENT #18: Because of the special provision in Section 50-40-201, MCA, allowing county-occupied buildings to delay becoming smoke-free, the rules need to clarify the date that county operated nursing homes, assisted living facilities, and other county health care facilities have to comply with the Clean Indoor Air Act.

RESPONSE: The issue above is a result of the apparent conflict between two provisions of the Clean Indoor Air Act, as amended by the 2005 Legislature. Section 50-40-201, MCA, insofar as it applies to county-owned or operated health care facilities, appears to conflict with the provision in Section 50-40-103(3), MCA, prohibiting smoking in any health care facility. Any conflict in statutes is to be settled by the provisions of Section 1-2-102, MCA, which states that "[w]hen a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." The department is of the opinion that the more particular provision in this case is the one banning smoking in all health care facilities, with the result that even county-owned or operated health care facilities have to be smoke-free as of October 1, 2005.

COMMENT #19: Several commenters asked if minors could be employed in businesses in which smoking is allowed.

RESPONSE: The law is clear that minors are not allowed in any area in a public place in which smoking is allowed.

COMMENT #20: The department should notify bars that received an exception certificate, that the exception expires on September 30, 2009.

RESPONSE: The department will include language on the application for and the actual certificate of exception stating this fact. This is clear in the statute and should not be repeated in the rules.

COMMENT #21: Excepted establishments should be allowed by rule to have smoking and non-smoking hours that allow youth in smoking areas when there is no smoking.

RESPONSE: The statute is clear that youth under 18 are not allowed in areas in which smoking is permitted, regardless of whether smoking is occurring there at the time the minor would be present. The department does not have the authority to amend the statute by rule.

COMMENT #22: A comment was received that when the department grants the exceptions allowed under Rule II, the department should explain certain issues to the bar. A list of suggestions was also provided for inclusion in such explanations (e.g., expiration of exception, annual renewal of exception, revocation for non-compliance, submission of records to assure compliance, information that the exemption will not protect patrons and workers, and signage that restates exception criteria be posted at entrances.)

RESPONSE: The department grants non-mandatory certificates of exception to the statute. The statute itself defines the criteria for exception. Therefore, while the department may provide the suggested information to certificate applicants, no rulemaking is necessary on the subject.

COMMENT #23: The department should require an annual renewal of the exception for each bar to ensure compliance.

RESPONSE: See the response to Comment #5. The exceptions portion of the statute is self-executing. The department will grant, as appropriate, non-mandatory exception certificates to currently licensed bars in 2005. For newly licensed establishments, the process will become part of the application for a liquor/gaming license. In addition, any establishment that believes they qualify can seek an exception certificate at any time until October 1, 2009, the date that the authority for an exception expires.

COMMENT #24: Bars qualifying for an exception certificate must be willing to submit their books for inspection by the

Department of Revenue to determine if they meet the criteria for an exception.

RESPONSE: Under Rule III(3), the department, a local health board, and the designee of either have the authority to request documentation from an establishment to prove that they meet the annual gross income requirements specified in the law. Since the Department of Revenue is a current designee of the Department of Public Health and Human Services, it would have the authority to inspect a bar's books.

COMMENT #25: Under Rule II, the department should include the following statement: "In the judgement of the department, exceptions (to the law) will not protect the health of patrons and employees working in areas where smoking is allowed and that the decision to allow smoking is solely that of the bar and is not endorsed or condoned by the State of Montana."

RESPONSE: This suggestion is not regulatory and does not belong in the rules. The department strongly recommends that all enclosed public places and work places become smoke-free now to protect the health of the public and workers.

COMMENT #26: Signs at the entrances of bars should state the three criteria for an exception from the smoking ban (gross annual income, no youth in smoking areas, no infiltration of smoke).

RESPONSE: There are only two criteria for an exception, which are the annual gross income requirement and the prohibition against infiltration of smoke into any area where smoking is prohibited. The department believes that signage should be kept as clear and understandable as possible. In addition, this particular request is by nature serving more of an educational than regulatory purpose. Since the rules are for regulatory purposes only, the suggestion was not included in them.

COMMENT #27: Rule III or IV should include a requirement that a bar that qualifies for an exception post a sign that provides members of the public with the name and address of the person with whom complaints can be filed.

RESPONSE: The department declined adding such a requirement to the rules. The contact information for the local health board should be readily available through the phone book, and the name and address of the particular local contact may change, making that requirement an unduly onerous and ineffectual burden.

COMMENT #28: There were several comments that complaint and enforcement procedures are not clearly outlined in the rules. Some suggested extensive detail for these procedures.

RESPONSE: The enforcement authorities are clearly designated in the statute as the department, local boards of health or their

respective designees. The proposed rules currently state that complaints must be received in writing by these enforcement authorities. The penalties are clearly delineated in the statute and since the third or subsequent violations within a three-year period are misdemeanors, these would clearly need to be referred to local government. See the response to Comment #8.

COMMENT #29: Some employers are considering making a smoking area by utilizing an enclosed area they may have with air circulating units and exhaust fans. Do the rules permit such a configuration as meeting the requirements of the law?

RESPONSE: For businesses that do not meet the exception outlined in the law this would not be permitted. Because the law is clear, no rule on the subject is required.

COMMENT #30: Is there any required form or content for signage that must be placed at the entrances of enclosed public places?

RESPONSE: The law provides no specific requirements other than the sign should be posted at an entrance, in a conspicuous place, and should include the information that smoking is prohibited in the enclosed public place. The international no smoking sign would meet these requirements, as would any other version of the sign that imparts the same information. Both because the law is clear on its face and because allowing various versions of the sign is burdensome for those responsible for enclosed public places, no rule imposing uniform signage is contemplated.

COMMENT #31: The rules should allow the department and local boards of health to accept anonymous complaints.

RESPONSE: The rules state that complaints must be filed in writing with the department, a local health board or their respective designees in order to begin to provide a legal foundation for prosecution of a violation. The department, local health boards, and their designees can always receive anonymous complaints. However, such complaints cannot be prosecuted on their information.

COMMENT #32: If a complaint to a local health board is not submitted to the department as described in the rules, will the complaint be voided?

RESPONSE: No, there is nothing in the rules that states the complaint would be voided.

COMMENT #33: The rules should include time frames within which the investigation of a potential violation, notification of the potential violator, and any action from the city or county attorney should occur.

RESPONSE: The department cannot set by rule time frames for

local government investigations and actions.

COMMENT #34: Can the law or the rules be changed to increase the percentage of hotel rooms that are allowed to be smoking from 35% to 50%. How does the law pertain to internal apartments within a hotel?

RESPONSE: The Montana Legislature approved the law and the percentages it established cannot be changed by rule. Internal apartments are considered private residences and are excepted from the statute.

COMMENT #35: The department should revise the definition of "enclosed room" to read as follows (the suggested added language is underlined): "'Enclosed room', for the purpose of definition of place of work in 50-40-103, MCA, means an area with a solid wall or windows (exclusive of doorways), which extend from the floor to the ceiling. This does not include an area completely or partially open to the outside air such as a roofed shelter."

RESPONSE: We agree and have made this change.

COMMENT #36: The department should add the following to Rule II: "The applicant shall sign and submit to the Montana Department of Public Health and Human Services a written statement that reads as follows: I understand that smoking will be completely prohibited in bars and casinos in the State of Montana as of September 30, 2009. When that occurs, any exceptions will no longer apply."

RESPONSE: This is not necessary as the law is clear that this exception is in effect only through September 30, 2009. Further, similar language is included on both the request for an exception certificate and the exception certificate itself.

COMMENT #37: The department should add the following to Rule II: "The applicant shall state and prove that the establishment, as defined in 50-40-103(4), MCA, in which the applicant's enterprise operates, is a legal entity which is legally and physically separated from (enclosed and free-standing) or not part of any establishment exempt from this law."

RESPONSE: While the meaning of the comment is somewhat unclear, the department understands it to mean that the department should amend the rules to require each establishment where smoking is allowed to be the sole occupant of its own free-standing building. The department does not agree that the law requires such a limitation. Therefore, the department does not have the authority to specify the limitation by rule.

COMMENT #38: Bars that qualify for an exception from the smoking ban and that continue to allow smoking should be required to post signs indicating that smoking is permitted in the establishment and that tobacco smoke is known to cause heart

disease, cancer, and lung disease in smokers and non-smokers.

RESPONSE: While the department has the authority to promulgate rules implementing the Clean Indoor Air Act, it is not clear that it has the authority to require a sign that is primarily for educational purposes, rather than regulatory. As for a sign noting that smoking is allowed, the department is adding a requirement for a sign noting that minors are not allowed in that area. See the response to comment #16.

COMMENT #39: In Rule III(3), the department should be allowed to request and review documentation beyond that which is necessary (the word desirable is suggested) in order to prove gross annual income meets the requirements for an exception as outlined in the law. In addition, there was a suggestion to impose a fee to pay for reviews by certified public accountants.

RESPONSE: The request goes beyond what is necessary to implement the law. The Montana Administrative Procedure Act requires rules to be necessary for such implementation. The Clean Indoor Air Act does not grant discretion to the department to require any fees.

COMMENT #40: The department should include creation of a complaint telephone line in the rules.

RESPONSE: Complaints must be provided in writing, as outlined in the rules, in order to ensure proper documentation of a violation. The department has created a toll-free information line, but will not operate the line for purposes beyond that. The information line can direct persons with complaints concerning how and to whom a written complaint can be submitted.

COMMENT #41: Language should be added to protect employees or others who bring complaints related to the Clean Indoor Air Act.

RESPONSE: State and federal "whistle-blower" protections are currently in place to protect employees and consumers in these situations. The department does not have the authority to address that issue by rule.

COMMENT #42: Language should be included to allow family farms and ranches that are part of a family corporation to be included in the definition of a private residence.

RESPONSE: The department agrees, had intended to provide that clarification with the definition of "private residence" included in the original notice of proposed rulemaking, and has revised the definition of private residence to more clearly include family farms and ranches that are part of a family corporation.

COMMENT #43: Proposed Rule II(4) should require a response from the department as to why a request for certificate of an

exception to the law was denied. Also, can a bar owner make a change to their business and reapply for a certificate?

RESPONSE: The rule already requires the department to state the reasons for a denial of a certificate. As for the question posed, there are two criteria for an exception clearly outlined in the law. These criteria will be the basis for acceptance or denial in granting a certificate of exception. A business owner could make changes to their business and reapply for a certificate.

COMMENT #44: The department should promulgate rules allowing a grievance process for denial of an exception.

RESPONSE: See the response to Comment #5. Since the certificate of exception process is non-mandatory, denial or revocation of a certificate should not trigger a grievance process. If a certificate is denied or revoked, the reasons for that action would be the basis for a local investigation to determine if a violation of the Clean Indoor Air Act was occurring.

COMMENT #45: Rule IV should not allow citizen complaints regarding violations.

RESPONSE: The law does not prohibit citizen complaints, and the department does not have the authority to do that by rule.

COMMENT #46: The complaint and enforcement procedures for counties that do not have a designated health board should be clarified.

RESPONSE: The problem should not exist because Montana law requires each county to have a board of health (50-2-104, MCA).

COMMENT #47: The rules should include an exception for work places that are private clubs, where the public may enter as guests.

RESPONSE: Private clubs that serve as places of work are not excepted and are subject to the smoking ban by the law. The department cannot do by rule what the law does not allow.

COMMENT #48: In Rule III(4), a reference should be included that if the alleged conduct occurred within city limits, the complaint is forwarded to the city attorney for prosecution, and, if it occurs outside the city limits, the complaint is forwarded to the county attorney for prosecution.

RESPONSE: The local authority with the responsibility to enforce the Clean Indoor Air Act is the local board of health, which is a county entity. The county attorney is, in turn, the enforcement officer for the county board of health. The department cannot, by rule, change that statutory pattern.

COMMENT #49: The school violations and penalties are not clearly outlined in the law. What will the penalty be for someone who is using tobacco products on school grounds? Who will enforce this law on public school campuses?

RESPONSE: The department disagrees that the penalties for school infractions are not clearly outlined. Section 20-1-220(4), MCA, of the laws pertaining to public schools, states that "[a] violation of this section is subject to the penalties provided in 50-40-115." Section 20-1-220(3), MCA, also states that the principal of an elementary or secondary school, or the principal's designee may enforce this section. The law being clear, no rulemaking on the subject is needed.

COMMENT #50: The rules should clarify whether or not smoking is allowed in private motor vehicles used for work purposes.

RESPONSE: The issue involves statutory interpretation. The department will be carefully analyzing the law to determine what the Clean Indoor Air Act requires in this case and may consider adding an interpretive rule on the subject in the future.

COMMENT #51: The rules should clarify whether or not smoking is allowed in private residences if any person works there.

RESPONSE: The issue involves statutory interpretation. The department will be carefully analyzing the law to determine what the Clean Indoor Air Act requires in this case and may consider adding an interpretive rule on the subject in the future.

COMMENT #52: A new rule should clarify whether or not smoking outdoors near a workplace is prohibited.

RESPONSE: The statute prohibits indoor smoking and does not address outdoor smoking. Therefore, the department has no authority to prescribe by rule anything about outdoor smoking.

COMMENT #53: Rule I should allow businesses to choose whether or not to become smoke-free.

RESPONSE: This would amend the statute. The department does not have the authority to do so.

COMMENT #54: Rule II should allow all casinos, taverns, and bars to be exempt until 2009.

RESPONSE: This would amend the statute and the department does not have the authority to do so.

COMMENT #55: Rule II should require that minors not be allowed in smoke-free areas of establishments that meet the exception criteria and can have both smoking and non-smoking areas.



RESPONSE: The law prohibits minors from being in areas where smoking is allowed and requires bars that qualify for an exception to the smoking ban to prevent infiltration into a non-smoking area. So long as no infiltration occurs into the no-smoking area, nothing in the law precludes a minor from being in that area, and the department has no authority to do so by rule.

COMMENT #56: Concerning Rule III, it is unnecessary for a copy of each certificate of exception the department issues to be sent to the local board of health having jurisdiction. A periodic list of those with certificates would be sufficient and handy.

RESPONSE: The department agreed and amended Rule III(5) accordingly.

COMMENT #57: A local complaint will customarily be acted upon locally. Therefore, it is an unnecessary burden for local authorities to have to submit a copy of every complaint to the department within five working days after its receipt. Submission of the copies after the end of each month should be sufficient.

RESPONSE: The department agreed and made the change.

GENERAL: Other comments were received that were directed at the Clean Indoor Air Act, rather than the rules, and were not answerable by rulemaking or relevant to the rules. Those comments will be addressed separately through direct response to those making the comments and public education concerning the issues raised. In addition, various entities requested various types of waivers from statutory requirements, and the statute is clear that no waivers are allowed.

Ellie Parker for  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 17, 2005.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 44.10.331 relating to )  
limitations on receipts from ) NOTICE OF AMENDMENT  
political committees to )  
legislative candidates )

TO: All Concerned Persons

1. On August 25, 2005, the Commissioner of Political Practices published MAR Notice No. 44-2-129 pertaining to the proposed amendment of the above-stated rule relating to limitations on receipts from political committees to legislative candidates, at page 1583 of the 2005 Montana Administrative Register, issue number 16.

2. The Commissioner has amended 44.10.331 as proposed.

3. No comments or testimony were received.

/s/ Gordon Higgins  
Gordon Higgins  
Commissioner

/s/ Jim Scheier  
Jim Scheier  
Rule Reviewer

Certified to the Secretary of State October 17, 2005.

**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 PO 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) 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<br>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<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 30, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2005, 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 2004 and 2005 Montana Administrative Registers.

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

GENERAL PROVISIONS, Title 1

1.2.419 and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903

ADMINISTRATION, Department of, Title 2

I-X Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839

I-X State of Montana Voluntary Employees' Beneficiary Association (VEBA), p. 2779, 643, 911

2.5.201 and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906

2.21.410 and other rules - Military Leave, p. 767, 1506

2.21.501 and other rules - Jury Duty - Witness Leave, p. 1633

2.21.701 and other rules - Leave of Absence without Pay, p. 141, 372

2.21.1001 and other rules - Parental Leave, p. 286, 571

2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320

- (Public Employees' Retirement Board)
- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329
  - I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021
  - I-VII When Salary Deferrals Under a Cafeteria Plan Should be Treated as Compensation, p. 1626
  - 2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400, 913
  - 2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907
  - 2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

AGRICULTURE, Department of, Title 4

- I-III Cherry Research and Marketing Development Program, p. 771, 1279
- 4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)

- 4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

- I-XII Insurance Standards for Safeguarding Personal Information, p. 2435, 426
- I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771
- 6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910
- 6.6.6811 and other rules - Captive Insurance Companies, p. 861
- 6.6.8501 and other rules - Viatical Settlement Agreements, p. 1636

COMMERCE, Department of, Title 8

- I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1539
- I Administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program, p. 1, 572
- I-XVI Award of Grants and Loans under the Big Sky Economic Development Program, p. 1711
- 8.119.101 Tourism Advisory Council, p. 404, 813

(Grant Review Committee)

- 14.4.101 and other rules - Award of Training Grants by the Grant Review Committee, p. 1471, 1915

EDUCATION, Title 10

(Superintendent of Public Instruction)  
10.16.3010 Special Education, p. 1641

(Board of Public Education)  
10.55.909 and other rule - Student Discipline Records -  
Student Records, p. 194, 575, 1390  
10.57.102 and other rules - Educator Licensure, p. 407, 916  
10.58.103 Review of Professional Educator Preparation Program,  
p. 289, 576

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)  
I No Wake Zone on Georgetown Lake, p. 1644  
I Notice of Adoption of a Temporary Emergency Rule -  
Closing the Clark Fork River from the Petty Creek  
Fishing Access Site to the Tarkio Fishing Access  
Site, p. 1586, 1916  
I-VII Exotic Wildlife, p. 358, 814  
I-X Aerial Herding Permits, p. 991, 1775  
I-XVI Blackfoot River Special Recreation Permit Program,  
p. 4, 430  
12.5.201 Removing the Peregrine Falcon from the State  
Endangered Species List, p. 1841  
12.9.211 Abandonment of Teton-Spring Creek Bird Preserve,  
p. 1646  
12.11.202 and other rules - Beaverhead and Big Hole Rivers,  
p. 144, 737, 917, 1391, 1507  
12.11.3985 No Wake Zone on Seeley Lake, p. 2874, 373

ENVIRONMENTAL QUALITY, Department of, Title 17

17.53.102 and other rules - Hazardous Waste - Authorization of  
the Hazardous Waste Program, p. 14, 442  
17.56.101 and other rules - Underground Storage Tanks -  
Installation of Underground Storage Tanks, p. 2877,  
443

(Board of Environmental Review)  
17.8.102 and other rules - Air Quality - Incorporation by  
Reference of Current Federal Regulations and Other  
Materials into Air Quality Rules, p. 291, 959  
17.8.335 Air Quality - Maintenance of Air Pollution Control  
Equipment for Existing Aluminum Plants, p. 2456, 321  
17.8.504 and other rules - Air Quality Permit Application,  
Operation and Open Burning Fees, p. 997  
17.8.743 Air Quality - Montana Air Quality Permits - When  
Required - Oil and Gas Well Facilities, p. 1479  
17.8.759 Air Quality - Review of Permit Applications, p. 1476  
17.24.116 Application Requirements for Operating Permit,  
p. 1649



- 17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844
- 17.30.1303 and other rules - Water Quality - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ 9 (Montana Technical Standards for CAFOs), p. 2962, 864
- 17.38.106 Public Water Supply - Fees for Review of Public Water and Sewage System Plans and Specifications, p. 2983, 577

TRANSPORTATION, Department of, Title 18

- 18.8.1101 Movement of Houses, Buildings, Extremely Heavy Machinery, and Other Large and Unusual Objects, p. 1002, 1589
- 18.9.401 and other rule - Eligibility for Gasohol Motor Fuel Tax Reduction - Tax Reduction on Certain Oxygenated Gasoline Passed by the 59th Legislature in SB 293, Ch. 452, p. 1719

CORRECTIONS, Department of, Title 20

- I-VIII Establishment of a Residential Methamphetamine Treatment Center, p. 1337, 1917
- 20.9.601 and other rules - Licensure of Youth Detention Facilities, p. 1722
- 20.27.101 and other rule - Siting and Construction Standards, p. 778, 1393

JUSTICE, Department of, Title 23

- I Creating a Separate Endorsement and Qualification for Commercial Drivers Who Operate School Buses, p. 780, 1394
- I-V Administration of the Address Confidentiality Program, p. 1731
- I-V Credit Counseling Services, p. 1485
- I-V Operation of the Criminal Intelligence Information Section - Access of Participating Law Enforcement Agencies to Information Maintained by the Criminal Intelligence Information Section, p. 304, 740
- I-VI Operation of the Identity Theft Passport Program, p. 1541
- I-VI Administration of the Forensic Rape Examination Payment Program, p. 1545
- I-VII Regulation of Retail Establishment Selling Ephedrine or Pseudoephedrine, p. 1343, 1488, 1782
- 23.16.102 and other rules - Effective Date for Forms Relating to Gambling Operator Licenses, Sports Tab Game Seller Licenses, Distributor's Licenses, Route

- Operator's Licenses, Manufacturer's Licenses, and  
Manufacturer of Illegal Gambling Devices Licenses,  
p. 1860
- 23.16.202 and other rules - Credit Play Prohibited - Video  
Gambling Machine Permits - Requirements for Letters  
of Withdrawal - Video Gambling Machine Testing Fees,  
p. 1735
- 23.16.209 and other rules - Bonus Games - Definitions -  
Display of Antique Slot Machines - Elimination of  
the Video Gambling Machine Permit Fee Surcharge -  
General Specifications and Software Specifications  
for Video Gambling Machines - Addition of Testing to  
Purposes for Which Illegal Video Gambling Devices  
May Be Imported or Exported by a Video Gambling  
Machine Manufacturer - Allowable Winning Patterns  
for Bingo - Permit Surcharge Which was Eliminated,  
p. 784, 1281, 1509
- 23.16.1823 Permit Fee Restrictions, p. 602, 964

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in  
alphabetical order following the department rules.

- 8.15.101 and other rules - Transfer from the Department of  
Commerce - Construction Blasters - Hoisting and  
Crane Operators - Boiler Engineers, p. 581
- 8.15.302 and other rules - Boilers - Terminology - Licensure  
- Examinations - Responsibility of Licensees -  
Training, p. 2492, 583
- 8.77.101 and other rules - Weights and Measures, p. 2997, 445
- 24.17.127 Prevailing Wage Rates for Public Works Projects -  
Building Construction Services - Heavy and Highway  
Construction Services, p. 1347
- 24.29.1409 Travel Expense Reimbursement for Workers'  
Compensation Medical Services, p. 1350
- 24.29.1409 Travel Expense Reimbursement for Workers'  
Compensation Medical Services, p. 520, 1395
- 24.29.4301 and other rules - Workers' Compensation Reporting  
Database, p. 1570
- 24.30.102 Occupational Safety Matters in Public Sector  
Employment, p. 1355
- 24.35.111 and other rules - Independent Contractor Exemption  
Certificates, p. 874, 1511
- 24.35.121 and other rule - Fee for Independent Contractor  
Exemption Certificates - Fee for Construction  
Contractor Registration, p. 525
- (Board of Alternative Health Care)
- 24.111.301 and other rules - Definitions - Naturopathic  
Physician Natural Substance Formulary List - Direct-  
entry Midwife Apprenticeship Requirements - Required  
Reports, p. 2786, 745

(Board of Architects)

24.114.403 and other rule - Business Entity Practice - Fee Abatement, p. 889

(Crane and Hoisting Operating Engineers Program)

24.135.501 and other rules - Hoisting Operators License Requirements - Crane Hoisting Operators License Requirements - Mine Hoisting Operators License Requirements - Fee Schedule - Renewals - National Commission Certification - Failed Examinations - Applications - Citations and Fines, p. 1871

(Board of Dentistry)

24.138.301 and other rules - Definitions - Initial Licensure of Dentists by Examination - Initial Licensure of Dental Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Denturist Examination - Denturist Application Requirements - Definition of Continuing Education - Requirements and Restrictions - Requirements for Continuing Education in Anesthesia, p. 796, 1396

(State Electrical Board)

24.141.401 and other rules - Board Meetings - Apprentice Registration - Fee Schedule - Temporary Practice Permits - Examinations, p. 1219  
24.141.403 Licensee Responsibilities, p. 317, 1397  
24.141.405 and other rule - Fee Schedule - Master Electrician Qualifications, p. 2349, 325

(Board of Funeral Service)

24.147.1101 and other rule - Crematory Facility Regulation - Designation as Crematory Operator or Technician, p. 197, 650

(Board of Landscape Architects)

24.153.403 Fee Schedule, p. 365, 750

(Board of Medical Examiners)

I & II Medical Assistants - Fee Abatement, p. 1882

(Board of Nursing)

8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable to Advanced Practice Registered Nursing - Clinical Nurse Specialist Practice - Application for Initial Approval - Special Reports - Initial Application Requirements for Prescriptive Authority - Special Limitations Related to the Prescribing of Controlled Substances, p. 311, 742

8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse - Conduct of Nurses, p. 516, 1686

- 8.32.403 and other rules - Reexamination - Registered Nurse - Reexamination - Practical Nurse - Licensure by Endorsement - Temporary Practice Permit - Abatement of Fees - Foreign Educated Applicants - Licensure for Foreign Nurses, p. 866, 1687
- 8.32.427 General Requirements for Medication Aide Training Programs and Instructors, p. 1652
- 8.32.1701 and other rules - Delegation, p. 30, 1022, 1291

(Board of Nursing Home Administrators)

- 8.34.101 and other rules - Transfer from the Department of Commerce, p. 375
- 8.34.415 and other rule - Renewals - Continuing Education, p. 2138, 377
- 24.162.420 Fee Schedule, p. 1490

(Board of Occupational Therapy Practice)

- 24.165.301 and other rules - Modalities - Medications - Definitions - Approval to Use Modalities - Permission to Use Electrical or Sound Physical Agents, p. 2505, 447

(Board of Optometry)

- 24.168.401 Fees, p. 200, 651

(Board of Outfitters)

- 8.39.501 and other rules - Outfitter Licensing and Operations, p. 1549

(Board of Physical Therapy Examiners)

- 8.42.101 and other rules - Transfer from the Department of Commerce, p. 380

(Board of Plumbers)

- 24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

- I-VI Private Alternative Adolescent Residential or Outdoor Programs, p. 1886

(Board of Private Security Patrol Officers and Investigators)

- 8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

(Board of Professional Engineers and Professional Land Surveyors)

- 8.94.3001 and other rules - Transfer from the Department of Commerce - Uniform Standards for Monumentation, Certificates of Survey and Final Subdivision Plats, p. 966
- 24.183.1001 Form of Corner Records, p. 530, 1783

(Board of Psychologists)

- 24.189.601 and other rule - Application Procedures - Licensees from Other States or Canadian Jurisdictions, p. 729, 1294
- 24.189.2107 and other rule - Continuing Education Implementation - Fee Abatement, p. 1739

(Board of Public Accountants)

- 8.54.410 and other rules - Fees - Amount of Required Experience - Continuing Education Matters - Special Practice Permits for Nonresident Certified Public Accountants, p. 1864

(Board of Radiologic Technologists)

- 8.56.602C and other rules - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Code of Ethics, p. 2682, 649
- 24.204.401 and other rules - Fee Schedule - Permit Fees - Abatement of Renewal Fees - Radiologic Technologists Applications - Replacement Licenses and Permits - Permits-Practice Limitations - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Adoption of a Code of Ethics, p. 1226

(Board of Real Estate Appraisers)

- 24.207.402 Adoption of USPAP by Reference, p. 42, 652
- 24.207.502 Application Requirements, p. 369
- 24.207.517 and other rule - Trainee and Mentor Requirements, p. 622, 1400

(Board of Respiratory Care Practitioners)

- 24.213.301 and other rules - Definitions - Application for Licensure - Temporary Permit - Examination - Institutional Guidelines Concerning Education and Certification and Authorization to Perform Pulmonary Function Testing and Spirometry, p. 2352, 453

(Board of Sanitarians)

- 24.216.402 and other rule - Fee Schedule - Minimum Standards for Licensure, p. 2994, 382

(Board of Social Work Examiners and Professional Counselors)

- 24.219.301 Defining Pastoral Counseling, p. 535

(Board of Veterinary Medicine)

- 8.64.101 and other rules - Transfer from the Department of Commerce, p. 323

LIEUTENANT GOVERNOR, Office of the, Title 30

- 30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358

LIVESTOCK, Department of, Title 32

- 32.2.403 Diagnostic Lab Fees, p. 1493, 1785
- 32.18.202 and other rule - Sheep Permits, p. 1007, 1517
- 32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1743

(Board of Horse Racing)

- 32.28.501 and other rules - Horse Racing, p. 45, 383

MILITARY AFFAIRS, Department of, Title 34

- I-VI Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1362, 1691

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36.19.106 Reclamation and Development Grants Program, p. 1746
- 36.23.102 and other rule - Tax Increment Revenue Bonds under the Water Pollution Control State Revolving Fund Act, p. 210, 457
- 36.24.102 and other rule - Tax Increment Revenue Bonds under the Drinking Water State Revolving Fund Act, p. 203, 458

(State Board of Land Commissioners and the Department of Natural Resources and Conservation)

- 36.25.210 Increase Royalty Rates for Oil and Gas Leases on State School Trust Lands from Current Rates to 16.67%, p. 1654

(Board of Oil and Gas Conservation)

- 36.22.1242 Privilege and License Tax Rates for Oil and Gas, p. 538, 1045

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-IV Montana Clean Indoor Air Act, p. 1665
- 37.30.102 and other rules - Vocational Rehabilitation Program, p. 1577
- 37.40.302 and other rules - Nursing Facility Reimbursement, p. 630, 1046
- 37.40.311 Medicaid Payments to Nursing Facilities, p. 411, 969, 1401
- 37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1657
- 37.70.311 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1366, 1786
- 37.78.102 and other rule - Temporary Assistance for Needy Families (TANF) - Medical Assistance - Purpose and Incorporation of Policy Manuals, p. 898, 1591

- 37.80.101 and other rules - Child Care Subsidy - Legally Unregistered Provider - Child Care Provider Merit Pay - Star Quality Tiered Reimbursement Programs, p. 217, 1057
- 37.85.212 Resource Based Relative Value Scale (RBRVS), p. 625, 974
- 37.85.414 and other rules - Medicaid Provider Requirements, p. 2690, 459
- 37.86.805 and other rules - Medicaid Reimbursement Rates for Ambulance Services, Hearing Aids and Durable Medical Equipment, p. 53, 385
- 37.86.1004 and other rule - Medicaid Dental Reimbursement and Coverage, p. 733, 1073
- 37.86.2207 and other rules - Comprehensive School and Community Treatment Program (CSCT), p. 1374, 1787
- 37.86.3607 and other rules - Case Management Services for Persons with Developmental Disabilities, Reimbursement, p. 1010
- 37.86.4401 and other rules - Reimbursement of Rural Health Clinics and Federally Qualified Health Centers, p. 60, 975, 1402
- 37.104.101 and other rules - Emergency Medical Services, p. 1238
- 37.106.704 Minimum Standards for a Critical Access Hospital, p. 804, 1295
- 37.108.219 and other rule - Managed Care Quality Assurance, p. 807, 1296
- 37.114.701 and other rules - School Immunization Requirements, p. 541, 1074

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Utility Implementation of Rate Changes and Billing Practices, p. 421
- I Eligible Telecommunications Carriers and Lifeline/Link-Up, p. 423, 820
- I-VII Energy Utility Service Standards, p. 416, 1404
- I-XIX Eligible Telecommunications Carriers, p. 2697, 653
- 38.5.2202 and other rule - Pipeline Safety, p. 2795, 386
- 38.5.3301 and other rules - Telecommunications Service Standards, p. 2518, 568

REVENUE, Department of, Title 42

- 42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147, 1592
- 42.18.109 and other rules - Montana Reappraisal Plans for 2003 and 2009, p. 1891
- 42.18.118 and other rules - Industrial Property, p. 2798, 667
- 42.20.106 and other rules - Property Taxes, p. 1016, 1594
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 1748
- 42.25.1801 and other rules - Oil, Gas, and Coal Natural Resources, p. 1896

SECRETARY OF STATE, Title 44

1.2.419 and other rule - Scheduled Dates for the 2006  
Montana Administrative Register - Submission Dates  
for Replacement Pages, p. 1903

(Commissioner of Political Practices)

I Lobbying and Regulation of Lobbying - Payment  
Threshold, p. 158, 387

44.10.331 Limitations on Receipts from Political Committees to  
Legislative Candidates, p. 1583



## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in September 2005 appear. Vacancies scheduled to appear from November 1, 2005, through January 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 15, 2005.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Corrections Advisory Council</b> (Corrections)			
Lt. Governor John Bohlinger Helena	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Rep. Dorothy Bradley Bozeman	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Rep. Tim Callahan Great Falls	Governor	Zook	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Mr. Dave Castle Great Falls	Governor	Funyak	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Sen. Mike Cooney Helena	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
County Attorney George Corn Hamilton	Governor	Lambert	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Chief William Dial Whitefish	Governor	Blaz	9/30/2005 9/8/2007
Qualifications (if required):	public representative		
Ms. Gloria Edwards Bozeman	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required):	public representative		

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Corrections Advisory Council</b> (Corrections) cont.			
Sen. Steve Gallus	Governor	reappointed	9/30/2005
Butte			9/8/2007
Qualifications (if required):	public representative		
Commissioner Adam Gartner	Governor	Underdal	9/30/2005
Glendive			9/8/2007
Qualifications (if required):	public representative		
Rep. Gail Gutsche	Governor	Sales	9/30/2005
Missoula			9/8/2007
Qualifications (if required):	public representative		
Judge Joe L. Hegel	Governor	Christopher	9/30/2005
Forsyth			9/8/2007
Qualifications (if required):	public representative		
Rep. Larry Jent	Governor	Tash	9/30/2005
Bozeman			9/8/2007
Qualifications (if required):	public representative		
Mr. Emery Jones	Governor	Pfaff	9/30/2005
Missoula			9/8/2007
Qualifications (if required):	public representative		
Rep. William T. "Red" Menahan	Governor	Clodfelter	9/30/2005
Anaconda			9/8/2007
Qualifications (if required):	public representative		
Mr. Robert Ross	Governor	McGree	9/30/2005
Billings			9/8/2007
Qualifications (if required):	public representative		

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Corrections Advisory Council</b> (Corrections) cont.			
Ms. Emily Matt Salois Missoula	Governor	Rice	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Sen. Trudi Schmidt Great Falls	Governor	Furois	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Sen. Jim Shockley Victor	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Rep. Veronica Small-Eastman Lodge Grass	Governor	Juneau	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Ms. Carol Stratemeyer Hamilton	Governor	reappointed	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Mr. Carl Venne Crow Agency	Governor	Stadler	9/30/2005 9/8/2007
Qualifications (if required): public representative			
Ms. Valarie Weber-Rasch Billings	Governor	McCave	9/30/2005 9/8/2007
Qualifications (if required): public representative			
<b>Film and Television Advisory Council</b> (Commerce)			
Mr. Will Brewster Belgrade	Governor	not listed	9/14/2005 3/11/2007
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Council on Developmental Disabilities</b> (Commerce)			
Ms. Janet Carlson	Governor	Halsey	9/22/2005
Malta			1/1/2007
Qualifications (if required): primary consumer representative			
Ms. Connie Wethern	Governor	Kosmann	9/22/2005
Glasgow			1/1/2007
Qualifications (if required): secondary consumer representative			
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife, and Parks)			
Mr. Jamie Byrne	Governor	reappointed	9/22/2005
Ekalaka			6/30/2007
Qualifications (if required): outfitter			
Mr. Shane Colton	Governor	Walker	9/22/2005
Billings			6/30/2007
Qualifications (if required): Fish, Wildlife, and Parks commissioner			
Ms. Connie Eissinger	Governor	Dascher	9/22/2005
Brockway			6/30/2007
Qualifications (if required): landowner			
Mr. William Falls Down, Sr.	Governor	Pugrud	9/22/2005
Hardin			6/30/2007
Qualifications (if required): landowner			
Mr. Gordon Haugen	Governor	Quatraro	9/22/2005
Bozeman			6/30/2007
Qualifications (if required): hunter/angler			
Sen. Lane L. Larson	Governor	Hansen	9/22/2005
Billings			6/30/2007
Qualifications (if required): legislator			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife, and Parks) cont.			
Ms. Donna McDonald Alder	Governor	reappointed	9/22/2005 6/30/2007
Qualifications (if required): outfitter			
Mr. Max McDonald Vaughn	Governor	Nathe	9/22/2005 6/30/2007
Qualifications (if required): landowner			
Mr. Mat Millenbach Billings	Governor	Bettas	9/22/2005 6/30/2007
Qualifications (if required): hunter/angler			
Mr. Jack Rich Seeley Lake	Governor	reappointed	9/22/2005 6/30/2007
Qualifications (if required): outfitter			
Mr. Craig Roberts Lewistown	Governor	reappointed	9/22/2005 6/30/2007
Qualifications (if required): hunter/angler			
Mr. Doug Schott Stevensville	Governor	Roos	9/22/2005 6/30/2007
Qualifications (if required): outfitter			
Mr. Arlo Skari Chester	Governor	Tash	9/22/2005 6/30/2007
Qualifications (if required): landowner			
Mr. Land Tawney Missoula	Governor	Bothwell	9/22/2005 6/30/2007
Qualifications (if required): hunter/angler			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife, and Parks) cont.			
Rep. Bill Warden Bozeman	Governor	Lange	9/22/2005 6/30/2007
Qualifications (if required): legislator			
<b>Rail Service Competition Council</b> (Governor)			
Ms. Carla Allen Denton	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): having knowledge of class II railroads			
Mayor Larry J. Bonderud Shelby	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): knowledge of the trucking industry			
Mr. William Fogarty Anaconda	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): having knowledge of class I railroads			
Mr. Russell Hobbs Columbia Falls	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): knowledge of transportation for the wood products industry			
Mr. Doug Miller Troy	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): knowledge of transportation for the mineral industry			
Mr. Michael O'Hara Fort Benton	Governor	not listed	9/7/2005 7/1/2007
Qualifications (if required): farm commodity producer knowledgeable about transportation of farm commodities			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Workers' Compensation Court Judge</b> (Labor and Industry)			
Mr. James Shea	Governor	McCarter	9/7/2005
Missoula			9/6/2011
Qualifications (if required): none specified			
<b>Youth Justice Council</b> (Justice)			
Ms. Teri Young	Governor	not listed	9/14/2005
Great Falls			8/15/2007
Qualifications (if required): juvenile parole officer			



VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Alternative Livestock Advisory Council</b> (Fish, Wildlife, and Parks) Dr. Deborah Yarborough, Kalispell Qualifications (if required): veterinarian	Governor	1/1/2006
Ms. Rebecca Mesaros, Cascade Qualifications (if required): representative of the alternative livestock industry	Governor	1/1/2006
Mr. Stanley Rauch, Victor Qualifications (if required): sportsperson	Governor	1/1/2006
<b>Appellate Defender Commission</b> (Administration) Judge Richard A. Simonton, Glendive Qualifications (if required): district judge	Governor	1/1/2006
Mr. Mike Sherwood, Missoula Qualifications (if required): attorney	Governor	1/1/2006
<b>Board of Chiropractors</b> (Labor and Industry) Dr. Pamela Blanchard, Great Falls Qualifications (if required): chiropractor	Governor	1/1/2006
Ms. Jo Ausk, Terry Qualifications (if required): public member	Governor	1/1/2006
<b>Board of Horse Racing</b> (Livestock) Mr. Tim Donnelly, Miles City Qualifications (if required): representative of District 1	Governor	1/20/2006
Ms. Barbara Cole, Shelby Qualifications (if required): representative of District 3	Governor	1/20/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Occupational Therapy Practice</b> (Labor and Industry) Ms. Danette Rasmussen, Antelope Qualifications (if required): public member	Governor	12/31/2005
<b>Board of Pardons and Parole</b> (Corrections) Ms. Roxanne Wilson, Busby Qualifications (if required): public member with knowledge of Indian culture	Governor	1/1/2006
Mr. Darryl Dupuis, Polson Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems	Governor	1/1/2006
Ms. Margaret Hall, Pablo Qualifications (if required): Indian culture knowledge	Governor	1/2/2006
<b>Board of Speech-Language Pathologists and Audiologists</b> (Labor and Industry) Ms. Marilyn Thaden, Butte Qualifications (if required): speech-language pathologist	Governor	12/31/2005
Ms. Jennifer L. Hartze, Belgrade Qualifications (if required): audiologist	Governor	12/31/2005
<b>Developmental Disabilities Planning and Advisory Council</b> (Commerce) Ms. Sylvia Danforth, Miles City Qualifications (if required): advocacy program representative	Governor	1/1/2006
Mr. Dan McCarthy, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): advocacy program representative	Governor	1/1/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Developmental Disabilities Planning and Advisory Council</b> (Commerce) cont. Ms. Bernadette Franks-Ongoy, Helena Qualifications (if required): advocacy program representative	Governor	1/1/2006
Ms. Kimm Evermann, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Mr. Dennis Moore, Billings Qualifications (if required): advocacy program representative	Governor	1/1/2006
Ms. JoAnn Dotson, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Mr. Jeff Sturm, Helena Qualifications (if required): agency representative	Governor	1/1/2006
<b>Governor's Council on Worklife Wellness</b> (Public Health and Human Services) Mr. John Pipe, Wolf Point Qualifications (if required): tribal health government representative	Governor	12/2/2005
Ms. Diane West, Helena Qualifications (if required): state agency representative	Governor	12/2/2005
Ms. Maggie Bullock, Helena Qualifications (if required): state agency representative	Governor	12/2/2005
Ms. Jill Young, Missoula Qualifications (if required): health care representative	Governor	12/2/2005
Mr. Brad Roy, Kalispell Qualifications (if required): health care representative	Governor	12/2/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's Council on Worklife Wellness</b> (Public Health and Human Services) cont.		
Mr. Kurt Keller, Bozeman Qualifications (if required): higher education representative	Governor	12/2/2005
Mr. James Lindsey, Helena Qualifications (if required): insurer	Governor	12/2/2005
Ms. Gail Mooney, Helena Qualifications (if required): public school staff	Governor	12/2/2005
Mr. Cas Sprouffske, Helena Qualifications (if required): retail sales service representative	Governor	12/2/2005
Mr. Jim Kaiser, Bismarck Qualifications (if required): retail sales service representative	Governor	12/2/2005
Ms. Vonda Lancaster, Billings Qualifications (if required): special interest group representative	Governor	12/2/2005
Mr. Cliff Christian, Helena Qualifications (if required): special interest group representative	Governor	12/2/2005
Mr. Garfield Littlelight, Billings Qualifications (if required): Indian Health Service representative	Governor	12/2/2005
Ms. Kate Wilson, Helena Qualifications (if required): health care representative	Governor	12/2/2005
Ms. LaDonna Grotbo, Helena Qualifications (if required): state agency representative	Governor	12/2/2005
Ms. Lynda Blades, Helena Qualifications (if required): state agency representative	Governor	12/2/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's Council on Worklife Wellness</b> (Public Health and Human Services) cont.		
Dr. Mary Albright, Helena Qualifications (if required): representative of an insurer	Governor	12/1/2005
Mr. Pete Shatwell, Bozeman Qualifications (if required): representative of employee wellness	Governor	12/1/2005
Ms. Carol Strasheim, Billings Qualifications (if required): representative of Indian Health Service	Governor	12/1/2005
Ms. Catherine Ipsen, Missoula Qualifications (if required): representative of persons with disabilities	Governor	12/1/2005
Mr. Jay Strever, Billings Qualifications (if required): representative of retail sales and service	Governor	12/1/2005
<b>Independent Living Council</b> (Public Health and Human Services)		
Ms. June Hermanson, Billings Qualifications (if required): none specified	Director	12/2/2005
<b>Judicial Nomination Commission</b> (Justice)		
Judge Ted O. Lympus, Kalispell Qualifications (if required): district judge	Governor	12/31/2005
Mr. James Mockler, Helena Qualifications (if required): public member	Governor	1/1/2006
<b>Montana Alfalfa Seed Committee</b> (Agriculture)		
Mr. James Whitmer, Glendive Qualifications (if required): representative of the alfalfa seed growers industry and alfalfa leaf cutting bee industry	Governor	12/21/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Alfalfa Seed Committee</b> (Agriculture) cont. Mr. John Mehling, Hardin Qualifications (if required): representative of the alfalfa seed growers industry	Governor	12/21/2005
Mr. Rod Leafdale, Billings Qualifications (if required): representative of the alfalfa seed processing industry	Governor	12/21/2005
<b>Montana Children's Trust Fund Board</b> (Public Health and Human Services) Ms. Jani McCall, Billings Qualifications (if required): public member	Governor	1/1/2006
Ms. Ann (Punky) Bullis, Crow Agency Qualifications (if required): public member	Governor	1/1/2006
<b>Montana Council on Developmental Disabilities</b> (Commerce) Rep. Don Roberts, Billings Qualifications (if required): legislator	Governor	1/1/2006
Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2006
<b>Montana Geographic Information Council</b> (Administration) Mr. Tony Herbert, Helena Qualifications (if required): designee of the Director of the Department of Administration	Governor	11/19/2005
Sen. Joseph Tropila, Great Falls Qualifications (if required): member of the Montana Senate	Governor	11/19/2005
Mr. Don Wetzel, Bozeman Qualifications (if required): representative of Native American Tribes of Montana	Governor	11/19/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Geographic Information Council</b> (Administration) cont. Ms. Karen Strege, Helena Qualifications (if required): State Librarian	Governor	11/19/2005
Rep. Jon Sesso, Butte Qualifications (if required): representative of local government	Governor	11/19/2005
Mr. Lance Clampitt, Manhattan Qualifications (if required): federal USDI representative	Governor	11/19/2005
Mr. Art Pembroke, Helena Qualifications (if required): local government representative	Governor	11/19/2005
Rep. Dick Haines, Missoula Qualifications (if required): member of the Montana House of Representatives	Governor	11/19/2005
Mr. Chris Smith, Helena Qualifications (if required): designee of the Director of Fish, Wildlife, and Parks	Governor	11/19/2005
Mr. Steve Shannon, Butte Qualifications (if required): representative of public utilities	Governor	11/19/2005
Mr. Ken Jenkins, Missoula Qualifications (if required): representing MARLS	Governor	11/19/2005
Mr. Martin Prather, Missoula Qualifications (if required): federal USDA representative	Governor	11/19/2005
Ms. Dolores Cooney, Helena Qualifications (if required): designee of the Director of Department of Revenue	Governor	11/19/2005
Mr. Harold Blattie, Helena Qualifications (if required): representative of local government	Governor	11/19/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Geographic Information Council</b> (Administration) cont.		
Mr. Tom Deiling, Billings Qualifications (if required): federal USDI representative	Governor	11/19/2005
Mr. Dick Clark, Helena Qualifications (if required): designee of the Director of Department of Transportation	Governor	11/19/2005
Mr. Robin Trenbeath, Helena Qualifications (if required): designee of the Director of Department of Environmental Quality	Governor	11/19/2005
Dr. Katherine Maynard, Bozeman Qualifications (if required): federal USDA representative	Governor	11/19/2005
Mr. Alex Philip, Missoula Qualifications (if required): representative of a private business active in land information systems	Governor	11/19/2005
Mr. Hans Zuuring, Missoula Qualifications (if required): representative of the university system	Governor	11/19/2005
Mr. Jeff Hutten, Kalispell Qualifications (if required): representing the Interagency GIS Technical Working Group	Governor	11/19/2005
Mr. Tom Reynolds, Kalispell Qualifications (if required): representing the Montana Local Government GIS Coalition	Governor	11/19/2005
<b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation)		
Mr. Gary Unruh, Chinook Qualifications (if required): grazing district director	Governor	1/1/2006
Mr. Larry Brence, Baker Qualifications (if required): public member	Governor	1/1/2006



VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana High School Association Board of Control</b> (Governor) Mr. Gail Peterson, Sidney Qualifications (if required): public member	Governor	1/1/2006
<b>Montana Statewide Independent Living Council</b> (Public Health and Human Services) Ms. Cecilia C. Cowie, Helena Qualifications (if required): none specified	Director	1/5/2006
Mr. John Pipe, Wolf Point Qualifications (if required): none specified	Director	1/5/2006
Mr. Tom Tripp, Butte Qualifications (if required): none specified	Director	1/5/2006
Mr. Robert D. Liston, Missoula Qualifications (if required): none specified	Director	1/5/2006
Ms. Carol LaRocque, Great Falls Qualifications (if required): none specified	Director	1/5/2006
Ms. Donna M. Scott, Billings Qualifications (if required): none specified	Director	1/5/2006
<b>Montana Vocational Rehabilitation Council</b> (Public Health and Human Services) Rep. Carol Lambert, Broadus Qualifications (if required): Statewide Independent Living Council position	Director	1/1/2006
Mr. Dick Trerise, Helena Qualifications (if required): Office of Public Instruction position	Director	1/1/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Small Business Health Insurance Pool Board</b> (State Auditor)		
Ms. Connie Welsh, Helena	Governor	1/1/2006
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans		
<b>State Employees' Charitable Giving Campaign Steering Committee</b> (Administration)		
Ms. Joy McGrath, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Alicia Pichette, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Mary Dalton, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Mr. Ed Caplis, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Mary Wright, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Adeline Miller, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Marcia Armstrong, Helena	Director	1/31/2006
Qualifications (if required): none specified		
Ms. Karen Shipley, Butte	Director	1/31/2006
Qualifications (if required): none specified		
Mr. Tim McCauley, Helena	Director	1/31/2006
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Employees' Charitable Giving Campaign Steering Committee</b> (Administration) cont.		
Mr. Jack Lynch, Helena Qualifications (if required): none specified	Director	1/31/2006
Mr. Rick Bush, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Jeanine McCarthy, Helena Qualifications (if required): none specified	Director	1/31/2006
Mr. Wilbur Rehmann, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Beki Glyde Brandborg, Helena Qualifications (if required): none specified	Director	1/31/2006
<b>State Lottery Commission</b> (Commerce)		
Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2006
Ms. Betty L. Wilkins, Missoula Qualifications (if required): public member	Governor	1/1/2006
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services)		
Ms. Marilyn Patrick, Butte Qualifications (if required): family member of a survivor	Governor	1/1/2006
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice)		
Mr. Larry Curran, Butte Qualifications (if required): resident of Butte-Silver Bow	Governor	12/31/2005

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice)		
cont.		
Director Mary Sexton, Helena	Governor	12/31/2005
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Director Richard Opper, Helena	Governor	12/31/2005
Qualifications (if required): Director of the Department of Environmental Quality		
Ms. Linda Bouck, Anaconda	Governor	12/31/2005
Qualifications (if required): resident of Anaconda-Deer Lodge		
Mr. Dennis Daneke, Missoula	Governor	12/31/2005
Qualifications (if required): resident of Missoula County		
Mr. Paul Babb, Butte	Governor	12/31/2005
Qualifications (if required): resident of Butte-Silver Bow		
<b>Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council</b>		
(Environmental Quality)		
Mr. John Hollenback, Gold Creek	Governor	12/31/2005
Qualifications (if required): representative from Powell County and a voting member		
Ms. Sally Johnson, Missoula	Governor	12/31/2005
Qualifications (if required): representative from Missoula County and a voting member		
Sen. Dale Mahlum, Missoula	Governor	12/31/2005
Qualifications (if required): representative from Missoula County and a voting member		
Mr. Jim Flynn, Anaconda	Governor	12/31/2005
Qualifications (if required): representative from Deer Lodge County and a voting member		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2005 through JANUARY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council</b>		
(Environmental Quality) cont. Director Jeff Hagener, Helena Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks and a non-voting member	Governor	12/31/2005
Mr. Gene Vuckovich, Anaconda Qualifications (if required): representative from Deer Lodge County and a voting member	Governor	12/31/2005
Mr. Jerry Harrington, Butte Qualifications (if required): representative from Silver Bow County and a voting member	Governor	12/31/2005
Mr. Jules Waber, Great Falls Qualifications (if required): representative from Powell County and a voting member	Governor	12/31/2005
Mr. James Dinsmore, Hall Qualifications (if required): representative from Granite County and a voting member	Governor	12/31/2005