MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.617, 2.21.618, 2.21.619, 2.21.620, 2.21.626, 2.21.627, 2.21.628, 2.21.636, 2.21.641, and 2.21.646 pertaining to holidays and holiday pay	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On February 5, 2010, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 25, 2010, to advise us of the nature of the accommodation needed. Please contact Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; Montana Relay Service/TDD 711; or e-mail mthomas2@mt.gov.

3. The department proposes to repeal the following rules:

2.21.617 SHORT TITLE found at page 2-678 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.618 POLICY AND OBJECTIVES found at ARM page 2-678.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.619 DEFINITIONS found at ARM page 2-678.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.620 HOLIDAYS found at ARM page 2-679.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-214, 1-1-216, 2-18-603, MCA

2.21.626 HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS found at ARM page 2-681.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.627 HOLIDAY BENEFITS FOR FULL-TIME EMPLOYEES found at ARM page 2-681.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.628 HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES found at ARM 2-682.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.636 PAY FOR WORK PERFORMED ON A HOLIDAY found at ARM page 2-683.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.641 SPECIAL SITUATIONS found at ARM page 2-685.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

2.21.646 CLOSING found at ARM page 2-685.

AUTH: 2-18-102, 2-18-603, MCA
IMP: 1-1-216, 2-18-603, MCA

STATEMENT OF REASONABLE NECESSITY: The rules proposed to be repealed concern only the internal management of state government and do not impact or affect the public. Therefore the rules are not appropriately included in ARM, according to the definition of "rule" in 2-4-102(11)(b)(i), MCA. A revised holiday policy for state employees will be included instead in the Montana Operations Manual, a document that addresses the internal management of state government.

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: Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703;

or e-mail mthomas2@mt.gov, and must be received no later than 5:00 p.m., February 12, 2010.

5. Marjorie Thomas, an attorney with the Department of Administration, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State January 4, 2010.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the submission and review of applications for funding under the Treasure State Endowment Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 4, 2010, at 2:00 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on January 20, 2010, to advise us of the nature of the accommodation that you need. Please contact Jim Edgcomb, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2785; fax (406) 841-2771; TDD (406) 841-2702; or e-mail jedgcomb@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Treasure State Endowment Program Application Guidelines dated January 2010 as rules governing the submission and review of applications under the TSEP program.

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

(a) eligible applicants and projects;

(b) types of grants available under TSEP;

(c) general requirements for applying for TSEP grants; and

(d) application ranking criteria and review process.

(3) Copies of the regulation adopted by reference in (1) can be viewed on the department's web site at http://comdev.mt.gov/CDD_TSEP_Grants.asp, or 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 have these application guidelines before the eligible entities may apply to the department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP grants and the types of grants available. They also describe the review process by which the department evaluates applications and makes funding recommendations to the Legislature.

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 Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2785; fax (406) 841-2771; or e-mail jedgcomb@mt.gov, and must be received no later than 5:00 p.m., February 12, 2010.

5. Jim Edgcomb, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State January 4, 2010.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.102.4001, 10.102.5102, 10.102.5105, and 10.102.5106 pertaining to resource sharing and allocation of federation funding	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 16, 2010, at 1:00 p.m., the Montana State Library will hold a public hearing in the Grizzly Conference room of the State Library, 1515 E 6th Ave, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Montana State Library will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana State Library no later than 5:00 p.m. on February 5, 2010, to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, Montana State Library, PO Box 201800, Helena, Montana, 59620-1800; telephone (406) 444-3384; fax (406) 444-0266; TTY (406) 444-3005; or e-mail mstark2@mt.gov.

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

Subchapter 40

Interlibrary ~~Loan Reimbursement~~ Resource Sharing

10.102.4001 ~~REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS~~ RESOURCE SHARING (1) ~~Definitions used in this subchapter include:~~ The Commission has established a statewide interlibrary resource-sharing program (hereinafter resource-sharing program) to support and facilitate resource-sharing among libraries in Montana. The resource-sharing program consists of those library services provided to participating libraries pursuant to the Group Services Contract between the Montana State Library and OCLC Online Computer Library Center, Inc., and the services provided to participating libraries through the licensing and maintenance of the Montana Shared Catalog. 50 per cent of the funds appropriated by the legislature for the resource-sharing program shall be allocated to pay a portion of the cost of the Group Services Contract between the Montana State Library and OCLC Online Computer Library Center, Inc. The remaining 50 per cent of the funds appropriated by the legislature for the resource-sharing program shall be allocated to pay a portion of the ongoing cost of licensing and maintaining the Montana Shared Catalog for participating libraries. The latter funds shall not be

used for the purpose of offsetting the cost of adding new-member libraries to the Montana Shared Catalog.

~~(a) "Interlibrary loan" means the loaning or provision of copies of library materials from one Montana library to another Montana library. Such materials are to include, but are not limited to, the following: book, copy in lieu of book, magazine/periodical, copy in lieu of magazine/periodical, audiovisual title, government document/technical report, and pamphlets, some of which are to be returned.~~

~~(b) "Libraries eligible for interlibrary loan reimbursement" are defined in 22-1-328(2), MCA.~~

~~(c) "Net loaning libraries" are those libraries whose interlibrary loans exceed their borrowing of library materials during the year for which they seek net loaning reimbursement, provided the libraries reported and requested reimbursement for the loans.~~

~~(2) Reimbursements will be made on an annual basis based on the following:~~

~~(a) Reimbursement will be made at a rate determined by the State Library.~~

~~(i) This rate is based upon an estimated number of annual interlibrary loans (ILL) in Montana and available funds.~~

~~(ii) Available funds for ILL reimbursement will be divided evenly in half.~~

~~(iii) Every eligible library will be reimbursed from one-half these total available funds. These funds, shared between every eligible library, shall be called "simple loaning reimbursement".~~

~~(iv) Simple loaning reimbursement will be computed by dividing the total available funds in half, and distributing that half of the funds in proportional amounts to every library eligible for simple loaning reimbursement. The total amount of money available to the State Library for simple loaning reimbursement will be divided by the total number of loans reported to obtain the per-loan rate of reimbursement. The rate of reimbursement will then be applied to each simple loan to determine the amount of reimbursement for each library.~~

~~(v) Only net loaning libraries are eligible for reimbursement from the remaining half of the total available funds after simple loaning reimbursement funds are distributed. These funds shall be called "net loaning reimbursement".~~

~~(vi) Net loaning reimbursement will be computed by dividing the total amount of money available to the State Library for net loaning reimbursement by the total number of net loans reported to obtain the per-loan rate of reimbursement. The rate of reimbursement will then be applied to each net loan to determine the amount of reimbursement for each library.~~

~~(vii) These rates may be adjusted if deemed necessary by the State Library by dividing any remaining funds by the number of interlibrary loans claimed for reimbursement.~~

~~(b) A form for requesting reimbursement will be issued by the State Library. No reimbursement shall be made to any library which does not use the reimbursement form to submit its reimbursement request, or which fails to meet specified submittal deadlines for such requests.~~

~~(c) Each annual payment shall be made only for interlibrary loans within the specified year for which reimbursement funding is available. No count of interlibrary loan transactions shall be carried over from one year to another.~~

~~(d) Reimbursements will be made within 30 working days after the submittal date.~~

~~(e) No library may levy service charges, handling charges, or use fees for interlibrary loans for which it is reimbursed under the provisions of 22-1-325 through 22-1-331, MCA and these rules.~~

~~(i) Actual charges for postage are discouraged but not expressly prohibited under these rules.~~

~~(ii) Costs for special postal handling of interlibrary loan requests, when requested by the borrowing library, are chargeable costs.~~

~~(iii) Interlibrary loans, when completed via electronic submission, also count as reimbursable interlibrary loans. Costs associated with such electronic submission are chargeable if the transmission was specified by the requesting library. Electronic submissions qualify as special handling.~~

~~(iv) Per page photocopying charges may not be separately charged to the borrowing library but are assumed to be covered by the reimbursement under these rules.~~

~~(f) Providers of interlibrary loan are expected to follow the law in relation to copyright.~~

~~(g) Libraries applying for interlibrary loan reimbursement under 22-1-325 through 22-1-331, MCA and these rules must retain certain records as follows:~~

~~(i) The library requesting reimbursement shall retain records of interlibrary loans which support and agree with the number submitted for reimbursement. These records must include both the number of items loaned to eligible libraries, and the number of items borrowed. Reimbursement requests will include library-by-library detail of items lent to, and borrowed from, as well as total items borrowed and lent.~~

~~(ii) Libraries requesting reimbursement shall retain their records of interlibrary loan transactions for a period of three years and must produce these records for auditing purposes.~~

~~(h) For any questions arising because of this rule, the final arbiter is the State Library Commission.~~

~~(3) For a library to receive reimbursement through the program, it must annually certify to the State Library that the appropriate member of its staff has demonstrated competence regarding the application of the standardized interlibrary loan protocols.~~

AUTH: 22-1-330, MCA
IMP: 22-1-328, MCA

REASON: The original name of the subchapter is no longer appropriate as interlibrary resource sharing is now the focus rather than interlibrary loan reimbursement. This change is necessary to respond to changes in technology and interlibrary loan processes which led to the statute change that was accomplished in the 2009 legislative session. The statute change allowed more options for resource sharing and therefore the rule needed to be amended to reflect different options. Use of these funds according to the proposed rule changes would allocate

legislatively appropriated funds in a more cost effective manner to more effectively support resource sharing.

10.102.5102 ALLOCATION OF FUNDING BETWEEN FEDERATIONS AND GRANT PROGRAMS (1) remains the same.

(a) Before funds are allocated among federations, the travel expenses for federation coordinators will be estimated and subtracted off the top of the funds federations receive. Each federation will receive travel funds for its coordinator. The remaining portion of the appropriation allocated to library federations shall be distributed among the six federations according to the following formula: 50 percent~~%~~ of the first $250,000 shall be divided equally among the six federations and 50~~%~~ percent shall be allocated on the basis of population within the six federations.

(b) Any appropriation in excess of $250,000 shall be divided according to the following formula: 20~~%~~ percent of the remainder shall be allocated equally among the six federations. 80~~%~~ percent of the remainder shall be allocated among the six federations on the basis of population.

(2) remains the same.

(3) Each federation's annual plan of service shall be based upon direction given by the state library commission from its consideration of the state long range plan for libraries. The annual plan of service is submitted to the state library each ~~April~~ spring for consideration and action by the state library commission. Changes or appeals related to the plans of service are acted upon by the state library commission in May and June of each year.

(4) through (7) remain the same.

AUTH: 22-1-103, 22-1-413, MCA
IMP: 22-1-413, MCA

REASON: The first change is necessary to reflect the desire to more equitably share the cost of travel for coordinators and federations. The second change is necessary to more accurately reflect the timeline for the creation of federation plans of service and commission action. Some federations do not turn in their plan of service until they meet in May while others may turn in their plan of service before April.

10.102.5105 JOINING LIBRARY FEDERATIONS (1) Libraries eligible to join federations include any public, school, special, college, tribal, or university library.

(2) remains the same.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-328, 22-1-330, 22-1-331, 22-1-402, 22-1-404, 22-1-413, MCA

REASON: Tribal libraries needed to be added to the list as they can be active in federations.

10.102.5106 BASE GRANTS (1) through (2)(a)(i)(A) remain the same.

(B) to increase the on-line availability of local bibliographical information. Libraries may purchase subscriptions to bibliographic databases ~~such as lasercat and worldcat~~, add and maintain holdings in these databases, and purchase the necessary equipment and software;

(C) through (E) remain the same.

AUTH: 22-1-103, MCA
IMP: 22-1-103, 22-1-328, 22-1-330, 22-1-331, 22-1-402, 22-1-404, 22-1-413, MCA

REASON: Making the rule more open ended captures the gist of the rule, but doesn't limit it to a particular product that may change or even disappear.

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: Marlys Stark, Montana State Library, PO Box 201800, Helena, Montana, 59620-1800; telephone (406) 444-3384; fax (406) 444-0266; or e-mail mstark2@mt.gov, and must be received no later than 5:00 p.m., February 24, 2010.

5. State Librarian Darlene Staffeldt, Montana State Library, has been designated to preside over and conduct this hearing.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on November 13, 2009.

/s/ Darlene Staffeldt
Darlene Staffeldt
Rule Reviewer

/s/ Donald Allen
Donald Allen
Chairman
Montana State Library

Certified to the Secretary of State January 4, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.506, 17.56.507, 17.56.607, 17.56.608 pertaining to reporting of confirmed releases, adoption by reference, and release categorization	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On February 3, 2010, at 9:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 122, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 25, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the implementing agency within the specified timeframes and in the following manner:

(a) remains the same.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department and implementing agency by a method that ensures the department or the implementing agency receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) remains the same.

(ii) ~~preliminary remediation goals or soil~~ regional screening levels published in the United States Environmental Protection Agency, Region~~al 9 Preliminary~~

~~Remediation Goals~~ Screening Level (RSL) Table for ~~soil analyses of~~ contaminants in soil that are not listed in RBCA; or

(iii) remains the same.

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

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

(a) remains the same.

(b) Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~October 2007~~ September 2009);

(c) U.S. Environmental Protection Agency, ~~"Region 9 Preliminary Remediation Goals"~~ Regional Screening Level (RSL) Table (~~February 10, 2003~~ May 2009); and

(d) Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) published at 40 CFR Part 302 (~~2001~~ 2009).

(2) and (3) remain the same.

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

REASON: It is necessary to adopt this amendment to incorporate by reference the current version of Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA), which provides risk-based screening levels relied upon by the department to confirm the existence of a release of petroleum. RBCA sets soil screening levels using input modeling parameters representative of estimated statewide conditions. These levels are based on both direct contact with contaminated soil and leaching to ground water. The levels are also based on residential, industrial, or construction/excavation exposure and various depths to ground water and take into account multiple pathways and cumulative exposure. These screening levels are based on a 10^{-6} screening level for carcinogens, which allows the department to ensure that cumulative carcinogenic risk at sites does not exceed the 10^{-5} cumulative risk level. This is the risk level established by the Montana Legislature for adoption of water quality standards except for arsenic. For non-carcinogenic contaminants, the guidance uses a cumulative hazard index of 1, which represents the value indicating that no adverse non-cancer human health effects are expected to occur. It is the department's policy to periodically review RBCA to determine if changes to methods and toxicity information warrant updating the guidance. In 2008, the U.S. Environmental Protection Agency (EPA) released its Regional Screening Levels (RSLs) tables (EPA, September 2008) that represent a consensus throughout the EPA regions regarding toxicity data and methods for calculating screening levels based upon protection of human health. In January 2009, EPA released its Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) (EPA, January 2009). The

department has determined that it is appropriate to change its risk-based screening levels (RBSLs) in RBCA to more closely follow the EPA's approach. Changes from the 2007 to the 2009 version of RBCA are summarized at: http://deq.mt.gov/statesuperfund/rbca_guide.asp. Following is a description of changes from the 2007 version of RBCA:

1. The beneficial use based RBSLs for soils were removed and replaced with a qualitative evaluation. The beneficial use based RBSLs for ground water were retained because taste and odor thresholds for drinking water are more quantifiable.

2. The ethylbenzene and Methyl tertiary-butyl ether (MTBE) toxicity data were updated to be consistent with EPA's approach.

3. The method for evaluating inhalation exposure risk was made consistent with the EPA's approach presented in Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Rick Assessment) (EPA, January 2009). This approach involves the use of reference concentrations (RfCs) and inhalation unit risks (IURs) in the equations without adjusting for body weight and inhalation rate.

4. The particulate emission factor was updated to be consistent with the EPA's Regional Screening Levels User's Guide and Tables (EPA, September 2008).

5. A method of evaluating inhalation exposure risk to polynuclear aromatic hydrocarbons (PAHs) was added using the IURs provided in EPA's RSL Table for Chemical Contaminants at Superfund Sites (September 2008).

6. Both the noncarcinogenic toxicity data and the carcinogenic IUR provided in EPA's RSL Table for Chemical Contaminants at Superfund Sites (September 2008) were evaluated and the more conservative of the two concentrations for each scenario was incorporated.

7. The PAH calculation was changed to reflect the mutagenic mode of action method based upon current EPA guidance.

8. Inhalation route calculations made by extrapolating oral toxicity have been removed.

9. The commercial skin adherence factor was increased.

10. Volatilization factors for the target analytes were changed.

11. Risk analysis for dermal exposure was removed for volatile contaminants.

12. Saturation concentrations were removed from the Master Table because petroleum compounds are mixtures and these concentrations are not necessarily indicative of free product. Therefore, the department did not use these concentrations in its analyses of risk for decision-making.

13. The 75-year lifetime for carcinogenicity was retained instead of changing to 70 years to be consistent with EPA, because the slope factors and IURs for the target analytes are not adjusted for a 70-year lifetime and the department determined that 75 years is still appropriate.

14. Soil leaching RBSLs for petroleum fractions were recalculated based upon new ground water RBSLs.

15. Screening levels for Resource Conservation and Recovery Act (RCRA) metals were added.

16. The text of the document was revised and updated to make it more

understandable.

This amendment is also necessary to incorporate EPA regional screening levels (RSLs) that have superseded EPA Region 9 preliminary remediation goals (PRGs). The department has changed its RBSLs in RBCA, as described above, to more closely follow the EPA's approach. RSLs are being used by various states and EPA in much the same way as PRGs were used. RSLs will be used by the department as conservative screening values that provide the same levels for protection for non-petroleum compounds as RBCA provides for petroleum. The RSLs reflect the current state of the science of toxicology and risk assessment. RSLs are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure. The department will use RSLs to evaluate risk, and to confirm the existence of a release that requires corrective action, for contaminants that are not listed in RBCA.

Finally, this amendment is necessary to incorporate the reference to the current version of 40 CFR Part 302, which lists reportable quantities for hazardous substances under CERCLA. To be consistent with RCRA and other sections in CERCLA, EPA revised paragraph (b) of 40 CFR 302.5 to delete references to extraction procedure "EP" toxicity. This change does not affect any substantive aspect of DEQ's release reporting requirements.

17.56.607 RELEASE CATEGORIZATION (1) through (3) remain the same.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) remains the same.

(b) risks to human health, safety, and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5}, to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) remains the same.

(ii) a site-specific risk assessment method approved by the department for evaluation of risks to human health, safety, and the environment associated with contamination, or likely contamination, ~~of surface water or aquatic sediments, or for evaluation of risks associated with contaminant vapors,~~ that demonstrates to the department's satisfaction that current and potential future exposure pathways are incomplete;

(c) through (9)(g) remain the same.

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

REASON: The current rule allows a site-specific risk assessment to evaluate only risks associated with surface water, aquatic sediments or vapors. It is necessary to adopt the proposed amendment to ARM 17.56.607(4)(b)(ii) to eliminate these limitations and allow owners or operators to employ a site-specific risk assessment method to evaluate risks associated with contamination when a site-specific risk assessment is appropriate and approved by the department.

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

(a) remains the same.

(b) Drinking Water Maximum Contaminant Levels published at 40 CFR Part 141 (~~2001~~ 2009);

(c) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) (~~October 2007~~ September 2009); and

(d) through (3) remain the same.

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

REASON: This amendment is necessary to update the reference to Drinking Water Maximum Contaminant Levels (MCLs), published at 40 CFR Part 141, to the 2009 version. The drinking water MCLs are applicable environmental laws associated with petroleum releases that must be met in order to categorize a release as resolved. The 2009 version of the MCLs, listed in 40 CFR Part 141, contains revised MCL goals for disinfection byproducts (DBPs) such as chloroform, monochloroacetic acid, and trichloroacetic acid. This change could affect those releases that impact drinking water supplies that contain disinfectants. Most drinking water disinfectants react with organics in the water to produce DBPs. This MCL change provides increased protection against potential risks for cancer and reproductive and developmental health effects that are associated with DBPs.

This amendment is also necessary to adopt the current version of Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) which provides risk-based screening levels relied upon by the department to confirm the existence of a release of petroleum and to evaluate whether concentrations of listed contaminants pose an unacceptable risk to human health, safety, or the environment. These levels are necessary to assist owners, operators and the department in evaluating potential risk posed by a release without the necessity of a site-specific risk assessment. The changes incorporated within the September 2009 version of RBCA are described in detail in the reasons statement for ARM 17.56.507.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than February 11, 2010. To be

guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kirsten Bowers, attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

BY: */s/ Richard H. Opper*
RICHARD H. OPPER, Director

Certified to the Secretary of State, January 4, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I-V pertaining to the administration of an emergency medical service grant	)	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 26, 2010, the Department of Transportation proposes to adopt the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on January 28, 2010, to advise us of the nature of the accommodation that you need. Please contact the Planning Division, Department of Transportation, 2960 Prospect Avenue, Helena, Montana, 59620; telephone (406) 444-7289; fax (406) 444-7671; TTY (800) 335-7592; or e-mail dmcbroom@mt.gov.

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

NEW RULE I DEFINITIONS For the purposes of this subchapter and administering the Emergency Medical Service Providers Grant Program, and unless the context expressly indicates otherwise, the following definitions apply:

(1) "Emergency situation" means a documented emergency as determined by the Montana Department of Transportation Director, which includes, but is not limited to, the following:

(a) an accident that renders a vehicle or equipment inoperable and nonrepairable; or

(b) a vehicle or equipment breakdown that requires temporary substitutes during repairs to the primary vehicle or equipment.

(2) "Majority" means 51% or greater.

(3) "Match" means a cash match. A 10% match is required.

(4) "Routine medical supplies" means disposable, single-use supplies.

(5) "Training" means equipment for required training to maintain certifications, initial or ongoing emergency medical technician training, or continuing education.

AUTH: 61-2-506, MCA
IMP: 61-2-503, 61-2-504, 61-2-505, 61-2-506, 61-2-507, MCA

REASON: The proposed rule establishes definitions which are necessary to implement the emergency medical service providers grant program. These are

terms used in the statutes and in the proposed rules. As such, the definitions will provide for consistent application of the program.

NEW RULE II CRITERIA FOR REVIEW (1) An application for a grant to acquire or lease an ambulance or emergency response vehicles or equipment funds must include a statement indicating how the emergency medical service meets the following criteria. A proposed budget must be submitted with the application indicating how grants will be used.

(2) The department will review applications and rank based on the following weighted criteria:

(a) 50% -demonstrated need, including fleet status;

(b) 5% -size of the geographic area;

(c) 5% -distance from other emergency medical service providers in the geographic region;

(d) 5% -distance from the closest hospital;

(e) 5% -number of calls in the previous calendar year;

(f) 5% -number of volunteer emergency medical technicians on the active duty roster; and

(g) 25% -percentage of medical calls that are vehicle related.

AUTH: 61-2-506, MCA
IMP: 61-2-504, 61-2-506, MCA

REASON: The proposed rule fulfills the requirement of 61-2-506, MCA, which provides for statutory criteria weighing and scoring applications. The rule will allow for consistency and predictability in awarding grants.

NEW RULE III REASONS FOR NOT ALLOWING A GRANT (1) The allowable reasons for not awarding a grant are:

(a) ineligible applicant or application;

(b) higher scoring applicants receive funding;

(c) lack of remaining funding;

(d) failure to provide the 10% match; or

(e) granting authority ends.

(2) Any applicant may dispute the denial of an application for a grant. The applicant must submit in writing a letter appealing the decision to the director of the Montana Department of Transportation within 30 days of the applicant receiving notification of the department's decision. The director will conduct a review of the process and funding decision. A decision will be issued by the Montana Department of Transportation based on the director's findings. That decision will be the final agency decision.

AUTH: 61-2-506, MCA
IMP: 61-2-503, 61-2-505, 61-2-506, MCA

REASON: The proposed rule establishes the reasons for denying a grant application as required by 61-2-505 and 61-2-506, MCA. Each of the reasons listed

is sufficient for such a denial and will provide consistency and predictability in the program. The proposed rule also provides an appeal process in keeping with 61-2-505, MCA. It makes clear that the director's decision is the final agency action.

NEW RULE IV EMERGENCY FUND (1) An emergency fund of up to 5% shall be made available on an annual basis. Awards will only be made based on the emergency situation as provided in the definitions.

AUTH: 61-2-506, MCA
IMP: 61-2-506, 61-2-507, MCA

REASON: The proposed rule is to establish a grant for emergencies which complies with 61-2-507, MCA. It was necessary to define an emergency and to further describe the circumstances wherein such grants will be allowed.

NEW RULE V ACQUISITION OF CAPITAL AND REPORTING REQUIREMENTS (1) Grant recipients must use the ambulance specifications for emergency medical services found in ARM Title 37, chapter 104, subchapter 3. .

(2) Successful applicants must report on various accounting or data items as required by Montana Department of Transportation.

AUTH: 61-2-506, MCA
IMP: 61-2-506, MCA

REASON: 61-2-506, MCA requires that rules be adopted for reporting requirements for grant recipients. It is necessary to adopt a rule setting forth the reference to the DPHHS specifications and to inform applicants that MDT will develop forms for reporting.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Planning Division, Department of Transportation, 2960 Prospect Avenue, Helena, Montana, 59620; telephone (406) 444-7289; fax (406) 444-7671; or e-mail dmcbroom@mt.gov, and must be received no later than 5:00 p.m., February 11, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Doug McBroom at the above address no later than 5:00 p.m., February 11, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25 persons, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative

Register. Ten percent of those directly affected has been determined to be 12 persons based on the potential of 118 ambulance service providers that may be affected.

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

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

9. The cumulative amount for all persons of the proposed grant program is $1 million per year for two consecutive years with the potential of up to 118 ambulance service providers to be affected.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 19, 2009, and by e-mail on October 14, 2009.

/s/ Lyle Manley
Lyle Manley
Rule Reviewer

/s/ Jim Lynch
Jim Lynch
Director
Dept. of Transportation

Certified to the Secretary of State January 4, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.9.103 pertaining to Distributor's Statements	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 26, 2010, the Department of Transportation proposes to amend the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on January 28, 2010, to advise us of the nature of the accommodation that you need. Please contact Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, 2701 Prospect Ave, Helena, Montana, 59620-1001; telephone (406) 444-7672; fax (406) 444-6032; TTY (Telecommunications Device for the Deaf) (406) 444-7696 or 800-335-7592; or e-mail boturner@mt.gov.

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

18.9.103 DISTRIBUTOR'S STATEMENTS (1) Every distributor must file a monthly distributor's license tax report, on a form furnished by the department within the time prescribed by 15-70-205 and/or 15-70-344, MCA. Supporting detail schedules on forms furnished by the department must accompany the distributor's license tax report, with all letters of explanation of credit deduction and the payment of the license tax due.

(2) Electronic filing, in the format required by the department, will be accepted.

(3) A licensed distributor who is subject to 15-70-205 and/or 15-70-344, MCA, must file electronically in a format prescribed by the department. Licensed distributors who report a combination of 99,999 gallons or less of gasoline and/or special fuel within a year may choose to file electronically or on paper forms prescribed by the department.

~~(3)~~ (4) Each distributor must report the amount of gasoline and special fuel distributed and received in gross gallons on the monthly tax return that is filed with the department of transportation.

AUTH: 15-70-104, 15-70-115, MCA
IMP: 15-70-112, 15-70-113, 15-70-114, 15-70-115, 15-70-205, 15-70-344, MCA

REASON: Section 15-70-344 was added to Subsection (1) as a housekeeping measure because the current rule did not address the special fuel filing requirement.

The addition of the electronic filing requirement for distributors is to reduce errors, save the distributor potential penalty and interest from transposed numbers, mathematical errors and late filings due to postmark dates. Filing electronically can save the distributor money, time and improve the integrity of the data being supplied. This proposed language allows an exception for the small distributors who may not have the availability or ability to file electronically, to still file on paper.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action[s] in writing to Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, 2701 Prospect Ave, Helena, Montana, 59620-1001; telephone (406) 444-7672; fax (406) 444-6032; or e-mail boturner@mt.gov, and must be received no later than 5:00 p.m., February 11, 2010.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert Turner at the above address no later than 5:00 p.m., February 4, 2010.

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 directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 15 persons based on 148 current licensed distributors which would be affected by this rule.

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

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text

will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Lyle Manley
Lyle Manley
Rule Reviewer

/s/ Jim Lynch
Jim Lynch, Director
Department of Transportation

Certified to the Secretary of State January 4, 2010.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of ARM 36.25.137, amendment of ARM 36.25.106, 36.25.110, 36.25.111, 36.25.112, 36.25.115, 36.25.117, and 36.25.125, and the adoption of New Rules I through XIII regarding surface leasing and cabinsite leasing rules.	)))))))	NOTICE OF PUBLIC HEARINGS ON PROPOSED REPEAL, AMENDMENT, AND ADOPTION

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings at 7:00 p.m. on the following dates: February 3, 2010, at the Kalispell Red Lion Inn, 20 North Main Street, Kalispell, Montana; and February 4, 2010, at the Seeley Lake Community Hall, 3248 Highway 83, Seeley Lake, Montana, to consider the repeal, amendment, and adoption of the above-stated rules. Preceding each hearing at 6:00 p.m. will an informational presentation by the department and an informal question and answer period.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on February 1, 2009, to advise the department of the nature of the accommodation that you need. Please contact Mike Sullivan, Real Estate Management Bureau, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-6660; fax (406) 444-2684; e-mail misullivan@mt.gov.

3. The department proposes to repeal the following rule:

<u>36.25.137 CABINSITES</u> is found on page 36-5653 of the Administrative Rules of Montana.

AUTH: 77-1-209, MCA
IMP: 77-1-202, 77-1-208, MCA

<u>REASONABLE NECESSITY</u>: This rule has been integrated with the text of New Rule II.

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

36.25.106 TERM OF LEASE OR LICENSE (1) In general, a lease or license for agricultural or grazing lands shall be for a ~~5~~ five or ~~10~~ ten year period and shall expire February 28, ~~10~~ ten years or less from the beginning date of the lease or license.

~~(2) A cabinsite lease shall be for a period not to exceed 15 years and shall expire February 28, 15 years or less from the beginning date of the lease.~~

~~(a) In the event the lessee of a cabinsite needs a longer lease period for loan security purposes, the department may grant a cabinsite lease up to a maximum of 35 years~~.

(2) A lease for a use other than agricultural, grazing, cabinsite, or mineral production may be for up to 40 years. Leases for power sites or school sites may be for longer than 25 years.

(3~~2~~) A land use license may be for a term not to exceed ~~10~~ ten years.

AUTH: 77-1-202; 77-1-209, MCA
IMP: 77-6-109, MCA

36.25.110 MINIMUM RENTAL RATES (1) ~~As to agricultural lands, all~~ All leases on agricultural lands shall be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. For purposes of this rule, a district means the county or counties where the leased lands are located. ~~"The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve such special crop share rentals" as per 77-6-501, MCA.~~ The board may approve special crop share rentals of less than one-fourth as per 77-6-501, MCA.

(2) The department may authorize a lease or license upon ~~other~~ a basis other than cropshare~~, but in these~~. In those cases the rental shall at least equal the value of the usual landlord share prevailing in the district. ~~This may only be accommodated~~ Such accommodations may occur only once during the term of the lease unless changes in crops are contemplated. Such rental rate consideration may only be approved by the director upon proper written application by lessee or licensee.

(3) The rental rate for all grazing leases and licenses shall be on the basis of the animal-unit-month (AUM) carrying capacity of the land to be leased or licensed. The minimum rental rate per AUM is:

~~(a) grazing leases issued or renewed prior to July 1, 1993, until the first date of renewal after July 1, 1993 , the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year multiplied by 6.~~

(~~b~~a) the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana Agricultural Statistics Service of the U.S.

Department of Agriculture (USDA NASS) for the previous year, multiplied by 6.71 ~~For~~ for grazing leases issued or renewed between July 1, 1993, and June 30, 2001, until the first date of renewal after July 1, 1993; ~~, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 6.71.~~

(~~c~~b) the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana Agricultural Statistics Service of the U.S. Department of Agriculture (USDA NASS) for the previous year, multiplied by 7.54 ~~For~~ for all grazing leases issued or renewed after June 30, 2001, and all grazing licenses. ~~, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana, as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 7.54.~~

~~d~~4) The department shall appraise and reappraise the classified grazing lands and grazing lands within classified forest lands under its jurisdiction in accordance with 77-6-201, MCA, to determine the carrying capacity. Such determination shall be made from time to time as the department considers necessary, but at least once during the term of every lease or license. ~~and shall maintain~~ Appraisal records ~~of such appraisals in its~~ shall be maintained in the department's files. ~~Such determination shall be made from time to time as the department considers necessary, but at least once during the term of every lease or license.~~

(~~4~~5) When a lease or license term begins after February 28 but before July 1 during the first year of the lease or license, the lessee or licensee shall pay a rental price equal to the rental price for an entire year. When the lease or license term begins after June 30 but before February 28 of the next year, the lessee or licensee shall pay a rental price equal to ~~1/2~~ half of the yearly annual rental. Summer fallowing shall not entitle any lessee or licensee to a refund or reduction of the rental.

(~~5~~6) A lessee or licensee who grazes the stubble of harvested crops or hayland, or who grazes unharvested or damaged crops or hayland, shall contact the department regarding payment for such grazing on classified agricultural land.

(a) The department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under 77-6-507, MCA.

(b) Failure or refusal to pay ~~said~~ the rental or to notify the department of such grazing may be cause for cancellation of the lease.

~~(6) Effective January 1, 2001, and retroactive to those cabinsite leases issued between January 1, 1999 and December 31, 2000, and except as provided in (6) (a) , the minimum rental rate for a cabinsite lease or license is the greater of 5% of the appraised market value of the land, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, or $250. This rate takes into account all those factors in 77-1-106, MCA reflecting the costs to the lessee of leasing state land.~~

~~(a) For cabinsite leases or licenses expiring after January 1, 2001, and for those leases and licenses whose rates are reviewed from 2003 through 2007, the~~

~~department shall, when issuing a new lease or license at a rental rate greater than $250 for the same cabinsite, or in reviewing an existing lease or license, calculate the minimum rental rate as 5% of the appraised market value of the land; and:~~

~~(i) in the first year of the new lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, plus 20% of the difference between:~~

~~(A) the rental rate paid in the last year of the expired lease or license or lease review; and~~

~~(B) the calculated rental rate of 5% of the appraised market value of the land.~~

~~(ii) in the second year of the lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 40% of the difference between:~~

~~(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and~~

~~(B) the calculated rental rate of 5% of the appraised market value of the land.~~

~~(iii) in the third year of the lease or license, or lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 60% of the difference between:~~

~~(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and~~

~~(B) the calculated rental rate of 5% of the appraised market value of the land.~~

~~(iv) in the fourth year of the lease or license, or lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 80% of the difference between:~~

~~(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and~~

~~(B) the calculated rental rate of 5% of the appraised market value of the land.~~

~~(v) in each subsequent year for the remaining term of the lease or license, the department shall collect a rental rate equivalent to 5% of the appraised market value of the land.~~

~~(b) For cabinsites only:~~

~~(i) Any lessee or licensee has 60 days from the expiration or cancellation of the lease or license to remove all improvements from the leased or licensed premises. The removal of improvements must be conducted within the terms of a new land use license, for a fixed sum of 1/6 of the most recent year's lease or license fee or $50, whichever is the greater.~~

~~(ii) If the lessee or licensee does not wish to remove the improvements, but rather chooses to be compensated for the improvements, the lessee or licensee shall be responsible for any applicable tax assessments.~~

~~(iii) If, after two years of the expiration or cancellation of the lease or license, no new lessee or licensee is found, the department shall provide written notice to the~~

~~former lessee or licensee that unless the improvements are removed within 60 days, the improvements will become the property of the state.~~

~~(iv) If a new lessee or licensee is found within two years of the expiration or cancelation of the lease or license, during the pendency of the improvement valuation process, including arbitration and appeal, the new lessee shall place in escrow an amount equal to the assessed value of the improvements as per department of revenue assessment, plus any applicable tax assessment. Nothing herein will prevent the department from issuing a lease or license to the new lessee or licensee during the pendency of the valuation process.~~

~~(v) If, during the two-year period described above, the prior lessee or licensee wishes to remove the improvements, the removal can occur only during those times when the leased or licensed property is not being offered for competitive bid.~~

~~(vi) Determination of compensation for improvements through the arbitration process shall utilize standard appraisal procedures giving full consideration to the improvements condition, its contribution to the value of the property for residential purposes, remaining economic life, and shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.~~

(7) All other leases of class 4 land, other than cabinsite leases and agriculture and grazing leases, shall be based on a determination of fair market value made by the department. This determination and a record of the determination shall be made at least once during the term of every lease~~, and a record made thereof~~.

AUTH: 77-1-106, 77-1-202, 77-1-209, MCA
IMP: 77-1-106, 77-1-208, 77-6-201, 77-6-501, 77-1-502, 77-6-504, 77-6-507, MCA

36.25.111 COMPETITIVE BIDDING (1) All competitive bids for grazing leases or licenses shall be submitted in the form of ~~$X.XX~~ dollars and cents per AUM. ~~A.U.M. In no case may the~~

(a) A bid may not be for less than the minimum rental rate per AUM for that year determined in accordance with ARM 36.25.110. If in any succeeding year of the lease or license the amount bid is less than the minimum for that year, then the rental shall be the minimum.

(b) Bids for any lease or license may only be submitted for the present reclassified use unless the bidder submits a proposed reclassified use in accordance with ARM 36.25.109.

(2) remains the same.

~~(3) All competitive bids for unleased cabin sites shall be submitted in the form of $X per/year. In no case may the bid be less than the minimum rental determined in accordance with ARM 36.25.110. If in any succeeding year of the lease the amount of the lease is less than the minimum for that year, then the rental shall be the minimum.~~

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

AUTH: 77-1-209, MCA
IMP: 77-1-208, 77-6-202, 77-6-501, MCA

36.25.112 PAYMENTS ~~- WHEN~~ DUE DATES (1) For grazing leases and licenses, the grazing portion of leases and ~~-~~licenses containing both agricultural and grazing land, and agricultural leases not based on a crop share~~,~~:

(a) the department will send written notices to the address on the lease or license beginning in January of each year stating the amount of rental due. The notice shall also state that payment is due by March 1, and if not paid by April 1, the lease or license is cancelled~~.~~ ;

(b) ~~At~~ at least two weeks prior to April 1, the department shall send ~~by certified mail to each lessee or licensee who has not made payment~~ a letter by certified mail notifying each lessee or licensee who has not made a payment ~~the lessee or licensee~~ that the lease or license is cancelled if payment is not received or postmarked on or before April 1~~.~~ ; and

(c) ~~If~~ if payment is not received or postmarked by April 1, the entire lease or license is cancelled.

(2) For agricultural leases and licenses, and for the agricultural portion of leases and licenses which ~~containing~~ contain both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, whichever is greater~~,~~ ;

(a) the rental shall be due immediately after harvesting or before November 15 of the year in which the crop is harvested~~.~~ ;

(b) ~~The~~ the department shall compile a list as soon as possible after November 15 of those lessees or licensees with agricultural land who have not paid the agricultural rentals~~.~~ ;

(c) ~~A~~ a notice shall be sent to each lessee or licensee on the list by certified mail at least two weeks prior to December 31 advising ~~such lessee or licensee~~ that the lease or license is cancelled if payment is not received or postmarked on or before December 31~~.~~ ; and

(d) ~~If~~ if payment is not received or postmarked by December 31, the entire lease is cancelled. All appropriate seeding and crop reports must be submitted with the payment. Partial payments shall be accepted, however, such payments will not prevent cancellation of the lease or license if full payment as verified on the crop report is not received on the date required by law.

~~(3) For cabinsite leases or licenses, the department will send written notices to the address on the lease or license beginning in January of each year stating the amount of rental due. The notice shall also state that the payment is due by March 1 and if not paid by April 1, the lease or license is cancelled. At least two weeks prior to April 1, the department shall send by certified mail to each lessee or licensee who has not made payment a letter notifying the lessee or licensee that the lease or license is cancelled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease or license is cancelled.~~

(~~4~~3) When a lease or license takes effect after July 30 and before February 28 of the next year, the lessee or licensee shall pay both the rental for ~~1/2~~ half of the yearly rental due, and full yearly rental due for the next succeeding year before the lease or license is executed.

(~~5~~4) If there are special circumstances, a lessee or licensee of agricultural land must write to the department prior to November 1 ~~if they wish an extension~~ for an extension of the rental payment beyond the December 31 deadline. All extension requests must set forth the reasons for the extension and verification of those reasons by the appropriate sources. In all cases, permission for an extension may only be given in writing by the department, and such extension may not extend beyond April 1 of the following year.

(6) remains the same but is renumbered (5).

AUTH: 77-1-209, MCA
IMP: 77-6-103, 77-6-506, MCA

36.25.115 ISSUANCE OF LEASE OR LICENSE ON UNLEASED OR UNLICENSED ~~LAND~~ AND RECLASSIFIED LAND (1) A person who desires to lease or license unleased or unlicensed state land may apply on the standard application form prescribed by the department. The application form must be returned to the department and must be accompanied by a nonrefundable application fee. Such application shall be deemed an offer to lease or obtain a license on the land described therein at a rental rate which reflects the fair market value of the lease or license.

(2)~~(a)~~ When the department receives an application to lease or obtain a license on an unleased or unlicensed tract of land, or on a tract which has been reclassified, it shall advertise for written bids on the tract according to the procedures set forth in (4) ~~(c)~~, except in the following circumstances:

(~~i~~a) where grazing land is reclassified to agricultural land upon application of the existing lessee; or

(~~ii~~b) where land is reclassified and a licensee applies for a lease on the land for the same use for which he was formerly licensed, or a lessee applies for a license to use the land for the same use for which he formerly leased the land~~; or~~ .

~~(iii) where the application is for a cabinsite lease or license on a tract of land which was subject to a cabinsite lease or license on or before October 1, 1983.~~

(~~b~~3) The department may advertise for bids according to the procedures set forth in (~~c~~4) in any of the above circumstances where such procedures are deemed by the department to be in the best interests of the state.

(~~c~~4) When advertisement for bids is called for under this rule, the department shall advertise for written bids on the tract once a week for ~~2~~ two weeks in the official county newspaper of the county in which the tract lies. The tract will be leased or licensed to the highest bidder unless the board determines that the bid is not in the best interests of the state.

(a) All bids shall be sealed bids and will not be opened until a specified time and place.

(b) If the high bid is rejected, the board will issue its reason for the rejection in writing. The lease or license shall then be issued, at the fair market value determined by the board, to the first bidder willing to pay the board-determined rental whose name is selected through a random selection process from all bidders on the tract.

(3) remains the same but is renumbered (5).

~~(4) Cabinsite leases issued on previously unleased land shall be subject to the bid rental rate for the full term of the lease unless, after 5 years, 5% of the adjusted rental rate as determined by ARM 36.25.110 is higher, and then the lessee or licensee shall pay the higher rate.~~

(6) When a lease or license is cancelled by the board or department or surrendered by the lessee or licensee, the department shall attempt to release or relicense the land. The department shall:

(a) advertise for written bids on the tract, and application and bid forms will be mailed to all persons who have expressed in writing an interest in leasing or licensing the land~~.~~ ; and

(b) ~~The department shall~~ receive applications and bid forms from potential lessees or licensees for a reasonable time after the date on which the first such application and bid form is mailed~~, and the~~. The land will be leased or licensed in accordance with (1) ~~and (2)~~ through (4).

(7) Any person who has had ~~his~~ a lease or license cancelled and not reinstated by the board or department for any reason except nonpayment of rentals shall not be allowed to bid upon the lease or license or upon any lease or license for land managed by the department.

(a) If no other bids are received, the former lessee or licensee may be allowed to bid~~, but~~ ; however, the board may reject any or all bids from a lessee or licensee who has had his lease cancelled in the past.

AUTH: 77-1-209, MCA
IMP: 77-6-202, MCA

36.25.117 RENEWAL OF LEASE OR LICENSE AND PREFERENCE RIGHT

(1) The board retains the right to select the best lessee possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessees possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the leases promotes good stewardship of the land. Such security of land tenure encourages the lessees to place and develop improvements which, in turn, increases the productivity of the land and improves its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing~~,~~ a preference right to meet the high bid and retain the lease.

(2) A current lessee or licensee shall be sent an application to renew ~~his~~ the lease or license if ~~he has paid~~ all rentals due are paid. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year

preceding the expiration of the lease or license and must be postmarked on or before January 28 of the year of expiration of the lease or license. Failure to submit a renewal application by the lessee or licensee postmarked on or before January 28 will result in an unleased or unlicensed tract and the tract will be subject to the requirements for leasing or licensing an unleased or unlicensed tract under ARM 36.25.115.

(a) remains the same.

(3) Unless the board decides on its own volition and sole discretion that a lease should be given to a better qualified applicant, a surface lessee or licensee who has strictly complied with the applicable conditions set forth in 77-6-113(1), MCA, has a preference right to meet the high bid offered for the lease or license and may retain the lease or license subject to the provisions in (~~8~~9), if all rentals have been paid and appropriate reports submitted, and (4) has not been violated. When an agricultural lessee or licensee meets the high bid and retains ~~his~~ the lease or license, the new rental rate must be paid for all crops harvested after the renewal date even if such crops were planted before the lessee met the high bid. The lease or license shall be renewed at the fair market rental provided no other applications for the lease or license have been received by the department within the time limits set forth by ARM 36.25.116(2) . Grazing or agricultural uses on classified forest lands may be terminated if it is determined that the resources under that classification are being damaged or not perpetuated.

~~(a) A cabinsite lease is not subject to bids upon renewal if the lessee continues the lease and the lessee has paid all rentals and (4) is not violated. The lease shall be renewed at the rental provided by law.~~

(~~b~~a) If~~,~~ during the previous lease term, an existing lessee has violated any condition set out within 77-6-113(1), MCA, the lessee shall not have the right to renew the lease or match any other bids submitted. The department shall notify the lessee if it determines that ~~they have~~ the lessee has failed to comply with the requirements of 77-6-113(1), MCA. The notice shall include the factual basis for that determination.

(~~c~~b) The lessee may, within 15 days of receipt of the notice, appeal the decision by requesting an informal hearing before the director or ~~his~~ the director's designee. Any individual conducting the hearing shall not have been involved in the original determination to revoke the lessee's preference right. If the director, or ~~his~~ the director's designee, concludes that the conditions under 77-6-113(1), MCA, have not been met by the lessee during the previous terms, no preference right shall be recognized. The renewal lease shall then be advertised for competitive bids as provided in ARM 36.25.115.

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

(4) For leases or licenses issued for a new lease or license term beginning in 1987 and thereafter, a lessee or licensee who subleases more than ~~1/3~~ one-third of the land under the lease or license may not exercise the preference right at ~~least~~ lease renewal if he has subleased the land for more than two years during the term of the lease or license. If such lessee or licensee subleases more than ~~1/3~~ one-third of the land for more than three years during the term of the lease, the department shall cancel the lease.

(a) ~~For all leases and licenses the~~ A lessee or licensee may sublease the land within a lease or license for ~~a period of not~~ no more than five years without losing the preference right or subjecting the lease to cancellation during the term of the lease~~,~~ if the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(b) For the purposes of these rules, ~~A~~ a lessee or licensee who has accorded another the use of all, or a portion of~~,~~ the allowable ~~A.U.M.'s~~ AUMs during one year will be deemed~~, for the purposes of these rules,~~ to have subleased the entire tract for that year.

(c) The provisions of this rule which state that a preference right will be lost, or that a lease will be cancelled for subleasing~~,~~ do not apply in those instances where:

(i) the approved sublease involved ~~1/3~~ one-third or less of the total acreage in the lease or license~~,~~ ; or

(ii) ~~where~~ the sublease is considered to be a pasturing agreement pursuant to ARM 36.25.120.

(5) and (6) remain the same.

(7) A surface lessee or licensee who has lost the opportunity to exercise a preference right because of a sublease or other arrangement may apply to the director and set forth the specific grounds why the lessee or licensee is entitled to a hearing.

(a) ~~Such application for the~~ The hearing application must be submitted in writing to the director within 15 days of receipt of notice of loss of preference right by the lessee or licensee. ~~If the grounds include a bona fide factual dispute, the~~

(b) The director shall order a hearing within 20 days if the grounds include a bona fide factual dispute. When such a hearing is granted, the contested case provision of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA (MAPA), shall apply.

(c) The board shall make a final decision after considering the entire record, or may delegate such authority to the director. The director may appoint a hearing~~s~~ examiner from the department's staff or from another source to conduct the hearing and produce proposed findings of fact, proposed conclusions of law, and a proposed order. ~~The hearings examiner may be from the department's staff or from another source.~~

(~~a~~8) If a surface lessee or licensee has lost the opportunity to exercise a preference right because of a sublease or other arrangement and disputes only the legal ground upon which the rights were lost, then the lessee or licensee may apply to the director for a declaratory judgment concerning legal grounds. Such application for declaratory judgment must be submitted in writing to the director within 15 days of the receipt of notice of loss of preference right by the lessee or licensee. The application shall specify the legal grounds which the lessee or licensee disputes. The procedure of applying for and issuing such a declaratory judgment shall be that set forth in MAPA ~~the Montana Administrative Procedure Act~~.

(~~8~~9) If other applications are received by January 28 of the year the lease or license expires, and the lessee or licensee has not violated (4) or 77-6-113(1), MCA,

the lessee or licensee shall have a preference right to renew ~~his~~ the lease or license provided he meets the high bid for such lease or license. Such bid is deemed to be met if the amount of the high bid is received by the department prior to the expiration of the lease or license or, in the case of agricultural land leased solely on a crop share rental basis, if the lessee or licensee agrees in writing to meet the high bid prior to the expiration of the lease or license.

(a) A lessee or licensee who believes the bid to be excessive may request in writing a hearing before the director after ~~he meets~~ meeting the high bid. The request for a hearing must contain a statement of reasons and supporting evidence why the lessee or licensee believes the bid not to be in the state's best interest~~,~~ . Those reasons, with supporting evidence, must support one or more of the following allegations:

(i) ~~because it~~ that the bid is above community standards for a lease of such land; ~~or~~

(ii) that the bid would cause damage to the tract; or

(iii) that the bid would impair ~~its~~ the land's long-term productivity. The lessee or licensee shall also submit evidence of rental rates for similar land in the area with his request.

(8)(b) through (8)(b)(vii) remain the same but are renumbered (9)(b) through (9)(b)(vii).

(viii) any other information the director deems necessary in order to provide a recommendation to the board. The department may incorporate all, or part of this information as terms and conditions in the new lease agreement.

~~(ix) The department may incorporate all or part of this information as terms and conditions in the new lease agreement.~~

(c) The director shall recommend to the board whether there should be a reduction to the bid rate, and who should be selected as the lessee. The director may recommend to the board that the bid be lowered only if ~~he~~ the director feels that it is in the best interests of the state to do so. The hearing is not subject to MAPA ~~the Montana Administrative Procedure Act. The~~ and the board may accept or reject the director's recommendation.

(d) The lessee is obligated to lease or license the property at the rate determined by the board. ~~It is the~~ The duty of the board is to achieve fair market value. The lease or licensing of such land shall be such so as to generate revenue commensurate with the highest and best use of the land, or portions thereof, as determined by the department.

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

(~~10~~11) When land under lease or license has previously been sold and the certificate of purchase has been cancelled, any later reinstatement of the certificate of purchase shall not have the effect of canceling any lease or license except that the current lessee or licensee shall lose ~~his~~ the right to renew the lease.

AUTH: 77-1-209, MCA
IMP: 77-2-333, 77-6-205, 77-6-210, 77-6-212, MCA

36.25.125 IMPROVEMENTS (1) A lessee or licensee may place improvements on state land which are necessary for the conservation or utilization of such state land with the approval of the department~~; however, only a single one-family residence will be permitted on each cabinsite lease~~.

(a) The lessee or licensee shall apply for permission prior to placing any improvements on state land on the form prescribed by the department and then in current use. ~~Blank forms shall be available at no cost.~~

(b) A lessee or licensee will not be entitled to compensation by a subsequent lessee or licensee for improvements which are placed on the land after May 10, 1979, and which are not approved by the department. Proof of the date of placement of improvements may be required by the department.

(c) Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee or licensee.

(2) ~~It shall be the responsibility of the~~ The lessee or licensee is responsible ~~to notify~~ for notifying the new lessee or licensee of the improvements and their value on the lease or licensed tract ~~and the value of such improvements~~.

(a) ~~Prior to the issuance of a new lease or license, a~~ Within 120 days of the issuance of the lease or license, the new lessee or licensee shall: ~~prove that he has offered to pay or has paid~~

(i) provide proof of the new lessee's offer of payment or actual payment to the former lessee or licensee of the value of the improvements and fixtures either as agreed upon with the former lessee or licensee; ~~or~~

(ii) the value of the improvements as fixed by arbitration; or

(iii) provide proof that the former lessee has decided to remove the improvements and fixtures from the lease or license.

(3) ~~However, if~~ If the improvements and fixtures become the property of the state because the former lessee or licensee has failed to act within 60 days after expiration of the lease, as per (4), then the new lessee or licensee shall not be required to ~~prove that he (she) has offered~~ provide proof of the offer to pay the former lessee or licensee for such improvements and fixtures.

(4) The department may require a written notice from the former lessee or licensee stating that he has been paid for, or is removing the improvements and fixtures. If the former lessee or licensee does not agree on the value of the improvements and fixtures or begin arbitration procedures within 60 days after the expiration of the lease or license, then all improvements and fixtures remaining, both movable and fixed, shall become the property of the state. ~~This applies to permanent as well as movable improvements.~~ The 60-day period for removal of improvements may be extended by the department upon proper written application.

(~~3~~5) The value of the improvements will be determined by arbitration when ~~When~~ the former lessee or licensee wishes to sell improvements and fixtures~~,~~ and the new lessee or licensee wishes to purchase such improvements and fixtures, ~~and~~ but the parties cannot agree upon a reasonable value~~, such value shall be determined by arbitration~~.

(6) When the new lessee or licensee does not wish to purchase the movable improvements and fixtures, then the former lessee or licensee shall remove such

improvements immediately. Extensions for removing these improvements for good cause may be granted by the department.

(~~4~~7) In case of arbitration~~,~~ :

(a) the lessee or licensee, or purchaser and the former lessee or licensee, shall each appoint an arbitrator, with a third arbitrator appointed by the two arbitrators first appointed~~.~~ :

(i) ~~No~~ no party may exert undue influence upon the arbitrators in an effort to affect the outcome of the arbitration decision~~.~~ ; and

(ii) ~~If~~ if any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director, the director may appoint an arbitrator for that party~~.~~ ;

(b) ~~The~~ the value of the improvements and fixtures shall be fixed by the arbitrators in writing and submitted to the department. ~~and such~~ That determination shall be binding on both parties; however, either party may appeal the decision to the department within ~~10~~ ten days of the receipt of the arbitration decision by the department~~.~~ ;

(c) ~~If~~ if any relevant portion of the arbitration decision is vague or unclear, then the department may ask for written clarification of the intent of the arbitration panel~~.~~ ;

(d) ~~Upon~~ upon appeal by either party, the department may examine such improvements to determine the value of the improvements and fixtures and the department's determination shall be final~~.~~, however:

(i) ~~The~~ the determination of the value of improvements by the department shall be limited to those improvements involved in the arbitration~~.~~ ; and

(ii) ~~The~~ the department shall charge the cost of its examination to the party or parties in such proportion as justice may require~~.~~ ; and

(e) ~~The~~ the compensation for the arbitrators shall be paid in equal shares by both parties~~.~~ :

(i) ~~If~~ if the former lessee or licensee refuses to pay his share of the cost of arbitration, then those costs may be deducted from the value of the improvements and fixtures~~.~~ ;

(ii) ~~If~~ if the new lessee or licensee refuses to pay the cost of arbitration within 30 days of the completion of the arbitration, the lease or license shall be cancelled ~~shall not be issued and the bid deposit shall be forfeited to the department~~, and the lease or license shall be put up for bid to qualified bidders.

(5) remains the same but is renumbered (8).

(~~6~~9) Summer fallowing, necessary cultivation done after the last crop grown, seeding and growing crops shall all be considered improvements. The value of seeded acreage and growing crops shall be limited to costs for seeding, seedbed preparation, fertilization and agricultural labor at the prevailing rate in the area. The former lessee's or licensee's anticipated profit shall not be included in such value. If the parties cannot agree on the value of seeded acreage or growing crops, the arbitration procedure set out in (~~4~~7) shall be followed. The original breaking of the ground shall also be considered an improvement; however, if ~~1~~ one year's crops have been raised on the land~~,~~ the value shall not exceed $2.50 per acre, and if ~~2~~ two year's crops have been raised, there shall be no compensation.

AUTH: 77-1-209, MCA
IMP: 77-6-301 through 77-6-306, MCA

REASONABLE NECESSITY: The amendments to the above rules are reasonably necessary because the pertinent references to cabinsite leases have been integrated with the text of New Rule I through New Rule XIII. The amendments also correct spelling and grammatical errors and remove obsolete language.

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

NEW RULE I CABINSITE DEFINITIONS (1) "Abandon" or "abandonment" means the simultaneous intent and voluntary act of surrendering or disclaiming any ownership of, or surrendering or disclaiming a property interest in a lease or the improvements existing upon a lease, or both.

(2) "Adjusted 2009 appraised value" means the 2003 Montana Department of Revenue (DOR) appraised value for a state parcel increased by 6.53 percent annually to 2009.

(3) "Annual lease rental period" means March 1 to February 28, annually.

(4) "Assignment" means the transfer of rights, obligations, and ownership of a current lease agreement to another person or other legal entity qualified to hold a lease.

(5) "Base rent" means the lower of five percent of the adjusted 2009 appraised value of the state land under lease or five percent of the actual 2009 reappraisal of market value by the DOR.

(6) "Board" means the Board of Land Commissioners.

(7) "Cabinsite", also referred to as "homesite" and "residential lease", means land occupied or to be occupied for a non-commercial use as a temporary or principal place of residence for a single family or equivalent of the same, and the supporting buildings, within the lease area.

(8) "Cancellation" means an involuntary nullification or voiding of rights under a lease before the end of its stated term due to a breach of the lessee's obligations under the lease contract.

(9) "Consumer Price Index" (CPI) is a measure of the annual change in the price of a basket of consumer goods over time. For these rules, the department will use the CPI-U, West Urban Index published by the U.S. Bureau of Labor Statistics (http://www.bls.gov/) or, should the CPI-U, West Urban Index be discontinued, a similar index published by the U.S. Bureau of Labor Statistics chosen by the department. The CPI shall be established by reviewing the annual change in the CPI on October 1 of each year.

(10) "Department" means the Department of Natural Resources and Conservation.

(11) "Director" means the director of Natural Resources and Conservation, chief administrative officer of the Department of Natural Resources and Conservation, or the director's designee.

(12) "Lease" means a contract by which the board conveys state land for a term of years for a specified rental, and for the use for which the land is classified (77-1-401, MCA).

(13) "Lease fee adjustment" means the department application of the rental rate contracted in the lease to the most recent appraised market value to determine if it is necessary to alter the annual rental payment. The adjustment will occur at the review period defined in the lease.

(14) "Lease fee adjustment process" means the annual process by which the department applies the Lease Fee Indicator to the adjusted 2009 appraised value of the leased premises, or by which the department applies the rental rate contracted in the lease to the actual 2009 reappraisal of market value by the DOR, and subsequent reappraisals, to determine if it is necessary to alter the annual rental payment. Future lease fee adjustments will occur at the review period defined in the lease, or at any time that it is considered necessary to protect the interests of the state, as determined at the sole discretion of the director of the department.

(15) "Lease Fee Indicator" (LFI) means the increase that is applied annually to the previous year's lease fee. The LFI, which is recalculated annually, is the average of the CPI and the Real Estate Index; however, the LFI shall be limited in that it may never be less than 3.25 percent and may never be more than 6.5 percent. The LFI is named for the year the CPI data was primarily collected, but applied to the billing for the following year. For example, an LFI determined from CPI data from calendar year 2014 would be called the 2014 LFI and would be applied to the 2015 cabinsite lease fee adjustment process.

(16) "Real Estate Index" (REI) means a moving 25-year average of the annual appreciation of all cabinsite parcel values. This number will be adjusted after every new re-appraisal cycle by the DOR. The REI is currently 8.75 percent and will remain so until the next DOR appraisal, which is currently scheduled for 2014.

(17) "Security interest" means an interest that a third party retains in any portion of a lease and the lease improvements located on that lease in order to secure the payment by the lessee to that third party.

(18) "Semi-annual lease rental period" means March 1 to August 31 or September 1 to February 28.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE II CABINSITE LEASES (1) A cabinsite lease may only include a maximum of five acres unless special circumstances exist for which the department may grant more than five acres.

(2) The lessee shall be required to comply with all rules and regulations, including, but not limited to:

(a) county planning;

(b) subdivision requirements; and

(c) other state and federal statutes and regulations. The department's approval to place or modify any improvement on the lease lot does not necessarily

constitute approval from any other regulatory entity such as a county, other state administrative agencies, or federal agencies.

(3) The successful bidder for a cabinsite lease may be required to pay for the cost of any surveys, fulfillment of zoning and subdivision requirements, and other assessments, or costs related to compliance with any other local, state, and federal statutes and regulations.

(4) The issuance of any cabinsite leases after January 16, 1987, shall require reclassification of the land as provided by ARM 36.25.109.

(5) A cabinsite lease grants the lessee the right of access and the right to place necessary utility facilities within the cabinsite lease premises, and from the main utility to the cabinsite lease premises. For any such rights outside of the cabinsite premises, the lessee must acquire an easement with the appropriate landowner(s).

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE III CABINSITE MINIMUM RENTAL (1) Effective January 1, 2010, and for those cabinsite leases due for the lease fee adjustment process in calendar year 2008 and 2009, and except as provided in (1)(a) and (1)(b), the minimum rental for a cabinsite lease is the greater of five percent of the 2009 appraised market value of the land, excluding improvements, as determined by the Montana Department of Revenue (DOR) pursuant to 77-1-208 MCA, or $250, or a competitive bid amount as described in [NEW RULE IX]. As required by 77-1-106, MCA, this rental rate reflects the expenses commonly incurred by lessees in leasing state land. A cabinsite lessee may:

(a) choose to pay rental on a cabinsite lease according to the existing terms and conditions within the current lease contract with the department; or

(b) sign and execute a 2010 supplemental lease agreement, which will direct that the minimum rental shall be calculated as follows:

(i) the 2003 appraised parcel value determined by the DOR shall be increased at an annual rate of 6.53 percent, compounded annually for six years to obtain the adjusted 2009 appraised value. [Example: 2003 appraised value x $(1.0653)^6$ = adjusted 2009 appraised value];

(ii) the adjusted 2009 appraised value shall be compared to the 2009 appraised parcel value determined by the DOR;

(iii) the lower of either five percent of the adjusted 2009 appraised value or five percent of the 2009 appraised parcel value shall be the base rent applicable to the lease in the year 2010; and

(iv) the annual rental due for years 2011 and thereafter shall be calculated by applying the LFI to the previous year's lease fee. Any lease renewed, reviewed, or subject to lease fee adjustment, shall pay an annual rental equal to that calculated under (b)(i) through (iv), above. In year 2010, the LFI will not be used. [Example: 2010 base rent x (1 + LFI) = 2011 rent].

(2) Effective for the 2025 cabinsite billing, the department will have a lease fee adjustment and review the 2024 annual cabinsite rental for each lease individually, as calculated under the provisions of (1)(b). The department will compare that cabinsite rental to an amount equal to five percent of the most recent appraised parcel value for the cabinsite lease as determined by the DOR. The difference between these two rental amounts shall be compared and described as a percentage of how much five percent of the appraised parcel value is above or below the 2024 rental as billed.

(a) If the 2024 rental, as billed, is not more than 15 percent above or below five percent of the most recent appraised parcel, then the 2025 rental will be the same as the 2024 rental.

(b) If the 2024 rental, as billed, is more than 15 percent above or below five percent of the most recent appraised parcel, then the 2024 rental will be increased or decreased by that percentage amount so it becomes identical to five percent of the appraised parcel value.

(c) The lease fee adjustment between 2024 and 2025 will not exceed a 50 percent increase or decrease.

(d) No additional LFI will be applied in determining the lease fee adjustment from 2024 to 2025.

(3) For leases that will complete their current contract rental calculation and have a lease fee adjustment, particularly those cabinsite leases due to start the lease fee adjustment process in calendar year 2011, 2012, and 2013 and beyond, the rental will be calculated per (1)(a) and (1)(b).

(4) The lease fee adjustment will occur every 15 years after the 2024 review.

(5) In the 15-year periods between lease fee adjustments, rentals will be calculated per section (1)(b).

(6) New and renewed leases will have rents calculated in accordance with (1)(b), or at the discretion of the director.

(7) Cabinsite lessees shall pay a lease rental that is the higher of the rental amounts as calculated by this rule, or the bid amount, or a minimum annual rental of $250. The lessee shall pay that higher amount until such time as the rental, as calculated by this rule, exceeds the bid amount or $250.

AUTH: 77-1-202; 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE IV CABINSITE PAYMENT DUE DATE (1) Beginning in January of each year, the department will send to each cabinsite lessee written notice of the amount of rental due. Notices shall be sent to the lessee's address of record. The notice shall also state that the payment is due by March 1, and if not paid by April 1, that the lease will be cancelled. Payments made after March 1, but before April 1 will be charged an additional $25 late fee. In mid-March, prior to April 1, the department shall send a letter by certified mail to each lessee who has not made payment, notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease is cancelled.

(2) If the lessee elects to make semi-annual payments, the department will send written notices in January and July of each year to the address of record, per ARM 36.25.104(3), stating the amount of semi-annual rental due. The notice shall also state that the first-half payment is due by March 1, and if not paid by April 1, the lease is cancelled. The second-half payment is due by September 1, and if not paid by October 1, the lease is cancelled. Likewise payments made after March 1 but before April 1, and payments made after September 1 but before October 1 will be charged an additional $25 late fee. In mid-March, prior to April 1, and mid-September, prior to October 1, the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1 or October 1. If payment is not received and postmarked by April 1 or October 1, the entire lease is cancelled.

(3) A lease may be reinstated for an additional reinstatement fee, which will be a minimum of $500 or as much as three times the annual rental amount of the lease. The decision whether or not to offer a lessee the ability to reinstate the lease by paying a reinstatement fee, as well as the amount to charge for the reinstatement fee, are both at the discretion of the department.

(4) When a lease term begins on or between March 1 and August 31 during the first year of the lease, the lessee shall pay a rental price equal to the rental price for an entire year. When the lease term begins on or between September 1 and February 28 of the next year, the lessee shall pay a rental price equal to half of the annual rental. Prorated or partial-year payments shall be made in amounts equal to either the full annual rental or half the annual rental.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE V CABINSITE IMPROVEMENTS (1) A cabinsite lessee may place improvements on state land which are necessary for the conservation or utilization of that state land and associated structures such as outbuildings, utilities, and sleeping cabins, with the approval of the department; however, only one single-family residence will be permitted on each cabinsite lease, and the lessee is responsible to insure all such installations and improvements meet all applicable rules, codes, and regulations.

(2) The lessee shall apply for permission prior to placing any improvements on state land and shall use the form prescribed by the department.

(3) A lessee will not be entitled to compensation by a subsequent lessee for improvements which are placed on the land after May 10, 1979, unless those improvements have been approved by the department. Proof of the date of placement of improvements may be required by the department. Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee.

(4) It shall be the responsibility of the lessee to notify the department of the value of the improvements. The asking price of the improvements shall be the

higher of either the most recent DOR assessment of the improvements, or of an appraisal of the improvements, though the lessee retains the right to lower the asking price of the improvements. Settlement for the improvements shall be determined pursuant to 77-1-208(3), MCA, and the procedures set out in ARM 36.25.125. All settlement for improvements must occur within 120 days of the issuance of the lease.

(a) If an appraisal is needed, the appraisal shall be contracted by the department and paid for by the lessee.

(b) Determination of compensation for improvements shall utilize standard appraisal procedures, giving full consideration to the improvements condition, its contribution to the value of the property for residential purposes, remaining economic life. Compensation shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(5) The department may require a written notice from the former lessee stating that the former lessee has received full compensation for the improvements or has removed the improvements and fixtures when a new lease is issued.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE VI REMOVAL OF CABINSITE IMPROVEMENTS AND COMPENSATION (1) At cancellation, termination or abandonment of the cabinsite lease, the lessee will be notified of their right to be compensated for their improvements by a new lessee, or their right to remove those improvements.

(2) If the former lessee informs the department that they wish to remove their improvements, the former lessee must:

(a) obtain a land use license to remove the improvements. The land use license may be for a term up to 60 days. The term may be extended by the department for good cause; and

(b) pay the license fee in advance. The license fee will be calculated as the most recent year's lease fee, divided by 365, and multiplied by the number of days in the license. The minimum fee for a removal land use license shall be $50.

(3) If the former lessee informs the department that they wish to be compensated for their improvements by a new lessee, the former lessee will have a maximum of three years from the time of cancellation, termination, or abandonment of the cabinsite lease to be compensated for their improvements by a new lessee. The former lessee shall have:

(a) submitted in writing to the department a statement that the former lessee is seeking third-party compensation for the improvements;

(b) paid all property taxes and any applicable special assessments; and

(c) provided the department with qualifying value information for the improvements. At any time during the three-year period and at the approval of the department, the former lessee may request a license to remove the improvements, at a fee and duration consistent with this rule.

(4) The department reserves the right to withhold authorization to remove the improvements during any time that a lease is being actively bid by the department.

(5) If three years after the cancellation, termination, or abandonment of the cabinsite lease no new lessee has been found, the department shall provide written notice to the former lessee that unless the improvements are removed within 60 days, the improvements will become the property of the state. This condition and limitation applies to all improvements on the property, including movable and non-movable improvements, as well as personal property.

(6) If the department receives no written request from the former lessee seeking to receive compensation for improvements from a new lessee or to remove the improvements, the department shall seek a new lessee for the cabinsite lease.

(7) Final determination of settlement for improvements will be conducted in accordance with statutes and rules pertaining to arbitration.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE VII ACCESS TO CABINSITE IMPROVEMENTS ON AN INACTIVE LEASE (1) A former lessee who has provided to the department a request to receive compensation from a new lessee for the former lessee's improvements, must obtain a land use license from the department to access the cabinsite for the limited purpose of maintaining the improvements and the lot and to market the improvements to a new lessee. The former lessee may not occupy the cabinsite or utilize the cabin site for recreational or residential purposes.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE VIII CANCELLATION AND ABANDONMENT OF CABINSITE LEASES AND SECURITY INTERESTS (1) The department may cancel a lease for nonpayment of rentals or any other breach of the lease contract.

(2) A lessee may request to abandon the lessee's right, title, and interest in the improvements on a cabinsite lease and the cabinsite lease itself to the department.

(a) The department reserves the discretion whether to accept the abandonment of the improvements and lease.

(b) All such abandonments shall utilize a form as prescribed by the department.

(3) Before any cancellation or abandonment of a cabinsite lease, the department shall notify any holder of a security interest form issued by the department of the impending cancellation or request by the lessee for abandonment.

(4) Abandonment of the lease begins on the date specified on the abandonment form. At such time the former lessee will forgo all rights to the lease, and if specified on the form, will forgo all rights to all improvements on the property.

Abandonment of improvements means all movable and nonmovable improvements, as well as personal property.

(5) The cancellation date of the lease begins on the date specified by the department when the cancellation process is complete.

(6) After the lease is cancelled or abandoned, the lease shall be available for lease to a third party and the department may put the lease lot up for bid.

(7) The former lessee may or may not choose to market the improvements for sale. In no case will the department pay any realtor fees or commissions for the marketing of former lessee improvements.

(8) The buyer of a former lessee's improvements must still participate in, and be the successful bidder of the cabinsite lease, per [NEW RULE IX].

(9) If the lease improvements have been abandoned, the improvements may be sold to a new lessee at a price determined by the department.

(10) The former lessee shall not be entitled to any refunds of any lease payments related to cancellation or abandonment.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE IX ISSUANCE OF CABINSITE LEASE ON UNLEASED AND RECLASSIFIED LAND (1) A person who desires to lease unleased state land for a cabinsite must apply on the standard application form prescribed by the department. The application form must be returned to the department and must be accompanied by a nonrefundable application fee. Such application shall be deemed an offer to lease land for a cabinsite as specified by the application, at a rental rate which reflects fair market value.

(2) When the department receives one or more applications to lease a cabinsite on an unleased tract of land, or on a tract which has been reclassified, it may advertise for bids on the tract and shall use the procedures set forth in this rule. The department has the discretion to put cabinsite leases up for bid even without first receiving any applications or offers for those cabinsite leases.

(3) The department will advertise cabinsites for bid in any of the following ways, or any combination of the following:

(a) at least once in a newspaper of general circulation, which services the area where the cabinsite is located;

(b) at least once in any newspaper, magazine, trade journal, flier, or other print medium that potential cabinsite bidders may view;

(c) sending letters to interested parties;

(d) sending e-mails to interested parties; and/or

(e) placing information on the internet.

(4) Nothing in this rule shall preclude the department from generally making it known that a cabinsite is currently unleased and that the department is accepting applications to lease state land for a cabinsite.

(5) All bids shall be submitted at a specific place and time as specified by the department. Bids may be sealed bids, oral auction, or submitted electronically, whichever is indicated by the department at the time it advertises for bids.

(6) All competitive bids for cabinsites shall be submitted in the form of dollars per year. In no case may a bid be considered qualified if it is less than the minimum rental specified in the bid solicitation.

(a) For a bid to be considered, the bid must:

(i) include the bid application and application fee;

(ii) include a bid deposit that is ten percent of the amount the bidder bids; and

(iii) meet any other requirements as specified in the bid solicitation.

(b) The department will specify whether the application fee and the bid deposit may be in the form of a cashier's check, money order, or from a credit card or similar electronic funds transfer for electronic bids.

(7) The cabinsite will be leased to the highest qualified bidder, with the following qualifications:

(a) if the board determines that the bid is not in the best interests of the state and the high bid is rejected, the board will issue its reason for the rejection in writing. The lease may then be issued, at a rental rate determined by the board, to the first bidder who is willing to pay the board-determined rental, whose name is selected through a random selection process from all bidders for the cabinsite lease; or

(b) if no bidder is selected, or if the highest qualified bidder declines the bid, the department may determine if and when to reopen a lease for bid, or offer the cabinsite lease to the next highest qualified bidder.

(8) The successful bidder shall sign and return the lease to the department within 30 days of receipt of the lease. If the lease is not signed and returned to the department within 30 days, the bidder shall forfeit the bid deposit, and the department may:

(a) re-advertise the lease for bid;

(b) offer the lease to the next highest bidder acceptable to the department; or

(c) choose to offer the lease for bid at a later time.

(9) When a lease term begins on or between March 1 and August 31 during the first year of the lease, the lessee shall pay a rental price equal to the rental price for an entire year. When the lease term begins on or between September 1 and February 28 of the next year, the lessee shall pay a rental price equal to half of the annual rental. Prorated or partial-year payments shall be made in amounts equal to either the full annual rental or half the annual rental.

(10) When a lease is cancelled, abandoned, or otherwise terminated, the department shall attempt to lease the land in accordance with this rule.

(11) Any former lessee who has had a cabinsite lease cancelled and not reinstated by the board or department for nonpayment of rentals may bid upon that cancelled lease, or any other cabinsite lease provided that before the bid:

(a) the former lessee pays the unpaid rentals billed for that cancelled lease;

(b) if the former lessee is bidding on that cancelled lease, the former lessee must pay any unpaid taxes or similar assessments on the improvements; and

(c) the bid is in compliance with this rule.

(12) Any lessee who has had a cabinsite lease cancelled and not reinstated by the board or department for any reason other than nonpayment of rentals may be

allowed to bid; however, the board or the department may reject any or all bids for a cabinsite from a lessee who has had a cabinsite lease cancelled in the past.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE X TERM OF CABINSITE LEASE (1) A cabinsite lease will be issued for a period not to exceed 15 years unless the cabinsite lessee demonstrates a need for a longer period for loan security purposes, in which case the lease may be issued for a period up to five years longer than the terms of the loan to a maximum lease period of 35 years.

(a) Demonstration of need shall be in the form of a request from the lender asking for the extended lease term.

(b) A cabinsite lease shall expire on February 28, thirty-five years or less from the beginning date of the lease.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE XI RENEWAL OF CABINSITE LEASE AND PREFERENCE RIGHT (1) A current cabinsite lessee shall be sent an application to renew the cabinsite lease if all rentals due are paid. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year preceding the expiration of the lease and must be postmarked on or before January 28 of the year of expiration of the lease. Failure to submit a renewal application postmarked on or before January 28 will result in an unleased tract, and the tract will be subject to the requirements for leasing an unleased tract under ARM 36.25.115.

(2) A cabinsite lease is not subject to bids upon renewal if the lessee continues the lease and the lessee has paid all rentals and the lease is in good standing. The lease shall be renewed at the rental according to [NEW RULE III].

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

NEW RULE XII CABINSITE HARDSHIP RENTAL DEFERMENT

(1) A cabinsite lessee may request a deferment for a portion of the lease payment. Such deferment will be a 25 percent reduction of the lease payment. An eligible lessee may obtain an annual lease deferment for a maximum of three years.

(2) To qualify for a deferment, a lessee must:

(a) use the cabinsite for his/her primary residence; and

(b) have an annual household income at or below 80 percent of the most current Area Median Income (AMI) limit published by the Montana Department of Commerce.

(3) A lessee seeking the hardship rental deferment shall submit an application on a form prescribed by the department prior to October 1 annually, to qualify for the next billing cycle.

(4) Verification of eligibility will occur on an annual basis. If a lessee is determined eligible, the deferment may occur in the lease year the lessee was determined to be eligible, though the department will not issue any refund of payment, only credit for future payments.

(5) If the three-year hardship period ends, or the lessee no longer meets the eligibility criteria at the time of annual re-verification, then the deferred payments must be made in one of the following ways:

(a) at assignment, as a condition of assignment;

(b) as a balloon payment made in association with paying a regular lease payment as billed by the department during the three-year hardship period; or

(c) paid back over a four-year period at the end of the three-year hardship period. The amount of lease payment deferral would be tabulated, with interest thereon at the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201, MCA, then divided by four. The resulting amount would be added to each annual payment over a four year period until the deferred rental was repaid.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

REASONABLE NECESSITY: The adoption of New Rules I through XII are reasonably necessary to provide a means for the valuation and imposition of rental rates for cabinsite leases upon state trust lands that reflect changing market values of those leases while obtaining the full market value of those leases for the affected trust beneficiaries. The adoption of New Rules I through XII are also necessary for the proper administration of cabinsite leases upon state trust lands.

NEW RULE XIII ADMINISTRATIVE HEARINGS RELATED TO CABINSITE LEASE DISPUTES (1) Any cabinsite lessee may request a hearing before the department to resolve any dispute which arises from the interpretation of, the administration of, the cancellation of, or the rental due upon, a cabinsite lease. However, the department shall not provide for any hearing upon the assessed valuations determined by the DOR for any cabinsite under 15-7-111, MCA.

AUTH: 77-1-202, 77-1-209, MCA
IMP: 77-1-208, MCA

REASONABLE NECESSITY: The adoption of New Rule XIII is reasonably necessary to provide a procedure for resolving disputes related to cabinsite leases.

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 Mike Sullivan, Real Estate Management Bureau, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-6660; fax (406) 444-2684; e-mail misullivan@mt.gov, and must be received no later than 5:00 p.m. on February 11, 2009.

7. Jeanne Holmgren, Real Estate Management Bureau Chief, has been designated to preside over and conduct the public hearing.

8. An electronic copy of this Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption 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.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (6) above or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State on January 4, 2010.

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

In the matter of the amendment of ARM 37.5.118, 37.47.601, 37.47.610, and 37.47.613 pertaining to administrative review of fair hearing decisions	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 13, 2010, the Department of Public Health and Human Services proposes to amend the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on February 5, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

3. The Child and Family Services Division (CFSD) of the Department of Public Health and Human Services (department) proposes to amend ARM 37.47.610(6) to allow a means by which fair hearing decisions may be reviewed administratively before becoming final agency decisions. At present, these decisions may only be reviewed by appealing them to district court. CFSD reasonably believes this proposed change will allow parties who may not have the means or desire to go to district court to potentially preempt the necessity of doing so by asking the director to consider the proposed decision, the exceptions filed, briefs and oral argument, and the record of the hearing before allowing the proposed decision to become final.

To fully effectuate this goal, ARM 37.5.118 must also be changed to include reference to two other administrative rules (ARM 37.5.328 and 37.5.331). Respectively, these two rules describe the content requirements for proposed decisions, and the notice and review process relating to proposed decisions. ARM 37.47.601 must also be amended slightly to include a reference to the proposed change in ARM 37.47.610. Similarly, ARM 37.47.613 must be amended to clarify that substantiated reports of child abuse or neglect will be listed as "pending" in CFSD's protective services information system until administrative and judicial appeals have both been exhausted.

The proposed administrative review process is already being used by other department divisions. Therefore, adoption of this proposed change is also reasonable because it makes CFSD's review process consistent with that being used elsewhere in the department.

Apart from the proposed changes noted above, CFSD also proposes to change ARM 37.47.610(2). This change simply updates CFSD's address following relocation of the division to a new physical location in Helena, MT.

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

37.5.118 SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT: APPLICABLE HEARING PROCEDURES (1) Hearings contesting substantiated reports of child abuse, neglect or exploitation are available to the extent provided in ARM 37.47.610. The procedures specified in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337 apply to such hearings, subject to the limitations specified in ARM 37.47.615.

AUTH: 2-4-201, 41-3-208, MCA
IMP: 2-4-201, 2-4-612, ~~41-3-202~~, 41-3-203, 41-3-204, MCA

37.47.601 PROTECTIVE SERVICES: PURPOSE (1) The rules of this subchapter govern the disclosure and amendment of case records containing reports of child abuse, neglect or exploitation, and identify a procedure to administratively challenge a substantiated report of child abuse, neglect, or exploitation.

AUTH: 2-4-201, 41-3-208, MCA
IMP: 2-4-201, 41-3-205, MCA

37.47.610 CHILD PROTECTIVE SERVICES: RIGHT TO FAIR HEARING TO CONTEST SUBSTANTIATED REPORTS (1) remains the same.

(2) The request for a fair hearing must be in writing and be sent within 30 days after the date of mailing of the department's initial notice of its substantiation determination. The request must be sent to: Division Administrator, Department of Public Health and Human Services, Child and Family Services Division, ~~1400 Broadway, P.O. Box 8005~~ 301 S. Park, P.O. Box 8005, Helena, MT 59604-8005.

(3) through (5)(d) remain the same.

(4) The fair hearing will be conducted pursuant to Title 2, chapter 4, part 6,

(6) The hearing officer's proposal for decision is ~~the final agency decision for purposes of judicial review under ARM 37.5.334~~ subject to review under ARM 37.5.331.

AUTH: 2-4-201, 41-3-208, MCA
IMP: 2-4-201, 2-4-612, ~~41-3-202~~, 41-3-203, 41-3-204, ~~41-3-205,~~ MCA

37.47.613 CHILD PROTECTIVE SERVICES: LISTING OF DETERMINATION IN THE PROTECTION INFORMATION SYSTEM (1) When the department substantiates a report of child abuse, neglect, or exploitation, the department will initially list in its protective services information system~~, as~~ provided in ARM 37.47.315~~,~~ that the report's final determination is pending. The report will be pending for a period of 30 days from the date of the department's initial notice of its substantiation determination.

(2) remains the same.

(3) If the subject requests a fair hearing pursuant to ARM 37.47.610(2), the department's determination will be listed as pending in its protective services information system until ~~the outcome of the informal reconsideration, the fair hearing or appeal, whichever decision is considered final~~ all administrative appeals have been exhausted and all judicial appeals have been decided.

AUTH: 2-4-201, 41-3-208, MCA
IMP: 2-4-201, 41-3-202, 41-3-204, ~~41-3-205,~~ MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on February 11, 2010. Comments may also be faxed to (406) 444-1970 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Rhonda Lesofski at the above address no later than 5:00 p.m., February 11, 2010.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 13 persons based on an average of the 14 CFSD fair hearings conducted in 2008 and 12 CFSD fair hearings conducted in 2009.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Bernie Jacobs
Rule Reviewer

/s/ Hank Hudson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 4, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.203, 42.17.204, 42.17.218, 42.17.219, 42.17.221, 42.17.222, 42.17.223, and repeal of ARM 42.17.206, 42.17.207, 42.17.208, 42.17.209, 42.17.210 relating to withholding taxes	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 11, 2010, at 8:30 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., February 1, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.17.203 RECORDS TO BE KEPT BY EMPLOYER (1) As required by ARM 42.2.305, employers must keep employment records for each employee and make records available for review for five years. Such records must show:

(a) For each pay period:

(i) the beginning and ending dates;

(ii) the total wages, as defined in ~~15-30-201~~ 15-30-2501, MCA, for employment in such pay period; and

(iii) the number and date of weeks in which there were one or more employees.

(b) through (2) remains the same.

(3) The department is authorized to examine any and all records necessary for the administration of the withholding and estimated tax law (Title 15, chapter 30, part ~~2~~ 25, MCA). These records include, but are not limited to:

(a) through (g) remain the same.

~~(4) These records and reports must be maintained by the employer for a period of five years and are open to periodic review by authorized representatives as provided in ARM 42.2.305.~~

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: ~~15-30-204,~~ 15-30-2504, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.203 to move, for purposes of clarity, the language that refers to the requirement for employers to maintain, and make available to the department, employee records for a period of five years into the first section of the rule rather than the last section. The department is further amending the rule to correct the statutes found in the authority and implementing sections for this rule to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.204 REMITTANCE OF WITHHOLDING TAX BY EMPLOYERS

(1) Every employer must report information to the department on an approved payment ~~coupon~~ voucher provided by the taxpayer. The remittance schedule is established annually by the department pursuant to ~~15-30-204,~~ 15-30-2504, MCA. The department may request any information from the employer necessary for the collection of the tax.

(2) All employers must complete and return this ~~coupon~~ payment voucher even if the employer did not pay any wages or withhold from employees during the pay period.

(3) remains the same.

(4) If a due date falls on a weekend or holiday, the next business day becomes the due date for which the payment ~~coupons~~ voucher must be remitted.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: ~~15-30-204,~~ 15-30-2504, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.204 to correct the name of the document the taxpayer submits to the department from a "coupon" to a "payment voucher" in order to make the rule consistent with the current forms used by the department. The amendment to the authority and implementing statutes is necessary because the 2009 legislature enacted House Bill 24, (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold ~~state individual~~ Montana income tax must register for a Montana tax identification number on form GenReg, Registration/Application for Permit, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for a Montana tax identification number shall be sent to:

~~the~~ Department of Revenue~~,~~
P.O. Box 5805~~,~~
Helena, Montana 59604-5805.

(2) and (3) remain the same.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: ~~15-30-209,~~ 15-30-2509, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.218 to reference the correct name of the document provided by the department and to amend the authority and implementing statutes because the 2009 legislature passed HB 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.219 FILINGS AND PAYMENTS DUE AFTER TERMINATION OF WAGE PAYMENTS (1) The following must be filed with the department within 30 days of ceasing to be an employer as defined in ~~15-30-201,~~ 15-30-2501, MCA:

(a) the payment ~~coupon~~ voucher with remittance for the final payroll period in which wages were paid;

(b) the MW-3 with the W-2 ~~form~~, reporting individual employee's wages and taxes withheld during the year to the date of termination of wage payments; and

(c) annual filers must file the final ~~MW3/AR~~ MW-3 with the W-2 ~~form~~, reporting individual employee's wages and taxes withheld during the year to the date of termination of wage payments.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: ~~15-30-201, 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-209,~~ 15-30-2501, 15-30-2504, 15-30-2505, 15-30-2606, 15-30-2507, 15-30-2509, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.219 to update form titles for consistency. The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009 legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.221 DUE DATE AND APPLICATION OF TAXES (1) Withholding taxes are due as provided in ~~15-30-204,~~ 15-30-2504, MCA.

(2) remains the same.

(3) Payments submitted with payment ~~coupons~~ vouchers are applied to the period noted on the ~~coupons~~ payment vouchers. If an employer pays more than the amount owed for withholding tax on the payment ~~coupons~~ vouchers, the withholding overpayment is applied to other amounts due as provided in (2). The employer may request that payments be applied to a more recent period.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: 15-1-216, 15-1-708, ~~15-30-321,~~ 15-30-2641, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.221 to update the tiles of the documents which must be filed with the department. The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009

legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.222 DEMAND OF PAYMENT OR REPORTS IF EMPLOYER TRANSFERS OR DISCONTINUES BUSINESS (1) The department may demand that an employer file a ~~MW3 Montana Annual Withholding Tax Reconciliation Annual Reconciliation Report~~ form MW-3 with applicable federal form W-2s and submit payment within 30 days after ceasing activity. ~~"~~Ceasing activity~~"~~ includes, but is not limited to:

(a) through (2) remain the same.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: 15-1-216, ~~15-30-204,~~ 15-30-2504, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.222 to update form references and to further clarify information that the department might require for businesses to file upon the closing or transfer of their business. The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.223 DETERMINING EMPLOYEE STATUS (1) It is the intent of the department that any determination of a worker's status as an employee for withholding tax purposes be consistent with the determination of the same person's status under the Department of Labor and Industry or the Workers' Compensation Act~~, unemployment insurance and the professional employer organization laws~~.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA
IMP: ~~15-30-248,~~ 15-30-2523, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.223 to make the rule consistent with the language of 15-30-2523, MCA, and to update the statutory references in the authority and implementing cites to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

4. The department proposes to repeal the following rules:

42.17.206 WAGES which can be found on page 42-1733 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA
IMP: 15-30-201, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.206. This rule was adopted when the department administered the tax section

of the unemployment insurance and for withholding purposes wages are defined in 15-31-2501, MCA, and therefore the rule is no longer necessary.

42.17.207 RENTAL OF CAPITAL ASSETS - NOT WAGES which can be found on page 42-1734 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA
IMP: 15-30-201, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.207. See the reasonable necessity for ARM 42.17.206.

42.17.208 EMPLOYEE EXPENSES - NOT WAGES which can be found on page 42-1734 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA
IMP: 15-30-201, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.208. See the reasonable necessity for ARM 42.17.206.

42.17.209 JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR FEES - NOT WAGES which can be found on page 42-1735 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA
IMP: 15-30-201, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.209. See the reasonable necessity for ARM 42.17.206.

42.17.210 DETERMINATION OF INDEPENDENT CONTRACTOR which can be found on page 42-1736 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA
IMP: 15-30-201, 15-30-248, 15-30-303, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.210. See the reasonable necessity for ARM 42.17.206.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than February 19, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been

designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 4, 2020

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401 relating to Property Tax Assistance Program	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 4, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 25, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

<u>42.19.401 PROPERTY TAX ASSISTANCE PROGRAM</u> (1) through (4) remain the same.

(5) Income must be reported by the applicant as follows:

(a) For the 2009 tax year, the applicant is required to report their federal adjusted gross income as reported on their federal income tax return for the preceding calendar year. An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.

(b) For the 2010 and subsequent tax years, the applicant is required to list total household income, which ~~includes otherwise tax exempt income of all types. That income includes, but is not limited to:~~

~~(i) employment income;~~

~~(ii) gross business income less ordinary operating expenses but before deducting depreciation or depletion allowance;~~

~~(iii) social security;~~

~~(iv) railroad pension;~~

~~(v) teachers' pension;~~

~~(vi) employment pension;~~

~~(vii) veterans' pension;~~

~~(viii) any other pension;~~

~~(ix) alimony;~~
~~(x) disability income;~~
~~(xi) unemployment benefits;~~
~~(xii) welfare payments;~~
~~(xiii) aid to dependent children;~~
~~(xiv) rentals;~~
~~(xv) interest from investments;~~
~~(xvi) stock/bond interest or dividends;~~
~~(xvii) interest from banks;~~
~~(xviii) any other income, but not including social security income paid directly to a nursing home;~~
~~(xix) food stamps;~~
~~(xx) direct utility payments paid by the energy share program; or~~
~~(xxi) capital gains.~~

~~(c) Total household income is not reduced or otherwise modified by losses, depletion, depreciation, or any Montana or federal adjustment to income~~ is the income as reported on the tax return or returns required by Title 15, chapters 30 or 31, MCA, for the year in which the assistance is being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income.

(6) An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.

(7) The applications described in (5)(a) and (b) require a copy of the appropriate form to be attached.

AUTH: 15-1-201, MCA
IMP: 15-6-134, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.401 because the amendment previously adopted on December 25, 2009 incorrectly provided for the inclusion of income that was excluded by the 2009 Legislature when it enacted House Bill 658 (Ch. 483, L. 2009), which amended 15-6-134, MCA. The legislative amendment to 15-6-134, MCA, changed the income requirement when applying for the property tax assistance program to the federal adjusted income as identified on the preceding year's federal income tax return. As the rule currently reads some of the items listed in (5)(b) would not be included when calculating a taxpayer's federal adjusted gross income.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than February 12, 2010.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on December 29, 2009, by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 4, 2010

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.308 pertaining to examination fees and the repeal of ARM 2.59.307 pertaining to dollar amounts to which consumer loan rates are to be applied	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 29, 2009, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-419 regarding the proposed amendment and repeal of the above-stated rules at page 1826 of the 2009 Montana Administrative Register, issue number 20.

2. No comments were received.

3. The department has amended ARM 2.59.308 exactly as proposed.

4. The department has repealed ARM 2.59.307 exactly as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State January 4, 2010.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the administration of the Quality Schools Grant Program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 25, 2009, the Department of Commerce published MAR Notice No. 8-2-78 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2193 of the 2009 Montana Administrative Register, Issue Number 22.

2. The department has adopted the above-stated rule as proposed: New Rule I (8.2.503).

3. The department has thoroughly considered the comments and testimony received, and has revised the guidelines for the Quality Schools Project Grants – incorporated by reference in New Rule I – as set forth below. A summary of the comments received and the department's responses are as follows:

COMMENT #1: May a school district apply for a single project grant that covers multiple projects at once?

RESPONSE #1: The Project Grant Guidelines require an applicant's project to fit within one of the six statutory priorities. If multiple projects are closely related, and can more efficiently or effectively be done in conjunction with one another, those projects can be grouped under one application. A school may not propose several unrelated projects under one project application.

COMMENT #2: Please clarify how many points an applicant will need to achieve to secure project funding.

RESPONSE #2: The Project Grant Program has no set point value that an applicant needs to achieve to secure funding. During round one of the project grants, the department will determine which applicants will receive a portion of the $10 million appropriation. During round two and thereafter, the department will recommend grant awards to the Governor. The Legislature will make the final determination as to the funding appropriation and grant awards. In order to ensure ranking, each application must meet the minimum requirements necessary to be reviewed and ranked by the department. (See page 1.5 of the Guidelines.)

COMMENT #3: The Guidelines and Application are too long.

RESPONSE #3: The department is sensitive to the needs of school districts to be able to easily access grant funds and comply with the Quality Schools Grant

Program requirements, and both the Guidelines and Application contain the minimum information required to give adequate and clear direction as how to apply for and administer a Quality School project grant. If necessary, eligible applicants can apply for a Quality School planning grant to obtain assistance in preparing a project grant application.

COMMENT #4: Page 1.1 the date of the DLR study says July 2009, should this read 2008?

RESPONSE #4: The date should read July 2008. The Project Grant Guidelines have been corrected on page 1.1.

COMMENT #5: Please clarify the exact date referred to on Page 1.2 of the Project Grant Guidelines as "the end of the 2011 biennium."

RESPONSE #5: The 2011 biennium will end on June 30, 2011. Page 1.2 of the Project Grant Guidelines has been updated to read, "by June 30, 2011 (the end of the 2011 biennium)." The section was also updated to specify a biennium equals two years.

COMMENT #6: On page 1.12 of the Project Grant Guidelines, the first bullet states, "The proposed energy efficiency improvements are not the highest priority improvements identified in the district's energy audit or evaluation." How is "highest priority" evaluated if the audit didn't rank the measures in the report?

RESPONSE #6: The language identified has been changed to clarify that a lower score of 0-40 will be given to those projects proposing to complete energy efficiency improvements that received a lower priority for completion than other improvements identified in the district's energy audit or evaluation. If the audit or evaluation did not rank the measures in the report, then a project's ranking will not be reduced under this scoring criterion.

COMMENT #7: There were several comments regarding the prioritization of energy conservation measures and their scoring under Statutory Priority #4 on page 1.12 of the Project Grant Guidelines. Specifically, comments were received regarding the proposal to rank projects with "short-term" paybacks higher than projects with "long-term" paybacks, how the department proposed to define "short-term" and "long-term," the difficulties associated with identifying payback periods, and acknowledging the availability of rebates and other programs available for projects with short-term paybacks. Comments were also received regarding combining short-term and long-term projects together and how those would be ranked.

RESPONSE #7: Quality Schools recognizes the importance of both short- and long-term paybacks in regard to energy conservation measures. Following the recommendations of the K-12 Facility Condition Study performed by the Department of Administration in coordination with DLR Group, Inc., the department will rank projects with short-term paybacks higher than long-term paybacks because many

schools in Montana lack even basic energy efficient improvements such as lighting, sensors, and retro-commissioning. As recognized in the K-12 Facility Condition Assessment, with a meaningful level of implementation of behavioral changes (Level 1 measures) and short-term payback measures (Level 2 measures) alone, the energy costs to Montana schools could reasonably drop by more than 20%, or over $5.4 million annually (prior to utility rate escalation).

Projects with a short-term payback will typically see cost savings returned within eight years or less, while projects with long-term payments typically will not see costs savings for 15-20 years or more.

Of course, when new construction is scheduled or warranted, in addition to these measures, school districts should additionally consider building orientation, fitting the building to the environment, capitalizing on prevailing wind patterns, evaporative cooling systems, geo-thermal and ground-loop sources, increased use of day-lighting, storm water retention, indigenous landscaping, gray water re-use, and other high performance design concepts intended to result in more sustainable and efficient buildings and campuses.

The department encourages school districts to leverage all available funds in prioritizing and funding its proposed projects. Under the statutory attributes, schools that can demonstrate the lack of other available resources for completing projects with short-term paybacks will obtain a higher score in the applicable attribute than districts that have other resources available.

Projects that combine both short-term and long-term paybacks will be ranked as a project with short-term paybacks.

COMMENT #8: Statutory Priority #4 refers to energy efficiency and payback for its point allocation. Can payback and energy efficiency be calculated based off a modified-base case? How are broken (nonfunctioning) systems scored?

RESPONSE #8: In order to qualify under Statutory Priority #4, the eligible applicant will need to have either completed an energy audit within the past five years or an FCI (Facility Conditions Inventory) report from the K-12 Facility Condition Assessment (July 2008) that specifically identifies the energy efficiency improvement proposed in the application. These documents, and the analysis contained therein, will be the basis for any energy efficiency project being scored under Statutory Priority #4.

If a system is broken or nonfunctioning, the project may be eligible under a different statutory priority than energy efficiency. Under Statutory Priority #4, the energy auditor's findings and recommendations will be the basis for scoring the project.

COMMENT #9: In regard to building codes, the commenter would like to see the rules award points for going beyond required code measures, so that energy efficiency improvements would show cost-effective paybacks and length of service.

RESPONSE #9: Statutory Priority #4, energy efficiency improvements, does not relate to building code requirements, but instead is scored based on the analysis in the energy audit provided by the district. While all improvements to a school facility must meet current building codes, a school proposing energy efficiency improvements – whether they go beyond those codes or not – must support its application through the analysis of paybacks in its energy audit. Infrastructure improvements proposed to meet current building code requirements are separately ranked under Statutory Priority #2.

COMMENT #10: It would be helpful to note the four key categories of the ECS in Page 1.15 of the Project Grant Guidelines. It's not clear how those four key categories (General Data, Site Amenities, Room Types, Building Offering & Amenities) would be used to evaluate projects.

RESPONSE #10: As set forth in the Project Grant Guidelines ranking scores, the four ECS categories relate to the project site and the school's ability to offer specific amenities related to education requirements of their curriculum, as well as the ability to accommodate extracurricular activities (intramural and competition sports, performance events, etc.). The four categories, to the extent they relate to infrastructure improvements and are not otherwise addressed under another statutory priority, translate into the four scoring levels identified under Statutory Priority # 5 listed here in order of priority:

(1) The construction or expansion of classroom space;
(2) The construction or expansion of Specialized Instructional Spaces;
(3) Increased school security; and
(4) The construction or expansion of additional support and resources areas at schools.

COMMENT #11: A comment was received regarding the timing of subsequent grant award rounds. Comment was in favor of the proposed schedule for round two and subsequent Quality Schools project grant awards.

RESPONSE #11: The department accepts the comment.

COMMENT #12: The proposed requirement to complete MEPA review prior to grant application could be too complicated to complete, and may deter applicants from applying. A MEPA review should be completed only after a project has been funded.

RESPONSE #12: In order to complete MEPA review, a school district must complete an environmental checklist, which can be downloaded from Quality Schools web site. If all impacts identified in the checklist are less than significant, or can be mitigated to a level of insignificance by changing the scope of the project or completing identified mitigation measures, no further environmental review is required. If the checklist identifies any significant effects that cannot be mitigated to a level of insignificance, then further analysis (EIS) may be required. This process

can be completed as part of the preparation of the project application, public review provided during that period, and a final decision on the environmental document made at the district's hearing approving submission of the project grant application. This upfront review will help districts identify any potential issues that could arise before further project costs are incurred; allows changes to be made to project scope and implementation plans; and avoids the department and the Legislature spending time and costs on reviewing, ranking, and funding awards before the environmental impacts of a project are known. A reference to the environmental checklist in the appendices to the Project Grant Guidelines has been added to Chapter 2, Overview.

COMMENT #13: Who is eligible to fill out the environmental checklist?

RESPONSE #13: Anyone authorized to perform work on behalf of the school district can prepare the environmental checklist, using all available information and evidence. The district superintendent or authorized representative must sign the environmental checklist, and the final environmental determination must be made by the school district board of trustees. The Project Grant Guidelines have been modified to clarify who can submit the environmental checklist. In addition, eligible applicants can apply for a Quality School planning grant to obtain assistance in preparing a project grant application, including any necessary environmental review.

COMMENT #14: Should the environmental review go to the Environmental Quality Council as well?

RESPONSE #14: As required by Section 75-1-201, MCA and the department's administrative rules relating to implementation of MEPA, the department is required to submit a copy of all environmental assessments (EAs) to the Environmental Quality Council (EQC). The department maintains a log of all EAs completed by the agency and submits a list of any new EAs completed to the Governor's Office and the EQC on a quarterly basis. (ARM 8.2.307(5)). The Project Grant Guidelines have been modified to require the applicant school district to submit a copy of its EA or EIS to the department, not the EQC. The department will provide the EQC with a copy of each EA directly. If the department proposes to adopt an EIS, the department must notify the Governor and the EQC of its decision and provide a statement describing its proposed course of action.

COMMENT #15: Testing for asbestos containing materials and other hazards is the most commonly over-looked environmental concern. The environmental section should contain requirements for testing for asbestos containing materials.

RESPONSE #15: The Asbestos Control Program of the Department of Environmental Quality (DEQ) regulates and permits asbestos abatement projects. Asbestos abatement activities must be permitted through the Asbestos Control Program and must be conducted by accredited asbestos personnel following proper asbestos inspection, abatement, transportation, and disposal procedures. Generally speaking, the Asbestos Control Program regulates asbestos projects, building

demolition, and building renovation activities that occur in facilities such as any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building excluding residential buildings having four or fewer dwelling units). Compliance with state and federal asbestos requirements has been added to the list on Page 2.6 of the Project Grant Guidelines of the various environmental permits that may be required on a Quality Schools infrastructure project from other state agencies.

COMMENT #16: Page 2.6 of the Project Grant Guidelines refers to environmental permits that may be required. Will these permits be required in advance of applying for a grant?

RESPONSE #16: No. Applicants are responsible for obtaining all proper permits for their project, but such permits do need to be obtained prior to applying for or obtaining approval of a Quality Schools project grant award.

COMMENT #17: Commenter requests that legal costs, specifically bond counsel, be included in the reimbursable expenses of the project grant.

RESPONSE #17: The department recognizes that there are additional costs not directly associated with the project that grant applicants will be responsible for. Quality Schools project grant funds cannot be used for grant administration expenses or financial costs, including bond counsel. Districts must use other sources of funds, including general funds, for such grant administration costs.

COMMENT #18: Commenter requests that non-permanent furnishings and fixtures or equipment be included as a reimbursable expense of the Quality Schools Project Grant.

RESPONSE #18: The Quality Schools Grant Program can fund school facility projects that involve the construction of a school facility; major repairs or deferred maintenance to an existing school facility; major improvements or enhancements to an existing school facility; or information technology infrastructure, including installations, upgrades, or improvements to an existing school facility or facilities. Accordingly, the school districts may use project grant funds to purchase permanent fixtures related to these types of projects. However, nonpermanent furnishings, fixtures, or equipment are not a reimbursable expense of the project grant.

COMMENT #19: Commenter believes the 10 per cent project contingency amount should be increased to 20-25 per cent at the beginning of the project, and reduced to 10 per cent as the scope of the project becomes more clear.

RESPONSE #19: The default construction contingency will remain at 10 per cent, with applicants providing the opportunity to justify when and why they propose a higher or lower contingency.

COMMENT #20: Please define the terms "isolated schools with low population density" and "urban schools with high population density," and clarify how schools fit into these categories and how schools that don't fit into these categories should fill out these sections.

RESPONSE #20: These terms come from Title 20, chapter 9 of the Montana Code Annotated. Schools designated as either are determined by the Office of Public Instruction (OPI). If a school does not fit into one of these categories, it should leave those sections of the application blank – the department will not be able to adjust its rankings based on those factors for that application.

COMMENT #21: Commenter would like assurance that smaller schools districts will have an equal opportunity to the grant money, and that rural districts may find the grant administration process too difficult due to limited manpower to properly manage the projects. What can be done to help the smaller districts to ensure their ability to successfully fulfill the requirements of the grant to properly manage the grant if awarded?

RESPONSE #21: The Quality Schools Grant Program statute was specifically drafted so that grant awards would be based not on the size of the school, but rather on what statutory priority the grant applicant is applying for and its ability to demonstrate its need for financial assistance; its fiscal capacity to meet the terms and conditions of the grant; its past efforts to ensure sound, effective, long-term planning and management of the school facility and attempts to address school facility needs with local resources; its ability to obtain funds from sources other than the funds provided under this part; and the importance of the project and support for the project from the community. The project grant ranking criteria reflect this statutory framework. If necessary, an eligible school district can apply for a Quality Schools planning grant to obtain assistance in preparing its application for a project grant. This ensures an equal opportunity for all schools to prepare a competitive application. The department is committed to assisting small schools apply for and administer Quality Schools Program Grants. In addition, the Quality Schools Grant Program statute allows the department to adjust its initial rankings based on educationally relevant factors, including a school's designation as an "isolated school."

COMMENT #22: How will the educationally relevant factors be used to adjust the ranking?

RESPONSE #22: The educationally relevant factors will not be considered during the ranking process with the statutory priorities and attributes. However, after the ranking of all project applications have been made, the department may consider the extent to which an applicant district serves isolated populations, urban populations, students with special needs, American Indian students, or its difficulty in attracting and retaining qualified educators and other personnel in making final funding decisions. Generally speaking, these factors will help the department make funding decisions between schools that otherwise rank equally in terms of the statutory

priorities and attributes, with funding going to schools that can demonstrate greater or more extensive educationally relevant needs.

COMMENT #23: Please describe the timetable for the project grant awards.

RESPONSE #23: For round one of the project grants, the Project Grant Guidelines and Application will be published January 14, 2010, with an application deadline of February 20, 2010, and awards announced mid-March. For round two of the project grants, the department is anticipating an application deadline of May 1, 2010, with grant award approvals by the 62nd Legislature at the end of the legislative session in spring 2011.

COMMENT #24: Some schools applied for a Quick Start project but were denied because all Quick Start money had been awarded. Will those applicants receive special consideration for the $400,000 in the Quality Schools program that flowed over from Quick Start?

RESPONSE #24: Section 58 of HB 645 (“Quick Start”) provided that any funds not obligated under the Quick Start program by September 30, 2009 "be used as provided in [section 85] for the School Facilities Program Administration and Grants line item appropriation." Section 85 of HB 645 provided a line-item appropriation "to be used in the same manner as provided in section 10 of HB 152." Section 10 of HB 152 provided that, "[i]n awarding grants under this subsection, all definitions and requirements of [sections 1 through 8] and rules adopted under [section 9] apply except that the department need not submit its recommendations to the governor and legislative approval is not required for the award of specific grants." Given these statutory directives, the department must award the $400,000 rollover within the ranking priorities and attributes set forth in the Quality Schools Grant Program statute. No special consideration may be given to unsuccessful Quick Start program applicants.

COMMENT #25: Will there be any special consideration for projects currently underway and costs already incurred on those costs?

RESPONSE #25: An eligible applicant can apply for a project grant for a project currently in progress, but only expenses incurred after the date of the notice of award letter would be eligible expenses for reimbursement through the project grant. Expenses incurred by a successful applicant prior to the date of the notice of award letter, or incurred by an unsuccessful applicant at any time, are the sole responsibility of the applicant.

COMMENT #26: The Facility Condition Inventory is inadequate to describe all problems, safety concerns, health concerns, or conditions that may need to be addressed by a school.

RESPONSE #26: While the K-12 Facility Condition Assessment (July 2008) may be used by a school to support its project grant application, that assessment is not a

required component in any project grant application. If a school believes that assessment is inadequate to describe its particular problems, safety concerns, health concerns, or conditions to be addressed, it may provide alternative or additional documentation of those conditions in support of its project grant application.

COMMENT #27: Is a Quality Schools planning grant required in order to get a project grant?

RESPONSE #27: No. A Quality Schools planning grant is not required in order to get a project grant. However, an eligible school can apply for a planning grant to undergo preliminary design and planning for a proposed project, or use planning grant funds to obtain assistance in preparing a project grant application.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State January 4, 2010.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.616 registry, 24.156.617 licenses, 24.156.618 testing requirements and the adoption of NEW RULES I through IX pertaining to registration	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 24, 2009, the Board of Medical Examiners (board) published MAR Notice No. 24-156-72 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1610 of the 2009 Montana Administrative Register, issue no. 18.

2. On October 20, 2009, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the October 28, 2009, comment deadline.

3. The board has amended ARM 24.156.616, 24.156.617, and 24.156.618 exactly as proposed.

4. The board has adopted NEW RULE I (24.156.629), NEW RULE II (24.156.630), NEW RULE III (24.156.631), NEW RULE IV (24.156.632), NEW RULE V (24.156.633), NEW RULE VI (24.156.634), NEW RULE VII (24.156.635), NEW RULE VIII (24.156.636), and NEW RULE IX (24.156.637) exactly as proposed.

BOARD OF MEDICAL EXAMINERS
DR. JAMES UPCHURCH, PHYSICIAN,
CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 4, 2010

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

In the matter of the amendment of ARM 24.174.301 definitions, 24.174.503 administration of vaccines, 24.174.510 prescriptions, 24.174.523 transmission of prescriptions, 24.174.601 objectives, 24.174.602 internship, 24.174.701 registration requirements, 24.174.703 pharmacy technician, 24.174.817 record keeping, 24.174.1002 registration conditions, 24.174.1114 emergency drug kit, 24.174.2102 and 24.174.2103 renewal, 24.174.2301 unprofessional conduct, and repeal of 24.174.1007 agent of records	))))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 16, 2009, the Board of Pharmacy (board) published MAR Notice No. 24-174-59 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1079 of the 2009 Montana Administrative Register, issue no. 13.

2. On August 6, 2009, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the August 14, 2009, deadline.

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

Comments and responses 1 through 4 pertain to ARM 24.174.510.

COMMENT 1: A commenter proposed eliminating the dispense-as-written (DAW) designation stating that it does not affect public safety in any form.

RESPONSE 1: The board notes that occasionally, patient safety requires a brand-name medication, because generics are less effective or because the patient may suffer an allergy to the binders, fillers, or other ingredients used in the generic formulation. Following amendment, this rule will ensure that the patient will be reimbursed for a brand-name drug by a third party payer. The board is amending the rule exactly as proposed.

COMMENT 2: A commenter cautioned about potentially inconsistent requirements between the requirements for Medicaid reimbursement under ARM 37.86.1105(1), and the "brand name medically necessary" language of the proposed change.

RESPONSE 2: The board concluded that the use of "brand necessary" or "brand required" from ARM 37.86.1105(1) is not necessarily inconsistent with the new language proposed for ARM 24.174.510, "brand name medically necessary." ARM 37.86.1105(1) sets forth examples of acceptable directives and is not meant to be exclusive. Moreover, the proposed amendment specifies a standard for dispensing and barring generic substitution, while ARM 37.86.1105(1) is geared towards Medicaid reimbursement. Finally, 37-7-502(2), MCA, expressly elevates the physician's standard to "medically necessary" requiring identical language in the rule implementing that statute. The board is amending the rule exactly as proposed.

COMMENT 3: One commenter stated that it would be burdensome to require that physicians manually handwrite "brand name medically necessary" on every prescription. This commenter proposed permitting physicians to use a box check-off indicating "substitution permitted" or "brand name medically necessary," or alternatively, two separate signature lines with the applicable directions allowing or disallowing substitutions under each signature line.

RESPONSE 3: The board notes that ARM 37.86.1105(1) requires a prescriber's directive to be in the prescriber's "own handwriting," and expressly declares, "A check-off box on a form or a rubber stamp is not acceptable." The board is amending the rule exactly as proposed.

COMMENT 4: A commenter seemed to suggest that alternate check-boxes would simplify the prescription delivery process and a handwritten directive is unnecessary.

RESPONSE 4: The board is mindful of the time pressures on practitioners, but notes that ARM 37.86.1105(1) requires a prescriber's directive to be in the prescriber's "own handwriting," and expressly declares, "A check-off box on a form or a rubber stamp is not acceptable." The board is amending the rule exactly as proposed.

COMMENT 5: A commenter noted that Department of Health and Human Services' (DPHHS) rules on Medicaid reimbursement provide specific tamper-resistant measures for handwritten prescriptions.

RESPONSE 5: The board notes that the concern is with handwritten prescriptions and the proposed amendment to ARM 24.174.523 governs electronically produced prescriptions hand-delivered to the patient. The board found no conflict between the two provisions.

COMMENT 6: A commenter observed that an electronic prescription, printed and handed to a patient, is no longer an electronic prescription and, under federal law, requires a traditional handwritten signature.

RESPONSE 6: The board agreed with the commenter and is amending ARM 24.174.523 accordingly.

COMMENT 7: A commenter suggested that the proposed amendment to ARM 24.174.2301 was unclear and could be interpreted to hold all of a facility's staff liable even if just one individual worked without a license.

RESPONSE 7: The board agreed with the commenter and will make no changes to ARM 24.174.2301 at this time.

4. The board has amended ARM 24.174.301, 24.174.503, 24.174.510, 24.174.601, 24.174.602, 24.174.701, 24.174.703, 24.174.817, 24.174.1002, 24.174.1114, 24.174.2102, and 24.174.2103 exactly as proposed.

5. The board has amended ARM 24.174.523 with the following changes, stricken matter interlined, new matter underlined:

24.174.523 TRANSMISSION OF PRESCRIPTIONS BY ELECTRONIC MEANS (1) through (4) remain as proposed.

(5) Computer-generated, electronically signed prescriptions that are handed directly to a patient or to a patient's agent must be authenticated by the prescriber with the prescription hand-signed, with the actual signature of the prescriber. ~~by one of the following methods:~~

~~(a) the prescription must be hand signed with the actual signature of the prescriber; or~~

~~(b) a prescription that is electronically signed by the prescriber must include an additional security feature on the prescription that cannot be reproduced.~~

~~(i) It is the prescriber's responsibility to identify the security feature on the face of the prescription.~~

~~(ii) It is the prescriber's responsibility to indicate on the face of the prescription that the prescription is not valid without the security feature.~~

(6) remains as proposed.

6. The board did not amend ARM 24.174.2301 as proposed.

7. The board has repealed ARM 24.174.1007 exactly as proposed.

BOARD OF PHARMACY
WILLIAM BURTON, RPH, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 4, 2010

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.204.501 permit application types, 24.204.504 practice limitations, 24.204.507 course requirements, 24.204.511 permit examinations, 24.204.607 code of ethics, and 24.204.2301 unprofessional conduct	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 16, 2009, the Board of Radiologic Technologists (board) published MAR Notice No. 24-204-36 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1089 of the 2009 Montana Administrative Register, issue no. 13.

2. On August 7, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 17, 2009, deadline.

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

COMMENT 1: Two commenters expressed concerns about the proposed changes to ARM 24.204.501, stating that the board provided no rationale for needing to increase educational requirements for limited permit holders. One commenter is concerned about the cost and dislocation of doing clinicals in larger hospitals in order to meet the standards. A commenter noted that in 2009, the American Registry of Radiologic Technologists (ARRT) called for associate degrees by 2015 for radiography, nuclear medicine technology, and radiation therapy certification, and that the federal Consistency, Accuracy, Responsibility and Excellence in Medical Imaging and Radiation Therapy (CARE) bill is no longer before Congress.

RESPONSE 1: The board concluded that the proposed increase in educational requirements corresponds to the changing technology in the profession and that limited permit holders must obtain the education needed for public safety. The proposed rules are consistent with the industry i.e., digital radiology, computed radiology, radiation protection, new technology, and equipment.

The board acknowledges that the CARE bill is no longer before Congress and is aware of the ARRT proposal for associate degrees by 2015.

COMMENT 2: A commenter stated that ARM 24.204.507(1) requires board-approved courses to meet ARRT educational standards for limited permit holders,

but noted that the ARRT sets standards for certification and registration, not education. The commenter suggested the board amend (1) to clarify this.

Commenters suggested deleting (1)(a) as redundant and amending (1)(b) because it is confusing. Three commenters noted that ASRT sets the educational standards.

RESPONSE 2: The board agrees that the ASRT is the entity that sets educational standards and is amending the rule for clarity. The board is aware that (1)(a) may be viewed as redundant, but decided to keep it in the rule. The board is amending (1)(b) for consistent use of the term "limited permit holder."

COMMENT 3: A commenter stated that many hospitals did not respond to the board's query about providing training for students, and that procedure, not hours, is a better measure for numbering competencies. Another commenter stated that the checklist for demonstrating competencies should be published in the board's administrative rules and not simply included with the limited permit application.

RESPONSE 3: Following discussion, the board decided to amend the rule by removing "hours" from ARM 24.204.507(3)(a) through (g). The competencies checklist will be included with the application to reflect the requirements of the rule.

COMMENT 4: A commenter suggested adding "correspondence or online courses" to (1) and then deleting (8) from ARM 24.204.507 to avoid redundancy in the rule.

RESPONSE 4: Noting that the board reserves the independent ability to review and approve online courses, the board is amending the rule for clarity.

4. The board has amended ARM 24.204.501, 24.204.504, 24.204.511, 24.204.607, and 24.204.2301 exactly as proposed.

5. The board has amended ARM 24.204.507 with the following changes, stricken matter interlined, new matter underlined:

24.204.507 COURSE REQUIREMENTS FOR LIMITED PERMIT APPLICANTS (1) Course providers shall receive board approval for correspondence or online course(s), prior to offering the courses outlined below and shall submit a request for reapproval every two years thereafter. The provider shall submit for the board's review, a course outline, agenda, and the identification and qualifications of all instructors. ~~Board approved courses must meet American Registry of Radiologic Technologists (ARRT) educational standards for limited permit holders~~ Board approved course content must be compliant with American Registry of Radiologic Technologists (ARRT) recognized curriculum.

(a) remains as proposed.

(b) All instructors shall be ARRT certified or ~~licensed~~ limited permit holders in the state of Montana. Approved course providers, instructors, or designees with five years experience include: radiologic technologists, limited permit holders, radiologic

practitioner assistants/radiologist assistants, podiatrists, radiologists, and chiropractors.

(2) and (3) remain as proposed.

(a) chest - four hours, and passing competencies - ten ~~hours~~ actual;

(b) extremities - eight hours, and passing upper extremities competencies - five ~~hours~~ actual and passing lower extremities competencies - five ~~hours~~ actual;

(c) spine - eight hours, and passing competencies - ten ~~hours~~ actual;

(d) skull - eight hours, and passing competencies - ten ~~hours~~, of which five may be simulated;

(e) abdomen - four hours, and passing competencies - ten ~~hours~~ actual;

(f) GI tract and associated overhead films - eight hours, and passing competencies - ten ~~hours~~, all of which may be simulated; and

(g) positioning - eight hours, and passing competencies - ten ~~hours~~ actual.

(4) through (7) remain as proposed.

~~(8) Verifiable correspondence or on-line course(s) are subject to board approval.~~

(9) remains as proposed but is renumbered (8).

BOARD OF RADIOLOGIC
TECHNOLOGISTS
CHARLES MCCUBBINS, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 4, 2010

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

In the matter of the adoption of New Rule I - CLXVIII, amendment of 37.5.117, 37.5.304, 37.95.127, 37.95.227, 37.106.2506, 37.111.104, 37.111.123, 37.111.305, 37.111.339, 37.111.504, 37.111.523, and repeal of 37.111.1001, 37.111.1002, 37.111.1003, 37.111.1010, 37.111.1011, 37.111.1012, 37.111.1013, 37.111.1021, 37.111.1022, 37.111.1023, 37.111.1024, 37.111.1025, 37.111.1101, 37.111.1102, 37.111.1105, 37.111.1112, 37.111.1113, 37.111.1114, 37.111.1115, 37.111.1130, 37.111.1131, 37.111.1132, 37.111.1133, 37.111.1138, 37.111.1139, 37.111.1140, 37.111.1141, 37.111.1142, 37.111.1143, 37.111.1147, 37.111.1148, 37.111.1149, 37.111.1150, 37.111.1151, 37.111.1152, 37.111.1153, 37.111.1154, 37.111.1155, 37.111.1156, 37.111.1158, 37.111.1159, 37.111.1160, and 37.111.1161 pertaining to swimming pools, spas, and other water features	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 14, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-471 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 604 of the 2009 Montana Administrative Register, Issue Number 9, and on July 16, 2009 published MAR Notice No. 37-471 pertaining to the notice of the second public hearing and extension of comment period on proposed adoption, amendment, and repeal on page 1104 of the 2009 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 37.5.117, 37.5.304, 37.95.127, 37.95.227, 37.106.2506, 37.111.104, 37.111.123, 37.111.305, 37.111.339, 37.111.504, and 37.111.523; adopted New Rule I (37.115.101), XII (37.1115.308),

XXI (37.115.321), XXIV (37.115.502), XXVI (37.115.504), XXVII (37.115.505), XXVIII (37.115.506), XXXII (37.115.510), XXXVI (37.115.517), XXXVIII (37.115.519), XLI (37.115.523), XLIII (37.115.602), XLIV (37.115.603), XLVIII (37.115.702), XLIX (37.115.703), L (37.115.705), LI (37.115.706), LIV (37.115.802), LVII (37.115.807), LX (37.115.904), LXIII (37.115.1001), LXX (37.115.1009), LXXIII (37.115.1012), LXVI (37.115.1017), LXXVIII (37.115.1021), LXXX (37.115.1103), LXXXII (37.115.1202), LXXXIII (37.115.1203), LXXXV (37.115.1302), LXXXVII (37.115.1305), XCI (37.115.1310), XCII (37.115.1311), XCIX (37.115.1404), C (37.115.1405), CII (37.115.1501), CIV (37.115.1505), CV (37.115.1507), CVIII (37.115.1603), CIX (37.115.1604), CX (37.115.1701), CXI (37.115.1702), CXII (37.115.1703), CXIII (37.115.1704), CXV (37.115.1803), CXVI (37.115.1804), CXVII (37.115.1805), CXVIII (37.115.1806), CXIX (37.115.1807), CXX (37.115.1808), CXXII (37.115.1810) ,CXXVIII (37.115.1817), CXXIX (37.115.1819), CXXXI (37.115.1823), CXXXIII (37.115.1825), CXXXIV (37.115.1826), CXXXV (37.115.1827), CXXXVI (37.115.1828), CXXXVII (37.115.1835), CXXXIX (37.1151.1837), CXLI (37.115.1839), CXLIV (37.115.1846), CXLVI (37.115.1901), CXLVII (37.115.1902), CXLVIII (37.115.1903), CL (37.115.1907), CLI (37.115.1909), CLII (37.115.1910), CLIII (37.115.1911), CLV (37.115.2001), CLVI (37.115.2002), CLVII (37.115.2003), CLVIII (37.115.2101), CLX (37.115.2103), CLXI (37.115.2104), CLXII (37.115.2105), CLXIII (37.115.2201), CLXIV (37.115.2203), CLXV (37.115.2205), CLXVI (37.115.2207), and CLXVIII (37.115.2211) as proposed; and repealed ARM 37.111.1001, 37.111.1002, 37.111.1003, 37.111.1010, 37.111.1011, 37.111.1012, 37.111.1013, 37.111.1021, 37.111.1022, 37.111.1023, 37.111.1024, 37.111.1025, 37.111.1101, 37.111.1102, 37.111.1105, 37.111.1112, 37.111.1113, 37.111.1114, 37.111.1115, 37.111.1130, 37.111.1131, 37.111.1132, 37.111.1133, 37.111.1138, 37.111.1139, 37.111.1140, 37.111.1141, 37.111.1142, 37.111.1143, 37.111.1147, 37.111.1148, 37.111.1149, 37.111.1150, 37.111.1151, 37.111.1152, 37.111.1153, 37.111.1154, 37.111.1155, 37.111.1156, 37.111.1158, 37.111.1159, 37.111.1160, and 37.111.1161 as proposed.

3. The department will not be adopting New Rule XI, XXIII, and LXII at this time.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.115.104) REQUIRED UPGRADING TO EXISTING FACILITIES AND OPERATIONS (1) Existing licensed public swimming pools, spas, or other water features that were in use or under construction prior to March 1, 2010 and which do not fully comply with the upgraded requirements for the physical plants set out in ARM Title 37, chapter 115, subchapter 5 through 10, but met the rules in effect at the time of construction, may continue to be operated as long as the facility meets the requirements of the grandfather clause in ARM 37.115.1905 and the operating requirements in this chapter, poses no significant health or safety risks, and is operated and maintained as designed, except that:

(a) remains as proposed.

(b) Existing public swimming pools, spas, and other water features, must comply with the barrier requirements set out in ARM 37.115.601, 37.115.602, and 37.115.603 by ~~March 1, 2010~~ December 31, 2010, or later date set in these rules. Facilities that do not meet this requirement will not be licensed after December 31, ~~2009~~ 2011.

(c) Existing wading pools that are permanent structures and that use the daily fill and drain method of operation in conjunction with hand or manual chlorination shall not be licensed and may not operate after December 31, ~~2009~~ 2010. No wading pool may be operated ~~between adoption of these rules and December 31, 2009, until~~ unless the wading pool complies with the requirements of the Virginia Graeme Baker Pool and Spa Safety Act, 15 USC 8001-8005 (2007) (VGBPSSA).

(d) Diving boards may not be used in any pool designed before or after March 1, 2010 until the pool and diving board meets the requirements of ANSI-I-1991 or ARM 37.115.801 through 37.115.807.

(e) License holders of indoor pools, spas, or other water features that currently use isocyanurates or ~~cyanuric acid~~ forms of chlorine stabilized with cyanuric acid as a disinfectant must convert to a different disinfectant system no later than March 1, 2011.

(f) Under the provisions of the ~~Virginia Graeme Baker Pool and Spa Safety Act~~ VGBPSSA, existing pools and spas are required to now be in compliance with the applicable standards set out in 15 USC 8001-8005. Pools, spas, or other water features that have drains that are not in compliance with these requirements may not operate until they are brought into compliance. Licensees must submit certification to the department on or before March 1, 2011 that the drains are in compliance with the Virginia Graeme Baker Pool and Spa Safety Act. If that certificate is not provided to the department by that date, the pool, spa, or other water feature may not operate until the certificate is provided even if the drain complies with federal law.

(2) All swimming pools, spas, and other water features must meet the operating requirements set in these rules with the following exception:

(a) current licensees of any swimming pools, spas, or other water features, do not need to meet the requirement of having an operator who meets the qualifications set in ARM 37.115.1101 until ~~January 1, 2011~~ December 31, 2011.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE III (37.115.105) DEFINITIONS In addition to the definitions in 50-53-102, MCA, the following definitions apply to these rules.

(1) through (25) remain as proposed.

(26) "Certified pool operator" means someone who has successfully completed the Certified Pool Operator (CPO) course sanctioned by the National Swimming Pool Foundation, the Aquatic Facility Operator (AFO) course sanctioned by the National Recreation and Park Association, or an equivalent course approved by the department. A certified pool operator must be currently certified, recertified,

or must have obtained any Continuing Education Units (CEUs) required by the sanctioning organization.

(27) through (32) remain as proposed.

(33) "Circulation equipment" means the mechanical components that are a part of a circulation system on a pool, spa, or other water feature. The components have different functions but when connected to each other by piping, perform as a coordinated system for purposes of maintaining water in a clear, sanitary, and desirable condition. The term "recirculation" may be used interchangeable with the term "circulation". Some components of circulation equipment include, but are not limited to:

(a) through (72) remain as proposed.

(73) "Invited guest" means an individual who is visiting a family member or friend and uses the privately owned private pool, spa, or other water feature upon invitation.

(73) through (78) remain as proposed but are renumbered (74) through (79).

~~(79)~~ (80) "lifeguard" means a qualified person who is responsible for supervision and lifesaving at a licensed public bathing place or public swimming pool. Under this chapter, "lifeguard" means either a certified lifeguard or a licensed lifeguard with the ~~following~~ certification or training as set forth in ARM 37.115.1604.

(80) through (85) remain as proposed but are renumbered (81) through (86).

(87) "Nonself-contained hot tub" means a hot tub that is made of an acrylic or thermoplastic shell molded at the factory to comfortably fit the body's contours. It does not have water heating and circulating equipment as an integral part of the product, and may employ separate components such as an individual filter, pump, heater, and controls or assembled combinations of various components.

(86) through (104) remain as proposed but are renumbered (88) through (106).

~~(105)~~ (107) "Public swimming pool" means an artificial pool and related facilities for swimming, bathing, wading, or other aquatic therapy or recreation. The term includes, but is not limited to, natural hot water pools, spas, splash decks, water slides, lazy rivers, and wave pools. The term does not include swimming pools located on private property, including the private common area property of owner-occupied condominium developments that is used for swimming or bathing only by the owner, members of the owner's family, or their invited guests. The term also does not include medicinal hot water baths for individual use. For purposes of these rules, a "swimming pool" or "pool" is either a privately owned public swimming pool or spa, or a public swimming pool as defined here:

(a) remains as proposed.

(b) "Public swimming pool or spa" means any swimming pool, spa, or other water feature operated by a person as owner, licensee, lessee, or concessionaire, whether or not a fee is charged. Any person who is charged money or any other consideration to use the pool is not an invited guest for the purposes of this definition. ~~Swimming pools are classified as Class A - D and Types VI - IX and Type N in [RULE XXIII] and Table 4. See Table 3 for minimum water envelopes for diving pools.~~

(106) through (112) remain as proposed but are renumbered (108) through (114).

~~(113)~~ (115) "Remodel" or "renovate" mean a substantial or material alteration. In the context of these rules, the terms mean the activity of restoring or upgrading all or part of a public bathing place or public swimming pool structure and its component parts ~~including, but not limited to, the rebuilding and/or replacement of worn and broken components~~. Remodeling or renovation may include rebuilding or replacing ~~pipes,~~ system components that are not identical or substantially similar to existing components such as pipes, drains, filtration systems, disinfectant systems, circulation systems, and/or pool decks that use different materials or different from the existing component or design. The terms do not include painting, replacing tile or caulk, ~~or~~ other such cosmetic changes, or replacing a worn or broken component for the same component, such as replacing a pump with a pump that is identical or substantially similar.

(114) through (123) remain as proposed but are renumbered (116) through (125).

~~(124)~~ (126) "Self-contained hot tub" means a hot tub that has a cabinet that houses the controls, the pump, heater, and filter. Most portable hot tubs are made of an acrylic thermoplastic shell and are surrounded by a cabinet made of wood, alternative wood, or thermoplastic. It can be moved to another location and reinstalled, and all control, water heating, and water circulating equipment are an integral part of the product. It may be permanently wired or cord connected. It is also known as a "portable hot tub". ~~Nonself-contained hot tub means a hot tub that is made of an acrylic or thermoplastic shell molded at the factory to comfortably fit the body's contours. It does not have water heating and circulating equipment as an integral part of the product, and may employ separate components such as an individual filter, pump, heater, and controls, or assembled combinations of various components.~~

(125) through (139) remain as proposed but are renumbered (127) through (141).

~~(140)~~ (142) "Splash deck" means a constructed area over which water is sprayed or jetted to contact bathers, but is not allowed to ~~pool~~ gather and stand. A splash deck may also be known as an "Interactive Play Attraction", a "spray pool", or a "zero depth spray pool".

(141) through (160) remain as proposed but are renumbered (143) through (162).

(163) "Virginia Graeme Baker Pool and Spa Safety Act" (VGBPSSA) means the Virginia Graeme Baker Pool and Spa Safety Act, 15 USC 8001-8005 (2007).

(161) through (169) remain as proposed but are renumbered (164) through (172).

~~(170)~~ (173) "Zero depth pool" means a pool with a sloping entry starting above the water line at deck level and ending below the water line. There is no depth to the pool at the point a swimmer enters the water. It is also known as a "beach entry".

~~(171) "Zero depth spray pool" means an area where water is dispersed using a fountain or similar installation and in which the water that is sprayed does not accumulate on the ground. The water from a zero depth spray pool may be recirculated or drained to waste. The water must be chlorinated or must come from~~

~~an approved municipal water system. A zero entry spray pool may also be known as a splash deck or as a spray pool.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE IV (37.115.201) ADOPTION OF ANSI/NSPI STANDARDS (1) Unless otherwise specified in ~~the~~ a rule, the following American National Standards Institute, American Society of Mechanical Engineers, National Sanitation Foundation International, American Society of Testing Materials, and American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ANSI/NSPI) standards and codes are adopted by reference and apply to all new construction or remodeling or renovation of existing facilities:

(a) through (c) remain as proposed.

~~(d) ANSI/NSPI-8 1996 Model Barrier Code for Residential Swimming Pools, Spas, and Hot Tubs; approved December 19, 1995 and published by National Spa and Pool Institute (now Association of Pool & Spa Professionals), 2111 Eisenhower Avenue, Suite 500, Alexandria VA 22314-4695;~~

~~(e)~~ (d) ANSI/~~IAF~~ APSP-9 2005 American National Standard for Aquatic Recreational Facilities; approved October 7, 2004, and published by International Aquatic Foundation, P.O. Box 4038, Alexandria VA 22303;

(f) through (i) remain as proposed but are renumbered (e) through (h).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE V (37.115.301) CRITICAL HEALTH AND SAFETY VIOLATIONS THAT REQUIRE IMMEDIATE CLOSURE (1) The following items are critical health and safety violations that require a pool owner or operator to immediately close a ~~swimming~~ pool, spa, or other water feature and related facilities until the safety violations have been resolved:

(a) and (b) remain as proposed.

(c) sanitizer falls outside the parameters set in ARM 37.115.1308, Table ~~7~~ 6;

(d) through (e) remain as proposed.

(f) pool clarity falls outside the parameters set in ARM 37.115.1308, Table ~~7~~ 6, or is insufficient to allow an observer to see the main drain from anywhere in or around the pool;

(g) remains as proposed.

(h) there are not lifeguards or attendants on duty in required numbers where lifeguards or attendants are required;

(i) through (m) remain as proposed.

(n) at an outdoor pool, when thunder is heard, the pool shall close and remain closed until 30 minutes after the last thunder clap is heard, or when one or more lightning flashes is observed, the pool shall remain closed for one hour after the last lightning flash is observed; ~~and/or~~

(o) a drowning or other serious accident has occurred and emergency responders or investigators are still present to render aid to the victim or to gather evidence.;

(p) pH of the water is higher than 7.8 and the chlorine or bromine reading is at or near the minimum required levels; and

(q) the main drain does not comply with the requirements of the VGBPSSA or if, after March 1, 2011, the department has not been provided with certification from an engineer licensed in Montana that the main drain complies with the requirements of the VGBPSSA.

(2) through (5) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE VI (37.115.302) HEALTH AND SAFETY VIOLATIONS THAT MAY REQUIRE IMMEDIATE POOL CLOSURE (1) The department may order a swimming pool, spa, or other water feature immediately closed where there have been repeated or ongoing or a combination of the following health and safety violations:

~~(a) pH of the water is higher than 7.8 and the chlorine or bromine reading is at or near minimum required levels;~~

(b) through (d)(iii) remain as proposed but are renumbered (a) through (c)(iii).

(d) if, during an inspection, the department requests the facility to contact its certified pool operator by telephone and the certified pool operator does not respond within 30 minutes.

(2) and (3) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE VII (37.115.303) REQUIRED INSTALLATION OF ULTRAVIOLET DISINFECTANT SYSTEM (1) In instances in which a ~~swimming~~ pool, spa, or other water feature has more than ~~ten~~ two users contract waterborne disease such as ~~crytosporadia~~ cryptosporidium or giardia within a period of 30 days the department may require ~~the~~ licensee of a pool, spa, or other water feature ~~licensee~~ to develop a corrective action plan and submit to the department for approval ~~approved by the department~~.

(2) If the corrective action fails to bring the disease outbreak under control, the department ~~may~~ will require that the facility install and utilize an ultraviolet disinfectant system as a secondary disinfectant system or other type of additional disinfection approved by the department that has been proven to control disease outbreaks as a secondary disinfectant system.

(3) Any licensee operating a splash deck or related water feature is required to install a secondary ultraviolet disinfection system approved by NSF and installed according to the manufacturer's directions into the main water line of the filtration system.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE VIII (37.115.305) PLAN REVIEW REQUIRED FOR POOLS, SPAS, AND OTHER WATER FEATURES (1) Complete plans and specifications for work or installation must be submitted to the Montana Department of Public Health and Human Services for review and approval before any construction begins or before any change is made to the existing facility whenever the owner or operator of a public ~~swimming~~ pool, spa, or other water feature intends to:

(a) remains as proposed.

(b) install equipment or replace existing equipment with components that are not identical or substantially similar or are new to the design at the location of the pool, spa, or other water features.

(2) remains as proposed.

(3) The plan review checklist form, plans and specifications, and the applicable plan review fee, shall be submitted to the Food and Consumer Safety Section, Department of Public Health and Human Services, 1400 Broadway, Helena, Montana 59620, or to the local health department agency at least:

(a) remains as proposed.

(b) 30 days prior to the anticipated installation date of new or replacement equipment which is new to the facility design and has not been previously approved.

(4) Whenever a piece of equipment is replaced with equipment that is identical or substantially similar, the licensee must notify the department, in writing, within 30 days.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE IX (37.115.306) QUALIFICATIONS REQUIRED FOR PERSONS PREPARING PLANS FOR REVIEW (1) Plans, specifications, and supporting data for design of a new pool, spa, or other water feature or for reconstruction or remodeling of a currently operating pool, spa, or other water feature must be prepared by a professional engineer who is registered in Montana., ~~an architect who is registered in Montana, or a construction contractor registered in Montana.~~ ~~A~~ The licensed professional engineer ~~or a registered architect~~ shall include his seal and signature on any plans and specifications submitted to the health authority. Stamps or seals may be provided electronically. ~~A registered construction contractor shall include an original signature on any plans and specifications submitted to the health authority.~~

(2) ~~Plans for all municipal pools and for all other pools exceeding 2000 square feet total in size, pools more than 70 feet long in one dimension, or pools that include lazy rivers, slide pools, or wave pools, or other complex designs must be stamped by a Professional Engineer or an American Institute of Architecture (AIA) licensed architect. Stamps or seals may be provided electronically.~~ Plan specifications and supporting data for any facilities related to operation of a pool, spa, or other water feature, such as restrooms or bathhouses, may be submitted by a licensed architect or by a registered construction contractor as long as the design

meets all applicable building codes and as long as all applicable permits have been obtained.

(3) Any plans for any slide structure must be reviewed and approved by a ~~licensed~~ structural engineer licensed in the state of Montana and the plan for the slide must include his seal.

~~(4) It is the responsibility of any builder, engineer, or architect involved in the construction of a new facility or involved in the design or reconstruction of a major remodel of any pool, spa, or other water feature, to ensure that all requirements of these rules are met.~~

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE X (37.115.307) SCOPE OF REVIEW BY THE DEPARTMENT

(1) remains as proposed.

(2) ~~In reviewing whether a plan complies with all applicable standards, the~~ The department may conduct preliminary inspections of any construction or of any reconstruction to any existing pool, spa, or other water feature during the construction or reconstruction and upon completion to determine whether the design and construction or reconstruction complies with the plans that were submitted.

(3) through (3)(c) remain as proposed.

(4) In any instance in which there is a conflict between the requirements set in these rules or requirements set by another agency that has jurisdiction over some aspect of the design, construction, or operation of a pool, spa, or other water feature, or related facility, the more stringent requirement must be met.

(5) If the department determines it is necessary to have an engineering review conducted on facets of the design including, but not limited to, such things as the total dynamic head (TDH), pipe flow velocities, air exchange, or other complex calculations, it may contact with an engineering firm to conduct that portion of the plan review. Costs for such an engineering review will be charged to the applicant or licensee and must be paid to the department before the license is issued.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XIII (37.115.309) INCOMPLETE PLAN REVIEW APPLICATIONS

(1) and (2) remain as proposed.

~~(3) If the department is required to send a second or subsequent letter requesting that the applicant submit previously identified items, the packet review fee set in [RULE XIV] will be charged each time the department must review the submissions to determine if they are yet complete and must then notify the applicant that items are still missing from the plan review application packet.~~

~~(4)~~ (3) ~~The department may request, in writing, that the applicant provide additional information pursuant to [RULE XII]. Any such request will be made by the department as soon as practicable.~~ In some circumstances the department may need information in addition to what the applicant is asked for in the plan review packet to submit. In those cases, the department will require additional information

as soon as practicable. Where the department has requested this additional information, review of the remainder of the plan review ~~checklist~~ packet and supporting documents will continue to the extent possible while the department waits to receive the additional information. ~~No additional fee for reviewing an incomplete application will be charged in these circumstances.~~

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XIV (37.115.311) ~~BASE~~ FEE TABLE

Table 1.

~~Type~~	~~Square Footage~~	~~Fee(s)~~
~~Swimming Pool~~	~~Less than 500 sq. ft.~~	~~$175~~
~~Swimming Pool~~	~~500-999~~	~~$275~~
~~Swimming Pool~~	~~1,000-1,999~~	~~$385~~
~~Swimming Pool~~	~~2,000-3,999~~	~~$550~~
~~Swimming Pool~~	~~4,000+ sq. ft.~~	~~$625~~
~~Spa pool~~	~~Less than 500 sq. ft.~~	~~$175~~
~~Spa pool~~	~~500 sq. ft. or larger~~	~~$275~~
~~Wading pool~~		~~$175~~
~~Spray attraction~~	~~By size, see above~~	
~~Lazy river~~	~~By size, see above~~	
~~Wave pool~~	~~By size, see above~~	
~~Other pools not listed above~~	~~By size, see above~~	
~~Filter system change~~		~~$75~~
~~Disinfection system change~~		~~$75~~
~~Remodel or renovations~~		~~$300+$75/hour over 4 hours review time~~
~~Incomplete application~~		~~After the department has on one occasion notified the applicant in writing of items from the plan review that still need to be submitted, a $75 fee will be assessed for each subsequent notification listing previously identified missing items.~~

Fee for interim ~~plan review conducted as determined needed under [RULE XIX] to determine if construction is complying with submitted plans~~		~~$200~~
~~Fee for inspection for final plan approval before opening or large or complex projects~~	~~Facilities with multiple water features~~	~~$300~~
~~Fee for additional review of plan and facility to determine if licensee or license applicant has corrected previously identified deficiencies~~		~~$75/hour for actual review time~~
~~Fee for department to review requested changes to an approved plan~~		~~$75/hour for actual review time~~
~~Engineering review~~		~~reasonable fees~~
~~Fee for final inspection of small project plans to determine if construction complied with plan~~	~~Spa less than 810 sq. ft. or pool less than 20,000 gallons~~	~~$60~~

Type	Design Volume	Plan Review Fees	Pre-opening Inspections and Interim Visit Fees
Pool, Spa, Wading Pool, Spray Attraction, Lazy River, Others	Less than 4,000 gallons;	$200	$60
Pool, Spa, Wading Pool, Spray Attraction, Lazy River, Others	4,000 – 9,999 gallons	$400	$80
Pool, Spa, Wading Pool, Spray Attraction, Lazy River, Others	10,000 gallons or more	$600	$100
Review Fees for a Substantial		$75	

Modification to Existing Filtration or Disinfection systems			
Engineering Review		$75	

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XV (37.115.312) PAYMENT OF PLAN REVIEW FEES (1) The applicant shall submit any required fee identified in Table 1 ~~based on square footage of specific type of pool, spa, or other water feature~~ in ARM 37.115.311 to the department at the time the plan review checklist and supporting documents are submitted. Pools not located on contiguous properties are considered separate projects for purposes of the fee schedule. Plan review will not begin until the fee is received.

~~(2) After the first time that a notice of incomplete application is sent to the applicant identifying items that are missing and needed for review, each time a subsequent notice is sent to the applicant identifying one or more of those items as still missing, a $75 incomplete plan review fee must be submitted with the additional materials that are subsequently provided to the department. Plan review will not begin until the fee is received.~~

(3) remains as proposed but is renumbered (2).

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XVI (37.115.313) OUTSIDE ENGINEERING REVIEW FEES

(1) The department may incur reasonable engineering fees for an engineering consultation on aspects of the application for plan review that are beyond the in-house expertise of department personnel, including, but not limited to, such things as the total dynamic head (TDH), pipe flow velocities, air exchange, or other complex calculations.

(2) If the department contracts with an engineering firm to conduct an engineering review, the applicant will be required to reimburse the department for ~~those~~ the engineering costs ~~based upon the costs~~ charged to the department by the engineering firm ~~charges the department for the engineering review~~. This fee is in addition to any other applicable review fees set out in ARM 37.115.311, Table 1.

(3) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XVII (37.115.314) PAYMENT OF REVIEW FEES (1) remains as proposed.

(2) If the department requires plan review at identified phases of construction of water parks or complex projects to ensure that the construction is in compliance with the plans, ~~a fee of $200~~ any interim fee outlined in Table 1 must be paid at the time of each such additional review. The fee applies to each pool, spa, or other water feature.

(3) The plan review fee for any pre-opening ~~or final plan review~~ of a ~~swimming~~ pool, ~~complex, water park, or other complex project is $300~~ spa, or other water feature is outlined in Table 1. ~~That~~ A pre-opening fee ~~encompasses the review of all~~ applies to each pool~~s~~, spa~~s~~, or other water feature~~s~~ opening at the facility to ensure that construction is in compliance with the plan.

~~(4) A fee of $60 will be charged for a pre-opening or final review for a simple project such as a spa less than 800 gallons in size or a swimming pool less than 20,000 gallons in size.~~

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XVIII (37.115.316) PLAN REVIEW APPROVAL AND EXTENSIONS

(1) Plan review approval by the department is valid for ~~one~~ two year~~s~~ and substantial and continuous construction must be initiated within 12 months of the date of approval.

(2) If substantial and continuous construction has not been initiated within 12 months from the date of the department's plan approval, the owner must obtain an extension in writing from the department. In no case shall an extension of the plan approval be granted for more than ~~six~~ 18 months beyond the ~~one year expiration~~ date of the original approval. The department is not required to approve a request for an extension of the plan approval.

(3) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XIX (37.115.317) PLAN REVIEW DURING CONSTRUCTION PHASE

(1) remains as proposed.

(2) Depending upon the complexity of the project, the department may require interim site visit reviews to be conducted at phases of construction that the department identifies to the applicant during the initial plan review.

(3) through (5) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XX (37.115.319) ~~CERTIFICATION AND DEVIATIONS~~ CHANGES FROM ORIGINALLY APPROVED PLANS AND FINAL CERTIFICATION (1) The pool or spa and related facilities shall be built in accordance with the plans as approved unless a modification of the approved plans is approved in writing by the department prior to construction or installation of the modification.

(2) The department's fee for conducting a review of a change to an approved plan schematic or disinfectant system will be ~~calculated and assessed at a rate of $75 per hour~~ $75.

(3) Within 30 days of the completion and licensing of any ~~swimming~~ pool, spa, or other water feature or related facilities, ~~the architect, or~~ the professional engineer~~, or contractor of record,~~ overseeing the project must submit a final certification to the department. The certification shall be submitted in the form of an "as-built" letter ~~to the department indicating that the facility was built according to the plans submitted or which identifies and documents any changes that were made on-site~~ that identifies any changes that were made from the originally approved plans and it shall include scaled drawings that incorporate any changes that were made. The scaled plans and the "as built" letter shall be submitted to the department in hard copy and electronic copy. The electronic copy must be submitted in a format acceptable to the department. Any change from the approved plans must still meet all requirements of these rules.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XXII (37.115.323) UNAPPROVED CONSTRUCTION OR INSTALLATION (1) through (3) remain as proposed.

(4) If construction, renovation, alteration, or installation of the pool structure, equipment, or other components, other than replacing an existing part with a part or component that is identical or substantially similar, was completed before obtaining the required approval from the department and it is determined upon review that one or more aspect of the construction, renovation, alteration, or installation of equipment does not comply with these rules, no license will be granted for operation of the facility until the owner or license applicant takes any and all steps necessary to bring the pool, spa, or other water feature into compliance with the rules. No member of the public may be allowed to use the pool, spa, or other water feature until the department has determined that it is in compliance with these rules and a license has been issued.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

RULE XXV (37.115.503) MATERIALS (1) remains as proposed.

(2) Nontempered ~~window~~ glass is prohibited in ~~the entrance of~~ close proximity to any pool, spa, or other water feature.

(3) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXIX (37.115.507) LEDGES AND BENCHES (1) through (2)(e) remain as proposed.

(3) In any nonspa pools with a benches along the side of any wall, markings on the deck must be provided to indicate that there is a bench below the water surface by marking the deck in lettering that is at least four inches tall and in a contrasting color, stating "Caution: Bench".

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXX (37.115.508) DRAINS AND SUCTION OUTLETS

(1) remains as proposed.

(2) All pools, spas, and other water features constructed after March 1, 2010, shall have dual or multiple main drains.

~~(3) Drain covers must meet the requirements of ASME A112.19.8 (2007).~~

(4) remains as proposed but is renumbered (3).

~~(5)~~ (4) All main drains and suction outlets of any pool, spa, or other water feature must meet the requirement of the Virginia Graeme Baker Pool and Spa Safety Act, ~~H.R. HR6 303-309 (2007)~~ 15 USC 8001-8005 (2007), or the pool, spa, or other water feature may not be operated.

(5) No pool, spa, or other water feature may operate after March 1, 2011 unless the licensee submits written certification to the department from an engineer licensed in the state of Montana, that documents that the drains and suction outlets meet the requirements of the Virginia Graeme Baker Pool and Spa Safety Act, even if the pool, spa, or other water feature meets those requirements.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXI (37.115.509) DEPTH MARKERS (1) The water depth shall be plainly marked in units of feet and inches at or above the water surface on the vertical pool wall and on the flat edge of the deck or walk next to the pool.

(2) through (6) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXIII (37.115.511) VENTILATION (1) All bathhouses, dressing rooms, shower rooms, toilet rooms, and indoor pools, spas, and other water features ~~Pools built before [the effective date of this rule]~~ must provide air turnover that is adequate to prevent the buildup of odors, excessive condensation, and chloramines.

~~(2) Bathhouses, dressing rooms, shower rooms, and toilet rooms constructed or renovated after [the effective date] shall meet the following ventilation requirements:~~

~~(a) air temperatures on indoor facilities shall be kept within a range of 1°F to 3°F warmer than the water temperature;~~

~~(b) relative humidity on indoor facilities should be kept near 50 percent;~~

~~(c) ventilation rates on indoor facilities should be at least eight complete air exchanges per hour;~~

~~(d) air supply should be 100 percent fresh air, but never less than 40 percent fresh air with the capability of bringing in 100 percent fresh air when needed during peak usage times or when attempting breakpoint chlorination; and~~

~~(e)~~ (2) ~~v~~Ventilation in pools built after March 1, 2010 must meet ventilation requirements of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) or the building code in force for that location for air turnover~~, or the requirements listed immediately above, whichever is more stringent~~.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXIV (37.115.513) LIGHTING (1) ~~All indoor pools, spas, or other public bathing places, and all outdoor pools, spas, and public bathing places operating at night shall have safe and adequate artificial lighting sufficient to meet the clarity as requirements of [RULE XCV].~~ All indoor pools, spas, or other water features and their decking areas that operate at night or that have insufficient natural light to meet the clarity requirements in ARM 37.115.1315 must install and use safe artificial light that is adequate to meet those clarity requirements at all times during operation of the pool, spa, or other water feature. Such lights shall be spaced to provide illumination so that all portions of the pool, spa, or other water feature, including the bottom, may be readily seen without glare.

(2) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXV (37.115.515) MAXIMUM FACILITY ~~OCCUPANCY LIMITS~~ BATHER LOAD (1) and (2) remain as proposed.

Table 2. Maximum ~~user~~ bather load, pools, and other water features.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXVII (37.115.518) DECK SURFACES (1) through (3) remain as proposed.

(4) If deck carpet is used six feet or more away from the pool, spa, or other water feature, it must be clean, dry, and ~~be~~ maintained in good repair and the deck must slope away from the carpet.

~~(5) Where deck carpet is used, the deck must slant away from the carpet.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XXXIX (37.115.521) HOSE CONNECTIONS (1) Hose connections or plumbing equipped with ~~vacuum breakers~~ backflow prevention shall be installed ~~at intervals~~ that enable all parts of any ~~swimming~~ pool or spa area to be reached with a

hose no longer than 50 feet. The installed backflow prevention must be adequate to withstand the water pressure needed for the length of hose in use and to prevent back siphonage into the potable water supply system.

(2) remains as proposed.

(3) ~~Care must be taken so the d~~Deck wash material and debris ~~is~~ shall not be washed into the pool, spa, or other water feature.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XL (37.115.522) WATER SUPPLY ~~(1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating maximum microbiological contaminant levels for public water supplies, and the following Department of Environmental Quality publications setting construction, operation, and maintenance standards for springs, wells, and cisterns, respectively:~~

~~(a) Circular #11, "Springs";~~

~~(b) Circular #84-11, "Minimum Design Standards for Small Water Systems"; and~~

~~(c) Circular #17, "Cisterns for Water Supplies". Copies of ARM 17.38.207 and Circulars #11, #84-11, and #17 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(2) In order to ensure an adequate and potable supply of water, a pool, spa, or other water feature must either:~~

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

~~(b) if the pool, spa, or other water feature is not utilized for more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents; and an adequate public water supply system is not accessible; utilize a nonpublic system:~~

~~(i) whose construction and use meet these standards set in Department of Environmental Quality Circular #84-11; or~~

~~(ii) if construction of the establishment was commenced on or after June 28, 1985, which is designed by an engineer registered in Montana and determined by the department or the local health authority to provide assurance of an adequate and potable water supply equivalent to that in Circular #84-11; or~~

~~(iii) if construction of the establishment was commenced prior to June 28, 1985, and utilizes a spring or cistern, which is operated and maintained in accordance with the standards set in either Department of Environmental Quality Circular #11 (for a spring) or Circular #17 (for a cistern), whichever is applicable.~~

~~(3) If a nonpublic water supply system is used in accordance with (2)(b), an establishment must submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of public water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207, incorporated by reference in (1).~~

~~(4) An establishment must replace or repair the water supply system serving it whenever the water supply:~~

~~(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207, as incorporated by reference in (1); or~~

~~(b) does not have the capacity to provide water adequate to meet the circulation requirements for sanitization of the water used in the pool, spa, or other water feature and with sufficient additional quantity for drinking, showering, other personal hygiene, laundry, and water-carried waste disposal.~~

(1) An adequate and potable supply of water must be provided. Water may be used from an approved public water supply system or from a source that meets the requirements of (2) and (3).

(2) Before a license may be issued, an establishment using an individual, shared, or multiple user water supply must submit the following to the department or its designee coliform bacteria and nitrate test results that meet the requirements of ARM 17.38.207.

(a) A supplier of an individual, shared, or multiple user water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31, and;

(b) conduct a nitrate test of the system at least once every three years. Water tests must be analyzed at a certified laboratory. A supplier shall keep sampling result records for at least three years.

(3) Nonpotable water sources must be marked "not for human consumption".

(4) Plumbing must be installed and maintained in a manner to prevent cross connections between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(5) A water supply system is determined to have failed and to require treatment, replacement, repair, or disinfection, when:

(a) it exceeds the maximum contamination levels allowed in ARM Title 17, chapter 38, subchapter 2.

(6) Extension, alteration, repair, or replacement of a water supply system or development of a new water supply system must comply with all applicable state and local laws.

(7) Bottled and packaged potable water may only be obtained from a licensed and approved source and shall be handled and stored in a manner that protects it from contamination.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XLII (37.115.601) BARRIERS: GENERAL REQUIREMENTS

(1) Barriers shall be provided to prevent unauthorized persons from gaining access to public ~~swimming~~ pools, spas, and other water features and related facilities~~, except natural bodies of water~~.

(2) A barrier of durable material shall be provided outside the minimum required deck area of all outdoor public ~~swimming~~ pools, spas, and other water features. ~~The barrier must separate the public swimming pool, spa, or other water feature from all other areas and/or structures.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XLV (37.115.604) BARRIERS FOR INDOOR POOLS (1) All entries to any indoor public ~~swimming~~ pool, spa, or other water feature must be equipped so that they can be locked ~~at all times when there is no supervision of the swimming~~ when the pool, spa, or other water feature is closed, to prevent unauthorized bathers from using the facilities.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XLVI (37.115.605) DEADLINE FOR RETROFITTING BARRIERS IN EXISTING FACILITIES (1) Existing public ~~swimming~~ pools, spas, and other water features must install barriers that meet the requirements of these rules on or before ~~January 1, 2010~~ December 31, 2011.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XLVII (37.115.701) ENTRIES AND PLACEMENT OF STEPS AND LADDERS (1) remains as proposed.

~~(2) Where the distance from the pool or spa floor to the top of the wall is 24 inches or less, such areas shall be considered as providing their own natural mode for entry and exit.~~

(3) through (5) remain as proposed but are renumbered (2) through (4).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LII (37.115.707) HANDRAILS (1) ~~When ladders, stairs, or recessed treads are provided to assist in entering or exiting a swimming pool, spa, or other water feature, handrails are required.~~ Handrails are required wherever ladders, stairs, or recessed treads are provided.

(2) and (3) remain as proposed.

~~(4) The leading edge of a handrail that facilitates pool exit on stairs shall not be more than 18 inches back from the vertical face of the bottom riser.~~

(4) A ladder installed to assist a person exiting a pool must be installed no less than three inches away from the pool wall and no more than five inches away from the pool wall.

(5) The water level of the pool must be maintained at a sufficiently high level during operation that a handrail installed to assist a person existing a pool on a

ladder extends to within 12 inches of the surface of the water when the pool is being used.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LIII (37.115.801) DIVING BOARDS - GENERALLY (1) remains as proposed.

(2) Existing diving boards may not be used until documentation has been provided to the department showing that ~~unless~~ they meet ~~manufacturer's specifications~~ the requirement of ANSI-1-1991 or any manufacturer's specifications that are more stringent than ANSI-1-1991.

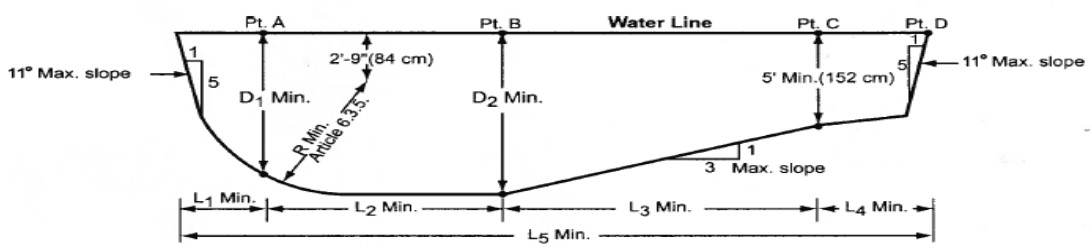
(3) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

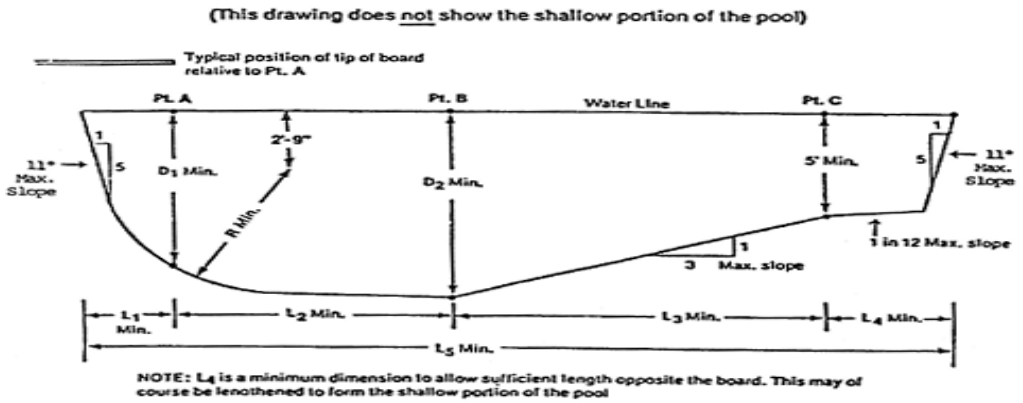
RULE LV (37.115.804) DIVING BOARDS - ~~MINIMUM WATER DEPTHS AND MINIMUM~~ DIVING ENVELOPE DESIGN REQUIREMENTS (1) ~~Swimming p~~Pools having diving equipment shall be designed to comply with the design requirements of Figure 2 and to provide at least the minimum water depths required in Table 3.

Figure 2.

This graph is being struck.



This graph is being added.



RULE LVI (37.115.805) DIVING BOARDS - ~~MAXIMUM LENGTH OF DIVING BOARDS AND MAXIMUM HEIGHT ABOVE WATER~~ MINIMUM REQUIREMENTS FOR DIVING ENVELOPE RELATIVE TO LENGTH AND HEIGHT OF DIVING BOARD (1) ~~A diving board may not be installed or utilized if it exceeds the maximum allowable length for diving boards or the maximum board height over the water set out in Table 4.~~ No diving board may be installed or utilized in any pool unless the minimum dimensions of the pool's diving envelope meet or exceed the requirements set out in Table 3 below for the length of the diving board and unless the diving board is set at or lower than the maximum height set out in Table 3 for the length of the diving board.

Table 3. (Proposed Table 3 and proposed Table 4 have been deleted and are being combined into New Table 3.)

~~Pool Type~~	~~Minimum Dimensions~~								~~Minimum width of pool at:~~		
	~~D_1~~	~~D_2~~	~~R~~	~~L_1~~	~~L_2~~	~~L_3~~	~~L_4~~	~~L_5~~	~~Pt.A~~	~~Pt.B~~	~~Pt.C~~
~~VI~~	~~7'-0"~~	~~8'-6"~~	~~5'6"~~	~~2'-6"~~	~~8'-0"~~	~~10'-6"~~	~~7'-0"~~	~~28'-0"~~	~~16'-0"~~	~~18'-0"~~	~~18'-0"~~
~~VII~~	~~7'-6"~~	~~9'-0"~~	~~6'-0"~~	~~3'-0"~~	~~9'-0"~~	~~12'-0"~~	~~4'-0"~~	~~28'-0"~~	~~18'-0"~~	~~20'-0"~~	~~20'-0"~~
~~VIII~~	~~8'-6"~~	~~10'-0"~~	~~7'-0"~~	~~4'-0"~~	~~10'-0"~~	~~15'-0"~~	~~2'-0"~~	~~31'-0"~~	~~20'-0"~~	~~22'-0"~~	~~22'-0"~~
~~IX~~	~~11'0"~~	~~12'-0"~~	~~8'-6"~~	~~6'-0"~~	~~10'-6"~~	~~21'-0"~~	~~0~~	~~37'-6"~~	~~22'-0"~~	~~24'-0"~~	~~24'-0"~~
~~NOTE: For definition of pool types see definitions in [RULE XXIII]~~											

Table 4.

~~Related Diving Equipment - Pool Type~~	~~Maximum Diving Board Length~~	~~Maximum Board Height Over Water~~
~~Type VI~~	~~10'~~	~~26" or 2/3 meter~~
~~Type VII~~	~~12'~~	~~30" or 3/4 meter~~
~~Type VIII~~	~~16'~~	~~1 meter~~
~~Type IX~~	~~16'~~	~~3 meter~~
~~NOTE: For definition of pool types see definitions in [RULE XXIII]~~		

Table 3.

Related Diving Equipment		MINIMUM DIMENSIONS								Minimum Width of Pool at:		
Max. Diving Board Length	Max. Board Height Over Water	D1	D2	R	L1	L2	L3	L4	L5	PT. A	PT. B	PT.C
10'	26" 2/3 meter	2.13m 7'0"	2.59m 8'6"	1.68m 5'6"	.76m 2'6"	2.44m 8'0"	3.20m 10'6"	2.13m 7'0"	8.53m 28'0"	4.89m 16'0"	5.49m 18'0"	5.49m 18'0"
12'	30" 1/4 meter	2.29m 7'6"	2.74m	1.83m 6'0"	.91m 3'0"	2.74m 9'0"	3.65m 12'0"	1.22m 4'0"	8.53m 28'0"	5.49m 18'0"	6.10m 20'0"	6.10m 20'0"

16'	1 meter	2.59m 8'6"	3.05m 10'0"	2.13m 7'0"	1.22m 4'0"	3.05m 10'0"	4.57m 15'0"	.61m 2'0"	9.45m 31'0"	6.10m 20'0"	6.71m 22'0"	6.71m 22'0"
16'	3 meter	3.35m 11'0"	3.65m 12'0"	2.59m 8'6"	1.23m 6'0"	3.20m 10'6"	6.40m 21'0"	0	11.43m 37'6"	6.70m 22'0"	7.32m 24'0"	7.32m 24'0"

L2, L3, and L4 combined represent the minimum distance from the tip of board to pool wall, opposite diving equipment.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LVIII (37.115.902) DRESSING ROOMS, TOILETS, AND SHOWER AREAS (1) The requirements set forth in this subchapter apply to all public pools, spas, and other ~~bathing places~~ water features, including ~~those~~ privately owned public facilities where nonmembers or nonlodging guests are allowed to use the facility.

(2) With the following two exceptions, ~~of~~ existing ~~Class B pools operated in conjunction with lodging and open only to guests of the motel or hotel, every Class A, Class B, and Class C~~ pools, spas, or water features shall be equipped with dressing rooms that are located adjacent to the locker room or the showering areas~~.~~:

(a) seasonal splash decks and other water features may locate showers in the public area of the pool facility, using tempered water; and

(b) existing hotels, motels, and lodgings are not required to provide dressing rooms and bathrooms adjacent to the pool. New hotels and motels must provide at least one unisex bathroom with a toilet, a hand sink, a changing table, and a shower. The shower may be located in the public area of the pool facility.

(3) through (9) remain as proposed.

(10) Separate shower facilities shall be provided in the dressing rooms, and shall be located so that bathers must pass from the shower room directly into the pool, spa, or other water feature area for year round pools, spas, or water features.

(11) All showers must be equipped with a mixing valve or cold and hot water plumbing no warmer than 120 degrees.

(12) Liquid, foam, or powdered soap shall be provided for each shower unit.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LIX (37.115.903) NUMBER OF FIXTURES REQUIRED (1) In facilities built or extensively remodeled after March 1, 2010, showers, toilets, urinals, and hand washing facilities shall, at a minimum, meet the number required by Table ~~5~~ 4.

Table 5. Fixture Ratio Required remains as proposed, but is renumbered 4.

(2) through (7) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXI (37.115.905) BABY CHANGING TABLES (1) All pool dressing rooms or restrooms must provide at least one baby changing table with an adjacent waste receptacle with lid ~~and hand sanitizing available to clean the changing table~~ and EPA approved sanitizing wipes available to clean the changing table.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXIV (37.115.1002) TURNOVER RATES (1) Pools, spas, and other water features constructed or modified after March 1, 2010 must have a circulation system ~~that is~~ capable of producing a ~~recirculation~~ turnover rate for the entire volume of water within the time period specified in Table ~~6~~ 5 ~~for the specific pools, spas, or other water features listed~~.

(2) remains as proposed.

(3) Table ~~6~~ 5.

Pool or Other Water Feature Type	Required Minimum turnover Rate (Hours)
Wave Pool	2
Activity Pool -less than 24 inches in depth	1
Activity Pool -24 inches or greater in depth	2
Catch Pool (for slides and flumes)	1
Lazy River	2
Vortex Pool	1
Interactive Play Attractions	1
~~Swimming~~ Pools ~~- volume of 30,000 gal or less~~	~~4~~ 6
~~Swimming Pool - volume of more than 30,000 gal~~	~~6~~
Wading Pool	~~30 minutes~~ 1
Flow through Hot Springs	8
Spa	30 minutes
Hydrotherapy Pool	1 hour or less if pool is less than 1,000 gallons or 2 hours or less if pool is 1,000 gallons or more
Spray pools, splash decks (no standing water)	~~30 minutes~~ 1

(4) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXV (37.115.1003) OPERATION OF CIRCULATION SYSTEM

(1) The circulation system shall ~~be operated in a manner that creates a pattern of recirculation that~~ use~~s~~ at least 70 percent return water from the skimmers or gutters and the remainder from the main drain. The main drain percentage may be increased during nonoperational hours to assist in debris removal.

(2) remains as proposed.

(3) No more than two spa units may use one recirculation system and no spa may utilize the recirculation or disinfection system of a ~~swimming~~ pool or other water feature. Wading pools and spas constructed after March 1, 2010 must have their own recirculation system separate from any other pool or spa.

(4) remains as proposed.

~~(5) The direction of recirculation shall be counterclockwise unless manufacturer specifications require a clockwise flow.~~

(6) and (7) remain as proposed but are renumbered (5) and (6).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXVI (37.115.1005) PUMPS (1) and (2) remain as proposed.

(3) A cleanable strainer or screen shall be provided on all pressure filter systems upstream of all recirculation pumps to remove solids, debris, hair, lint, and other such matter. The strainer shall be constructed of noncorrosive material and shall be located so as to be easily accessible for regular cleaning. Strainers are not required in systems that use vacuum diatomaceous earth filters or vacuum sand filters.

(4) remains as proposed.

(5) All pumps shall comply with ~~ANSI/NSF~~ NSF/ANSI 50-2008.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXVII (37.115.1006) INLETS (1) ~~Inlets are features of the pool, spa, or other water feature which return water to the pool or spa from the filters as a part of the recirculation system.~~ Inlets shall be submerged, and located to:

(a) and (b) remain as proposed.

(2) A pool, spa, or other water feature shall have a minimum of two return inlets ~~regardless of the size of the pool, spa, or other water feature~~. A third inlet is required for any pool, spa, or other water feature with 900 square feet or more of surface area. An additional return inlet is required for each additional 300 square feet of surface area or fraction thereof.

(3) through (3)(b) remain as proposed.

~~(4) Any pool having a width greater than 40 feet must have floor inlets meeting the requirements of (3)(b) or a combination of wall and floor units meeting the requirements of this rule.~~

(5) remains as proposed but is renumbered (4).

~~(6)~~ (5) All inlets must be located at least five feet away from any skimmer and there must be an inlet within five feet of any pool corner.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXVIII (37.115.1007) OUTLETS (1) remains as proposed.

(2) All pools, spas, and other water features must have main drain outlets at the deepest point to permit the water to be completely and easily removed unless the department has approved a complete shutoff of the main drain and allows alternative use of skimmers or 100 percent flow through as a way for the pool, spa, or other water feature to comply with the VGBPSSA.

(3) The grated areas of any outlet shall be of sufficient size to decrease the possibility of clogging or creating suction hazards dangerous to the safety of the bathers and must meet the VGBPSSA.

(4) ~~All pools, spas, or other water features must have dual main drains or must use other equivalent drain methods that conform to ANSI/APSP-7-2006 and ASME A112.19.8-2007 standards to prevent sufficient suction from building up to create an entrapment hazard.~~ On or before March 1, 2011, the licensee shall provide the department with certification by an engineer licensed in Montana which documents that the main drain velocity of the pool, spa, or other water feature complies with the requirements of the VGBPSSA. The velocity may not exceed a flow of 1.5 feet per second. The pool, spa, or other water feature may not operate after that date until the certificate of compliance is provided to the department.

(5) A minimum of two hydraulically balanced suction outlets per pump suction line are required except as described in (6) and must meet the following criteria:

(a) remains as proposed.

~~(b) there must be an inlet within five feet of any corner in the pool;~~

(c) and (d) remain as proposed but are renumbered (b) and (c).

~~(e)~~ (d) each suction outlet, other than skimmers, that measures less than 18 inches by ~~24~~ 23 inches or a diagonal of less than 29 inches shall be provided with a cover that has been tested by a nationally recognized testing laboratory and complies with ~~ASME A112.19.8-2007~~ the VGBPSSA; and

(f) remains as proposed but is renumbered (e).

(6) A single outlet shall be permitted only where the outlet's dimensions are at least 18 inches by ~~24~~ 23 inches or a diagonal of at least 29 inches or it otherwise meet the requirement of ~~ANSI/APSP-7 2006 or the federal pool/spa safety Act of 2007~~ the VGBPSSA.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXIX (37.115.1008) OVERFLOW GUTTERS (1) ~~Overflow gutters are a type of surface skimming system.~~ Overflow gutters shall be provided on all pools having a surface area over 1600 square feet unless the license applicant can

demonstrate that use of more skimmers than minimally required will provide sufficient recirculation to meet or exceed required turnover rates.

(2) and (3) remain as proposed.

(4) The hydraulic capacity of the overflow gutter shall be designed to be capable of handling 100 percent of the recirculation flow.

(5) through (7) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXI (37.115.1010) VACUUM EQUIPMENT (1) through (3) remain as proposed.

(4) Any vacuum equipment shall be used in accordance with manufacturer's guidelines and with all parts in place.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXII (37.115.1011) FILTRATION EQUIPMENT (1) through (3) remain as proposed.

(4) Flow meters shall be installed in a straight section of the piping unless the manufacturer's guidelines require the flow meter to be installed in some other location. There shall be straight pipe upstream and downstream from the location of the flow meter. The upstream pipe section must be a minimum of four pipe diameters in length. The downstream straight pipe section must be a minimum of ten pipe diameters in length.

(5) through (8)(b) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXIV (37.115.1015) PIPING SYSTEM (1) remains as proposed.

(2) The piping system of the pool, spa, or other water feature shall be marked ~~in distinguishing colors~~ to identify filtered water, make-up water, waste water, vacuum lines, and heating lines and shall be marked to identify the direction of flow. ~~The color system used for distinguishing the different piping systems shall be as follows:~~

~~(a) green pipes are designated for filtered water;~~

~~(b) yellow pipes are designated for raw or make-up water;~~

~~(c) black pipes are designed for waste water;~~

~~(d) red pipes are designated for the heating line;~~

~~(e) blue pipes are for vacuum lines; and~~

~~(f) orange pipes are for unfiltered water.~~

~~(3) As an alternative to color coding the piping system, labels which identify the pipe function and which show the direction of flow with arrows may be used as an acceptable pipe identification method.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXV (37.115.1016) DISINFECTANT AND CHEMICAL FEEDERS

(1) The ~~swimming~~ pool, spa, or other water feature shall be equipped with a continuously operating disinfectant feeder. The water must be ~~continuously~~ automatically disinfected by a chemical which distributes an easily measured, free available chlorine or bromine residual. The water shall at all times contain sanitizer residuals as required in this rule ~~and which are measured by industry-accepted field tests~~.

(2) All proposed ~~disinfectants~~ sanitizers must be approved by the department. Only Environmental Protection Agency (EPA) registered sanitizers approved by the department shall be used.

(3) All disinfectant equipment other than compressed chlorine gas feeders must be approved by the National Sanitation Foundation International ~~which must certify that the equipment meets the requirements of ANSI/NSF 50-2008. The disinfectant equipment shall be capable of introducing a sufficient quantity of EPA-approved disinfectant to maintain the required levels for disinfectant under all conditions of intended use~~.

(4) Sanitizer and pH shall be monitored and controlled automatically by suitable regulators. After March 1, 2010, all new pools, spas, and other water features and all existing pools, spas, and other water features that undergo major renovations shall install automatic chemical feed equipment ~~and an Oxygen Reduction Potential ("ORP" or "HRR") controller to monitor and~~ to adjust chemical levels. Automatic controllers shall be standardized in accordance with the manufacturer's instructions.

(5) through (7) remain as proposed.

(8) The water must be continuously disinfected by a chemical which imparts an easily measured, free available residual effect. The water shall contain sanitizer residuals as required in these rules at all times ~~and they must be measured by industry-accepted field tests~~. Only EPA-registered sanitizers approved by the department shall be used.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXVII (37.115.1019) SALT GENERATORS (1) remains as proposed.

~~(2) Salt generators shall not be used for spas, splash decks, catch pools for slides or flumes, wading pools, or other water features that may experience heavy use.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXIX (37.115.1101) OPERATOR QUALIFICATIONS (1) remains as proposed.

(2) Except for a licensee operating a spa at a tourist home which is drained and cleaned between each use, ~~T~~the licensee of any public ~~swimming~~ pool, spa, or other water feature shall employ ~~at least one staff member who is currently certified as~~ a Certified Pool Operator (CPO), ~~as an~~ a certified Aquatic Facility Operator (AFO), or a person who has equivalent current certification approved by the department.

(3) The certified pool operator for the facility shall be at the facility ~~or~~ whenever it is open or shall be available to ~~be called~~ respond to the ~~swimming~~ pool, spa, or other water feature ~~whenever it is open~~ within 30 minutes of being telephoned. If during an inspection the department telephones the certified pool operator and there is no response within 30 minutes, the inspector will note that. If during the next inspection at the same facility the certified pool operator fails to respond to a telephone call within 30 minutes, the department may require that within 30 days the licensee employ a different certified pool operator.

~~(a) In remote locations, the department may approve having one certified operator oversee more than one pool, spa, or other water feature, if that person is not responsible for more than three pools, spas, or other water features located on physically separate properties.~~

~~(b) Each municipally-owned swimming pool, spa, or other water feature must have its own certified operator with the following exceptions:~~

~~(i) municipally-owned or operated pools may have one certified operator responsible for all wading pools located throughout the municipality; or~~

~~(ii) one certified operator may be responsible for multiple water features if they are located on one contiguous property.~~

(4) If a pool, spa, or other water feature has been closed during an inspection for any violation of the critical items listed in ARM 37.115.301 or 37.115.302 and is then reclosed on the next inspection visit for any violation of the critical items listed in ARM 37.115.301 and ARM 37.115.302 and the violation is something that cannot be corrected during the inspection visit, the department may require the licensee to take corrective action that may include, but is not limited to, employing a fulltime certified pool operator or requiring remedial training for the licensee's certified pool operator.

(3) remains as proposed but is renumbered (5).

~~(4)~~ (6) Current licensees of ~~swimming~~ pools, spas, or other water features must meet the requirements of this rule no later than ~~January 1, 2011~~ December 31, 2011.

~~(5)~~ (7) New pools, spas, or other water features opened after March 1, 2010 must meet this requirement in order to operate.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXXI (37.115.1201) CHLORINE GAS STORAGE AND OPERATIONS (1) ~~Gas chlorine may be used as a disinfectant only when the pump is operated and vacuumed with a booster pump.~~ Gas chlorine may be used as a disinfectant only when the main pool recirculation pump is running and circulating

pool water and the chlorine supply to the recirculation system is delivered under a vacuum condition.

(2) When compressed chlorine gas is used, whether by an existing pool or spa or on a pool, spa, or other water feature constructed after March 1, 2010, the provisions of (3) through (6) must also be complied with.

(3) through (6) remain as proposed.

(7) Locker style chlorine storage may be used rather than a large room, when practical, following MT-DEQ Circular #1 provisions as well as the rules above.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXXIV (37.115.1301) TEST KITS ~~(1) No chemical or other agent may be used in the water of any public pool, spa, or other water feature unless a recognized and approved test kit is available on the market to test the use of the chemical or other agent and which can identify and quantify the amounts of the chemical or other agent in the water.~~

(2) through (4) remain as proposed but are renumbered (1) through (3).

~~(5)~~ (4) Test strips are not an approved method of accurate testing~~, but may be used for a quick reading between regular testing intervals to see if adjustments are needed~~.

(5) If a DPD test kit is not available for reading the higher pH readings allowed for hot springs, the licensee may request that the department approve use of a test kit that meets an accuracy standard set by the manufacturer that falls within ± 0.2 pH. Testing equipment verified for accuracy by the manufacturer may be approved by the department.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXXVI (37.115.1304) OXIDATION REDUCTION POTENTIAL (ORP) READING (1) through (4) remain as proposed.

(5) The water in the pool, spa, or other water feature shall be closed if the ORP is less than ~~700 mV~~ 650 mV as measured by the controller or by the ORP measuring equipment, regardless of the chlorine residual measurement and it shall remain closed until the ORP is at least ~~700 mV~~ 650 mV.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXXVIII (37.115.1307) DISINFECTANT USE (1) and (2) remain as proposed.

(3) In pools, spas, and other water features using chlorine as a disinfectant, breakpoint chlorination ("super chlorination" or "shocking") is required when the combined chlorine reading reaches ~~0.3~~ 0.5 ppm or greater.

(4) To super chlorinate or shock a pool, spa, or other water feature that has a combined chlorine reading of ~~0.3~~ 0.5 ppm or higher, the operator must, at one time,

add free chlorine equivalent in an amount that will bring the free chlorine reading to a level at least ten times greater than the combined chlorine reading.

(5) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE LXXXIX (37.115.1308) WATER CHEMISTRY PARAMETERS

(1) remains as proposed.

Table ~~7~~ 6.

Parameter	Acceptable range	Ideal range	Maximum
Chlorine	2-8ppm	3-5ppm	8ppm
Combined chlorine	~~0.2~~ 0 to 0.5	0.0	~~0.2~~ 5ppm
Bromine	2-10ppm	2-8ppm	10ppm
Total Alkalinity	~~60-180ppm~~ 60-220ppm (varies by chemical type and pool surface)	80-100ppm for Cal Hypo, lithium hypo, and sodium hypochlorite; ~~hypochlorine;~~ 100-120ppm for Sodium dichlor, trichlor, chlorine gas and bromine compounds	~~180ppm~~ 220ppm ~~If total alkalinity is too high:~~ ~~-cloudy water~~ ~~-increased scaling potential~~ ~~-pH tends to be too high~~
Oxygen Reduction Potential (ORP or HRR, which stands for High Resolution Reduction)	~~700~~ 650 minimum millivolts (mV)	~~700~~ 650-750 minimum millivolts (mV)	no maximum
pH	7.2-7.8	7.4-7.6	7.2-7.8 for all pools, spas, or other water features except flow through hot springs, which may have a pH up to 9.4
Cyanuric Acid (allowed only in	~~10-30ppm~~ 0-100ppm	~~25ppm~~ 10-50ppm	~~50ppm~~ 100ppm

outdoor pools)			
Calcium Hardness	Pools 150-1,000ppm	Pools 200-400ppm; Spas 150-250ppm	Pools 1,000ppm Spas 800ppm
Temperature	Varies	Varies	Spas 104°F Pools 100°F EXCEPTION: flow through hot spring pools and spas, which may have a maximum temperature of 100°F and 106°F
Clarity	In the deepest part of the pool, spa, or other water feature, the main drain shall be clearly visible and sharply defined. NTUs must be in the range of 0.0-1.0	In the deepest part of the pool, spa, or other water feature, the main drain shall be clearly visible and sharply defined. NTUs must be less than .5	NTUs up to 1.0

(2) and (3) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XC (37.115.1309) CLOSURE OF POOL BASED ON WATER CHEMISTRY READINGS (1) A pool, spa, or other water feature shall be closed immediately whenever a reading falls into one or more of the following categories:

(a) the chlorine or bromine reading is outside the minimum and maximum reading levels set in ARM 37.115.1308, Table ~~7~~ 6;

(b) water temperature exceeds the maximum set in ARM 37.115.1308, Table ~~7~~ 6;

(c) pool clarity fails to meet the parameters set in ARM 37.115.1308, Table ~~7~~ 6; or

(d) chlorine or bromine readings exceed the maximum set in ARM 37.115.1308, Table ~~7~~ 6.

(2) remains as proposed.

(3) When the critical water quality parameters are brought within the acceptable range set out in ARM 37.115.1308, Table ~~7~~ 6, the pool may be reopened with the approval of the department.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCIII (37.115.1313) SATURATION INDEX (1) remains as proposed.

(2) If the total dissolved solids (TDS) are less than 1,000 ppm, 12.1 is used as the total dissolved solids factor. If the total dissolved solids are greater than 1,000 ppm, 12.2 is used as the total dissolved solids factor.

(2) through (4) remain as proposed but are renumbered (3) through (5).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCIV (37.115.1314) SATURATION INDEX TABLE (1) The following is the saturation index table. If the total dissolved solids (TDS) are less than 1,000 pm then 12.1 is used as the total dissolved solids factor. If the total dissolved solids are greater than 1,000 ppm then 12.2 is used as the total dissolved solids factor.

Table 8 remains as proposed but is renumbered 7.

(2) through (2)(c) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCV (37.115.1315) WATER CLARITY (1) Acceptable water clarity of a ~~swimming~~ pool, spa, or other water feature shall be maintained at all times. It shall be determined by one of the following methods:

(a) remains as proposed.

~~(b) a two-inch diameter black and red plastic disk must be visible through 15 feet of water.~~

~~(2) A hot springs pool, spa, or other water feature may alternatively demonstrate sufficient clarity by the following method:~~

~~(a)~~ (b) water must, at all times, have sufficient clarity so that a black disc, six inches in diameter, and placed on a white background in the deepest point of the pool, spa, or other water feature, must be clearly visible and sharply defined when viewed from any point on the deck within five feet of any pool edge.

(3) through (4)(c) remain as proposed but are renumbered (2) through (3)(c).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCVI (37.115.1401) TYPES OF SIGNS REQUIRED (1) Every pool, spa, or other water feature shall conspicuously post signs which meet the requirements of this subchapter and which address the following categories of safety issues:

(a) ~~signs identifying~~ prohibited conduct;

(b) ~~signs providing~~ warnings of medical or safety hazards;

(c) ~~signs identifying~~ potential disease hazards;

(d) ~~signs that notify~~ notification ~~the patrons~~ of the supervision that is or is not provided by the facility; and

(e) ~~signs pertaining to~~ diving requirements.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCVII (37.115.1402) GENERAL POOL SIGN REQUIREMENT

(1) and (2) remain as proposed.

(3) Pools and other water features must post signs with the following wording or substantially similar wording:

(a) "Take a cleansing shower before using the pool ~~or the deck area~~";

(b) "Please do not use the pool if you have had diarrhea or any other disease ~~communicable~~ transmittable by water in the past two weeks";

(c) through (6) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE XCVIII (37.115.1403) SPA SIGNS (1) The following rules shall be posted adjacent to the spa. The wording shall be in the following language or substantially similar language:

(a) "Take a cleansing shower before using the ~~pool~~ spa";

(b) "Please do not use the spa if you have had diarrhea or any disease ~~communicable~~ transmittable by water in the past two weeks";

(c) and (d) remain as proposed.

(e) "Enter and exit the spa slowly";

(f) "Staying in a spa too long may result in dizziness, fainting, and nausea"; and

~~(e)~~ (g) "Heat stroke warning - Users limited to 15 minutes in spa".

(2) through (4) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CI (37.115.1406) SPRAY POOL SIGNS (1) One or more signs with the following language or substantially similar language shall be posted adjacent to the spray pool:

(a) Spray hours must be listed and the sign must then state, "Spray pool use at any other time is prohibited";

(b) "Anyone who has had diarrhea or any other disease ~~communicable~~ transmitted by water in the last two weeks may not use the spray pool";

(c) through (f) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CIII (37.115.1503) ROPES, FLOAT LINES, AND MARKING LINES

(1) Unless otherwise provided in this rule, a rope and float line with floats spaced no more than five feet apart shall separate the shallow portion of the pool from the deep portion of the pool. It shall be strung across the pool at ~~one linear foot from~~ the shallow end and no deeper than the five foot depth level~~, toward the shallow end of the pool~~.

(a) through (4) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CVI (37.115.1601) WHEN LIFEGUARDS ARE REQUIRED

(1) Lifeguards are required to be present and on duty during the operation of any municipally owned or operated ~~swimming~~ pool, spa, or other water feature except ~~spray park~~ splash deck and wading pools.

(2) through (5) remain as proposed.

(6) Lifeguards shall be stationed around any pool, spa, or other water feature in a pattern that provides them clear line of sight to all areas of the pool, spa, or other water feature.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CVII (37.115.1602) WHEN LIFEGUARDS ARE NOT REQUIRED

(1) through (1)(b) remain as proposed.

(2) A tourist home providing a pool, spa, or other water feature to its guests must post a sign as required in ARM 37.115.301 ~~(1)(a)~~, but is exempt from the requirements of (1)(b).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXIV (37.115.1801) REVIEW OF NONCONFORMING SPECIALTY POOLS AND WATER FEATURES (1) The department may approve specialty water pools and water features not specifically addressed in these rules if, upon its plan review, the department determines that the design complies with all substantive requirements of these rules or any other applicable federal or state laws or rules and presents no public health and safety concerns.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXI (37.115.1809) ZERO DEPTH ENTRY TO POOL (1) Any ~~Z~~zero depth or "beach" entry to a ~~swimming~~ pool~~s~~ shall comply with all other applicable sections of ARM Title 37, chapter 34, subchapters 1 through 22, and with (2) through ~~(4)~~ (3).

(2) There shall be an overflow drain or weir installed across the full width of the zero depth end of the ~~swimming~~ pool or around the entire perimeter, whichever is more effective in recirculating the water or removing the water properly to the sewer system.

(a) through (3) remain as proposed.

~~(4) A perimeter overflow gutter shall be provided. The gutter around the perimeter of the rest of the pool may be interrupted in the area where the water is less than one foot deep, provided that the length of the perimeter overflow gutter and the overflow drain shall be at least 60 percent of the total pool perimeter.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXIII (37.115.1811) ~~ZERO DEPTH SPRAY POOLS~~ SPLASH DECKS - WATER RECIRCULATION (1) ~~Spray pools~~ Splash decks may be constructed so that the water drains immediately to a waste water system. ~~Such pools~~ Splash decks must use water from an approved water supply. The water that is drained to a waste water system shall be disposed of in a manner approved by the Department of Environmental Quality.

(2) If the water from a ~~spray pool~~ splash deck does not drain immediately to a waste water system, then a chlorination system and filtration system must be in place that meets the requirements of these rules.

(3) A recirculation system consisting of pumps, piping, filters, water conditioning and disinfectant equipment and other accessory equipment which meet the requirements of these rules shall be provided which will clarify, chemically balance, and disinfect the water. The ~~spray pool's~~ splash deck's treatment tank filtration circulation and chemical disinfectant equipment must operate 24 hours a day.

(4) Water may be used one time and immediately drained to waste water or it may be recirculated and disinfected. Existing ~~zero depth spray pools~~ splash decks that recirculate water must recirculate the entire volume of water through an approved treatment system every ~~thirty minutes~~ hour or less. ~~Zero depth spray pools constructed after [the effective date of this rule] must recirculate the entire volume of water through an approved treatment system every thirty minutes or less.~~

(5) A surge tank constructed or installed after March 1, 2010 for ~~the spray pool~~ a splash deck must hold a minimum of 4000 gallons. The surge tank capacity must also be at least three times the combined flow rates of all attraction features and recirculation pumps based upon a minimum flow of five gallons per minute.

(6) An automatic water level controller shall be provided for the ~~spray pool~~ splash deck treatment tank.

(7) A screen or similar device shall be provided through which all water from the ~~spray pool~~ splash deck shall pass before entering the ~~spray pool~~ splash deck recirculation tank. In the alternative, the ~~spray park~~ splash deck may use another method or process that is approved by the department and provides for the removal of debris on the surface layer of the water in the recirculation tank.

(8) Sufficient numbers of filtered or treated water inlets shall be provided and located to ensure complete mixing and circulation of treated water within the ~~spray pool~~ splash deck recirculation tank.

(9) At least one main drain suction outlet that supplies water to the ~~spray pool~~ splash deck recirculation tank filtration system shall be provided at the deepest point in the ~~spray pool~~ splash deck recirculation tank.

(10) The ~~pipers~~ pipes, fittings, and valves of the recirculation system shall be sized so that velocities of water in the piping do not exceed six feet per second under suction, ten feet per second under pressure, or three feet per second in gravity flow. The water velocity limits may be exceeded when hydraulic computations indicate that use of higher velocities will not adversely affect the ~~spray pool~~ splash deck recirculation system.

(11) and (12) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXIV (37.115.1812) ~~ZERO DEPTH SPRAY POOL~~ SPLASH DECKS - GENERAL REQUIREMENTS

(1) Each ~~zero depth spray pool~~ splash deck shall have:

(a) and (b) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXV (37.115.1813) ~~ZERO DEPTH SPRAY POOL~~ SPLASH DECKS - DRAIN SYSTEMS (1) Outlets must be located at the low point of the ~~spray pool~~ splash decks.

(2) ~~Spray pools~~ Splash decks must have two or more main drains located a minimum of three feet apart.

(3) Drain covers must meet the following requirements:

(a) outlet drains to each ~~spray pool~~ splash deck recirculation pump must have drain covers that measure 12 inches x 12 inches or greater in size;

(b) and (c) remain as proposed.

(4) Flow through the drains to the treatment tank shall be gravity flow only. Direct suction outlets from the ~~spray pool~~ splash deck are prohibited.

(5) In any ~~zero depth spray pool~~ splash deck that recirculates the water after sanitizing it, the cleaning drains that drain directly to waste water must be located around the perimeter of the pad at a sufficient number of locations to drain water used to clean the pad so that it does not enter a main drain to be recirculated. The slope of the spray pad must change around the perimeter to slope toward the cleaning drains.

(6) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXVI (37.115.1814) ~~ZERO DEPTH SPRAY POOLS~~ SPLASH DECKS - RESTROOM REQUIREMENTS (1) General use recirculating ~~spray pool~~ splash deck facilities shall provide separate restroom facilities for each gender containing at least one toilet and hand washing sink and diaper changing area. Toilet facilities and lavatories shall be maintained and conveniently located at a ~~spray pool~~ splash deck. All facilities shall be provided with liquid soap, paper towels or electrical hand drying units, and covered waste receptacles.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXVII (37.115.1815) ~~ZERO DEPTH SPRAY POOLS~~ SPLASH DECKS - CLEANING REQUIREMENTS (1) Hose bibs with anti-siphonage devices shall be provided around ~~spray pool~~ splash decks at a maximum spacing of one hundred fifty feet. At the beginning of each day prior to use and at other times when needed, the ~~spray pool~~ splash deck must be adequately cleaned and flushed to remove any materials or contaminants on the surface area of the ~~spray pool~~ splash deck. The water must be flushed to the waste water system and not discharged into the ~~spray pool~~ splash deck recirculation tank.

(2) The ~~spray pool~~ splash deck recirculater tank must be designed to provide ready access for cleaning and must be capable of draining. An overflow pipe to convey excess water to an approved wastewater discharge system must be provided.

(3) The ~~spray pool~~ splash deck recirculation tank shall be completely drained and cleaned whenever needed to maintain water quality parameters set by these rules, including but not limited to the parameters for alkalinity, pH, and chlorine.

(4) The ~~spray pool~~ splash deck recirculation tank shall be completely drained and cleaned whenever needed to maintain water quality parameters set by these rules, including but not limited to the parameters for alkalinity, pH, and chlorine.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXX (37.115.1821) SPA SANITATION REQUIREMENTS

(1) remains as proposed.

~~(2) Chlorine generator (salt) disinfectant systems may not be used in spas.~~

(3) remains as proposed but is renumbered (2).

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXXII (37.115.1824) EXTERNAL SPA EQUIPMENT REQUIREMENTS (1) and (2) remain as proposed.

(3) After March 1, 2010 all new spa installations shall have a master shutoff switch that shuts off the power to all components of the spa, including ~~the main drain,~~ jet pumps, and the circulation pumps. The master shutoff switch must be adjacent to the spa, easily accessible, and clearly visible in case of an emergency.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXXXVIII (37.115.1836) WADING POOLS - CIRCULATION AND DISINFECTANT SYSTEM REQUIREMENTS (1) remains as proposed.

(2) Wading pools must have a recirculation and disinfectant system of its own that is capable of a ~~30 minute~~ one hour turnover rate.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXL (37.115.1838) WADING POOLS - DEPTH AND SLOPE

(1) and (2) remain as proposed.

~~(3) The maximum distance from the top of the deck to the design waterline shall not exceed six inches, unless seven inches is required under manufacturer specifications.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXLII (37.115.1840) WADING POOL RESTROOM AND CHANGING TABLE REQUIREMENTS (1) Changing and toilet facilities must be provided. They must provide the minimum required fixtures set in ARM 37.115.903, Table ~~5~~ 4.

(2) remains as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXLIII (37.115.1845) HOT SPRINGS POOLS AND SPAS AND FLOW-THROUGH HOT SPRINGS POOLS AND SPAS - GENERALLY (1) Hot springs pools and other than a flow-through hot springs pool, must comply with all other provisions of these rules, except for the following:

(a) remains as proposed.

(b) the temperature of a hot spring pool or spa or a flow-through hot spring pool or spa may not exceed 106°F in a pool or spa primarily used for soaking and may not exceed ~~106°F~~ 100°F in a pool used primarily for swimming; and

(c) through (2)(b) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, 50-53-108, 50-53-115, MCA

RULE CXLV (37.115.1847) OTHER SPECIAL PURPOSE POOLS

(1) Special purpose pools including, but not limited to, wave action pools, rafting rides, wave surf rides, activity pools, catch pools, leisure rivers, vortex pools, interactive play attraction pools, amusement park attraction features, scuba training pools, and therapy pools shall meet all requirements of these rules.

(2) through (4)(e) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CXLIX (37.115.1905) GRANDFATHER CLAUSE (1) Any ~~existing currently~~ licensed ~~and regularly operating swimming~~ pool, spa, or other water feature that is regularly operating on or before March 1, 2010 is entitled to a grandfather clause exemption from any requirement to upgrade to new design and construction standards set in ARM Title 37, chapter 115, subchapters 1 through 22, except as otherwise specifically provided in ARM Title 37, chapter 115, subchapters 1 through 22, until one or more of the following occurs:

(a) the ~~swimming~~ pool, spa, or other water feature undergoes reconstruction, remodeling, or renovation;

(b) the ~~swimming~~ pool, spa, or other water feature fails for any reason to be operating and open to the public at least 60 days in the calendar year of the license;

(c) through (2) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-104, 50-53-204, 50-53-216, MCA

RULE CLIV (37.115.1912) WHEN LICENSE NOT REQUIRED (1) Licenses are not required for the following:

(a) and (b) remain as proposed.

~~(c) swimming pools located in a private apartment complex with fewer than ten apartments and which are used for swimming or bathing only by the tenants or their invited guests;~~

(d) remains as proposed but is renumbered (c).

~~(e)~~ (d) ~~single unit tourist home~~ a pool~~s~~ or spa~~s~~ at a tourist home, if it is not ~~they are not~~ used by the parties renting or leasing the home or if ~~the spa~~ it is completely drained, cleaned, and refilled between guests;

~~(f)~~ (e) spa pools in individual hotel or motel rooms or in individual cabins that are completely drained, cleaned, and refilled between patron use; and

~~(g)~~ (f) pools or spas at condominium units that are leased for periods of one month or greater~~;~~. ~~and~~

~~(h) spray pools that drain immediately to waste.~~

AUTH: 50-53-103, MCA
IMP: 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA

RULE CLIX (37.115.2102) IMMEDIATE SUSPENSION OF LICENSE; EMERGENCY CLOSURE OF POOL, SPA, OR OTHER WATER FEATURE

(1) The department may order immediate suspension of any license or may order emergency closure of any ~~swimming~~ pool, spa, or other water feature or both if an inspector determines that an operator has refused or failed to immediately close the ~~swimming~~ pool, spa, or other water feature after occurrence of any health or safety violation identified in ARM 37.115.301. Any violation of ARM 37.115.301

constitutes an ~~imperative~~ imminent risk to public health, safety, or welfare that imperatively requires immediate closure of the ~~swimming~~ pool, spa, or other water feature.

(2) through (5) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 2-4-631; 50-53-201; 50-53-211; 50-53-212, MCA

RULE CLXVII (37.115.2209) LIMITS ON CONSIDERATION OF PRIOR VIOLATIONS (1) Except as provided in (2) ~~and (3)~~ through (4), the hearing examiner may not consider any prior violations that were included on a notice of violation delivered to the licensee, license applicant, or operator of a ~~swimming~~ pool, spa, or other water feature if:

(a) satisfactory corrective action was taken and accepted by the department or,

(b) ~~if~~ the licensee, license applicant, or operator requested a fair hearing to challenge the notice of violation ~~and prevailed.~~, the hearing examiner issued a dispositive order that denied all of the department's claims against the licensee and that order was not appealed or it was upheld after any appeal.

~~(2) The hearing examiner may consider any related prior violations or any history of a pattern of unrelated prior violations to support the violations that are the basis for the request for the order to show cause if satisfactory corrective action was not taken and accepted by the department and if the licensee, license applicant, or operator did not timely request and prevail at a fair hearing. Any previous violation cited at the swimming pool, spa, or other water feature is deemed admitted unless it was timely contested.~~

~~(3)~~ (2) The hearing examiner may consider any history of corrective action that was taken in response to a notice of violation and that was accepted by the department only for the limited purpose of determining whether:

(a) the history of past violations taken together with the current violations supports a penalty as severe as the level of adverse action imposed by or requested by the department; ~~or whether~~

(b) the department's imposition of the penalty or proposed penalty is so severe as to be arbitrary and capricious.

(3) In considering any prior violations by the licensee for purposes of (2), any prior violation cited at the pool, spa, or other water feature is presumed admitted unless it was timely contested.

(4) In considering any such prior violations, the hearing examiner shall weigh the frequency and the seriousness of the prior violations and the willingness and ability the licensee has demonstrated in the past to take corrective action that prevented reoccurrence of violations.

AUTH: 50-53-103, MCA
IMP: 2-4-612, 26-1-103, 26-1-501, 26-1-502, 26-1-602, 26-1-605, 26-1-606, 26-1-623, MCA

6. Two hearings were held on proposed New Rules I through CLXVIII and the amendments and repeal of several other rules. The hearings were held on June 3, 2009, and on August 7, 2009. A total of five individuals attended the hearing on June 30, 2009 and presented testimony. Written testimony was submitted by two of those attending. On August 7, 2009, two individuals attended the hearing and supplied testimony. In addition a total of 30 individuals submitted written comments during the two comment periods. That includes those persons attending the hearing who submitted written testimony and those who testified at one or both hearings and also submitted their testimony in written form. Five individuals each submitted two or more sets of comments. All together, a total of 30 written comments were received by the department by mail, facsimile, or e-mail.

The department has compiled its responses to the comments by breaking down the written comments received into specific individual comments which each relate to one rule or one issue. The department has attempted to organize the comments and responses to comments in numeric order by proposed rule and to group them together so that a reader can review all comments pertaining to a specific proposed rule easily.

Several general comments were made requesting that the department attempt to eliminate possible redundancies to make the rules more succinct and to review the rules to determine if they could be consolidated or could be made clearer. The department has attempted to do this and there are therefore a number of small grammatical changes included throughout the rules as adopted.

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

COMMENT #1: A commentor requested that the department extend the comment period, provide a second draft, and have an additional hearing.

RESPONSE #1: The department believes it has allowed sufficient time and opportunity for public comment. The department has already made efforts to allow public comment by adding a second comment period and hearing, and does not believe that an additional comment period is necessary.

COMMENT #2: A commentor believed the rules could be more clear and succinct, and that the current draft has redundancies and some conflicting statements, and further believed that the department should work with local sanitarians to improve this aspect of the proposed regulations.

RESPONSE #2: The department disagrees. The rules as drafted are structured to provide easy reference to topics a user is seeking information on. While that results in a few instances of duplication, it is necessary and beneficial to the user. However, the department has reviewed the rules and has provided a more succinct language or clarifying language where it could.

Rule II – 37.115.104

COMMENT #3: A commentor suggested that the renovations required in Rule II(1)(a) (37.115.104) would be too difficult or costly, and also that the existing slope rule was intended to prevent diving board accidents.

RESPONSE #3: The department believes that the change in slope requirement will eliminate a drowning hazard in pools with a steep drop-off. Pools with diving equipment will still be required to comply with the diving board standard, as stated in Rule LV (37.115.804).

COMMENT #4: A commentor agreed with the change required in Rule II(1)(a) (37.115.104), stating that older pools with great slope are dangerous for swimmers in distress.

RESPONSE #4: The department agrees.

COMMENT #5: Does the barrier requirement in Rule II(1)(b) (37.115.104) apply to a splash deck in a pool?

RESPONSE #5: The department finds this comment somewhat unclear. A splash deck is not in a pool. It is on a flat surface with a drain. If the splash deck is in a complex with multiple water features, it will not need to be separated from the other water features with a fence. However if there is only a splash deck at a facility, a barrier is required.

COMMENT #6: A commentor questioned whether drain-and-fill wading pools are a true safety concern and whether elimination in Rule II(1)(c) (37.115.104) is necessary.

RESPONSE #6: The department is aware of multiple studies demonstrating the high risk of disease transmission through drain and fill wading pools and is aware of multiple disease outbreaks in such pools. The chlorine levels are not maintained or stabilized in such a pool and the age of users, including users in diapers, contribute to the problem.

COMMENT #7: A commentor supports the phase-out of drain-and-fill wading pools because it is very difficult to maintain chlorine levels with this type of pool, and very young children, a high-risk population, are the main users.

RESPONSE #7: The department acknowledges the statement and appreciates the comments.

COMMENT #8: The dates for changing wading pools that are drain-and-fill to circulation filtration is too soon (December 31, 2009). Rule CXXXVII (37.115.1835)

prohibits drain-and-fill wading pools after December 31, 2010 rather than 2009, so the dates are not consistent.

RESPONSE #8: The department agrees the dates are not consistent in the proposed rules and has made the changes so that both rules set a deadline of December 31, 2010.

COMMENT #9: The Center for Disease Control (CDC), World Health Organization (WHO), and State of Florida just recently rewrote their health codes, and all of these entities accept the 100 ppm maximum for cyanuric acid (CYA). The draft pool rules do not allow use of cyanuric acid for indoor pools.

RESPONSE #9: The department agrees that cyanuric acid byproducts related to pools is not an issue. However, the buildup of cyanuric acid in pool water makes free chlorine less effective. The CDC also recommends not using cyanuric acid for indoor pools but says it is useful for outdoor pools due to the effects of the sun and wind on the chlorine. The CDC at one time recommended a maximum concentration of cyanuric acid of 150 ppm but now recommends a maximum concentration of 100 ppm. Any chemical used in a pool can be hazardous to staff or guests when manufacturer guidelines are not followed. The comment is not clear with regard to whether the State of Florida accepts the CYA amount for outdoor pools only or for both indoor and outdoor pools. Many other states are only allowing the use of CYA for outdoor pools.

COMMENT #10: Using less stable sanitizers increases the change of a hazard for the pool operators and the public. Cyanuric acid does not have anything to do with cyanide byproducts. Switching to a higher oxidizing sanitizer is much more dangerous.

RESPONSE #10: The department recognizes other states, such as Utah, prohibit the use of cyanuric acid for indoor pools. Cyanuric acid is to be used as a chlorine stabilizer for outdoor pools that are affected by sun and wind. Misuse of cyanuric acid by allowing its use for indoor pools is not condoned by the department. Commentor states that switching to a higher oxidizer is more dangerous. Any chemical, including tri-chlor or di-chlor, is dangerous to handle when done so incorrectly.

COMMENT #11: What is the rationale for the change in this rule? Any chemical/electric disinfection or pH system will be a safety threat if misused. Why isolate one system in the rule?

RESPONSE #11: The department does not condone improper use of a stabilizer. The misuse of CYA is more common than with other standard pool chemicals. All chemical, electric disinfection, or pH systems should be used properly. The department realizes that cyanuric acid misuse is an issue, and notes that other states have recognized this issue as well. MSDS sheets need to be available for staff when handling certain products. For example, a spill of muratic acid on bare

skin can cause serious burns to the handler if the handler is not wearing protective equipment or handling the product per the manufacturer's specifications. The concern with CYA is that it has been added to chemicals and used improperly by allowing its use of indoor pools. If any concerns about other systems or chemicals exist, they may be brought to the attention of the department for investigation as well as to the attention of CDC or any other regulatory or scientific entity.

COMMENT #12: A Commentor provided references to articles and other states' rules for additional information concerning cyanuric acid.

RESPONSE #12: The department appreciates the information.

COMMENT #13: A Commentor recommended a change in wording to the following, "isocyanurates or forms of chlorine stabilized with cyanuric acid". Chlorine stabilized with cyanuric acid has a very low pH and acid is added consistently with chlorine whenever the chlorine feeder is operating. While all forms of chlorine affect pH to some extent, stabilized chlorine seems to seriously impact pH levels and may contribute to pool closures based on low pH. The commentor stated that he/she has frequently observed operators have difficulty maintaining a pH above 7.2 when using stabilized chlorine for indoor swimming pools.

RESPONSE #13: The department agrees and has modified the proposed rule.

Rule III (37.115.105) and Rule XXXV (37.115.515)

COMMENT #14: The definitions set a maximum bather load, but can an owner set a lower number for its own pool based on operational requirements?

RESPONSE #14: The bather load is actually calculated by looking at the chart in Rule XXXV (37.115.515). The department acknowledges that there is always a potential for a facility to choose to set a lower maximum occupancy limit. However, design of a facility must meet the requirements to support the maximum bather load the size of the pool, spa, or other water feature could accommodate pursuant to the chart in that rule.

Rule III – 37.115.105

COMMENT #15: A commentor recommended clarifying the term "pool and related facilities" in Rule III(105) (37.115.105) so that a splash deck does not have to be associated or "related" to a pool in order to be termed a public swimming pool.

RESPONSE #15: The department disagrees and finds the comment confusing. Splash decks are listed as an example of a swimming pool in both this definition and in state statute, 50-53-102(a), MCA.

COMMENT #16: A commentor would like clarification on the phrase "invited guests" so that facilities charging a nominal fee, a fee through a subcontract, or no fee at all, but who are not friends with all users cannot use this argument to refuse to license.

RESPONSE #16: The department agrees that the term "invited guests" needs clarification. The department has added "invited guest" to the list of definitions in Rule III (37.115.105). This is important to include because it excludes a transient population. The individuals cannot be strangers to the owner(s) of the water feature and must be invited or asked to use the facility.

COMMENT #17: A commentor stated that the definition of public pools makes it unclear whether a pool at a condominium is considered a private or privately owned public pool. The commentor asked whether a resort pool on private property is exempt from licensure.

RESPONSE #17: Pools associated with condominiums that are leased or rented are listed in Rule III(105)(a) (37.115.105) as examples of privately owned public swimming pool or spas. A condominium or resort pool providing aquatic recreation may be privately owned, but is not exempt from licensure as a privately owned public pool, spa, or other water feature if a transient population is served. The definition of a "transient guest" is found in Public Sleeping Accommodations, 50-51-102(12), MCA as a guest for only a brief stay, such as the traveling public. Hotels and motels are grouped by function and the definition is found in Public Sleeping Accommodations, 50-51-102(5), MCA.

COMMENT #18: Rule III(105)(a) (37.115.105) indicates that a hotel pool is considered a privately owned public pool, yet Rule XXIII(1)(c) states a hotel pool is a semi-public class C pool. The hotel/motel pool classification needs to be clarified.

RESPONSE #18: The department agrees there is confusion caused by references to the pool classifications that were set out in Rule XXIII. That rule will not be adopted.

COMMENT #19: Is a resort pool on private property exempt under Rule III(105)?

RESPONSE #19: Rule III(105) (37.115.105) states that only a pool located on private property and used solely by the owner, friends, or invited guests is considered a private pool for the purposes of these rules. Any time a pool is used by the general public or use is used by a transient population such as tenants, the pool is defined as a privately owned public pool. A resort pool providing aquatic recreation is a privately owned public pool since a transient population is served.

COMMENT #20: A commentor asked for clarification of whether pools associated with schools, camps, churches, and retreats are clearly included in here and in definition of swimming pool.

RESPONSE #20: These types of facilities could be either a publicly owned or privately owned public pools. The classification is based on both ownership and the population served by the pool.

COMMENT #21: Many of the licensed tourist homes in our county are occupied by the owner when guests are not present. Are the attached pools considered public or private?

RESPONSE #21: Rule CLIV(1)(e) (37.115.1912) provides that a license is not required for, "single unit tourist home pools or spas if they are not used by the parties renting or leasing the home, or if the spa is completely drained, cleaned, and refilled between guests".

COMMENT #22: The definition of "Lifeguard" in Rule III(79) (37.115.105) uses the words "following certification", but no certification follows. The word "following" could be deleted.

RESPONSE #22: The department agrees and has removed the word "following" from proposed Rule III(79)(37.115.105).

COMMENT #23: "Recreational water" is defined in proposed Rule III(111) (37.115.105) but the term is not used in the rules.

RESPONSE #23: The purpose of the definition is to show that natural bodies of water are not to be licensed under these rules. It also clarifies which agency licenses these outdoor recreational facilities.

COMMENT #24: Proposed Rule III(124) (37.115.105) includes a definition of "nonself-contained". Should it be listed as its own term/definition?

RESPONSE #24: The department agrees that "nonself-contained hot tub" should be listed as its own definition and has changed Rule III (37.115.105).

COMMENT #25: Some of the definitions in Rule III (37.115.105) go beyond defining terms and contain regulatory requirements. For example, proposed Rule III (37.115.105)(171) defines "zero depth spray pool" and contains requirements that are also contained in the body of the rules.

RESPONSE #25: The department agrees and has removed descriptions of substantive requirements in the definition in Rule III (37.115.105).

COMMENT #26: Rule III(113) (37.115.105) includes all maintenance and repairs with renovations. A repair is not necessarily a remodel or renovation.

RESPONSE #26: The department agrees with the comment and has added language in Rule III (37.115.105) to clarify that replacement of existing equipment or

components with equipment or components that are identical or substantially similar is not considered a remodel or renovation.

COMMENT #27: Rule III(81) (37.115.105) needs to change "ASME A112.19.8-2007" to "ASME.19.17.-2002" and here is why: http://catalog.asme.org/Codes/PrintBook/A1121917_2002_Mfd_Safety.cfm.

RESPONSE #27: This is the standard for SVRS devices. Not all pools require these devices.

COMMENT #28: A commentor stated that the definition in proposed Rule III(85) should be changed.

RESPONSE #28: It is unclear to the department why proposed Rule III(85) should be changed. Proposed wording was not provided by the commentor and the commentor did not explain what was inaccurate in the definition. Therefore the rule will not be modified.

Rule IV (37.115.201)

COMMENT #29: A commentor recommended removing the reference to ANSI-I-1991.

RESPONSE #29: The department disagrees. The ANSI-I-1991 is an appropriate set of standards for the design and construction of a pool, and many engineering firms have copies of ANSI standards for reference. These standards contain basic definitions for pools.

COMMENT #30: The ANSI standards are intended to be used as a design guideline, not a regulatory document.

RESPONSE #30: The department disagrees. It is adopting the ANSI standards as enforceable standards. The adopted rule will incorporate by reference the 1991 version of the ANSI Standards. That version of the ANSI standards will remain set as the department standard unless the rule is amended at some point in the future to reference a later version of the ANSI standards.

COMMENT #31: The NSPI/ANSI standards are intended to be used as a design guideline, not a regulatory document.

RESPONSE #31: See Response #30.

COMMENT #32: The diving board area requirements are in the body of the rules. Why reference the standards?

RESPONSE #32: There are many other ANSI components for pool design located in ASNI-I-1991. Additional ANSI standards address such issues as the

specifications for pumps and the plumbing needed to connect them. The standards will be needed at various points in the design, construction, or operation of a pool, spa, or other water feature. The ANSI standards are therefore incorporated by reference.

COMMENT #33: The pool type classifications in Table 3 do not match the pool classifications in proposed Rule XXIII.

RESPONSE #33: The department agrees and will not be adopting Rule XXIII. The classification of pool types in letter or numerical value is generally not mentioned throughout the proposed rules, even though those designations match some ANSI standards. Therefore the reference to the classification of pool types creates unnecessary confusion here and has been removed.

COMMENT #34: A commentor was concerned that if the ANSI standards adopted in Rule IV (37.115.201) changed, there will be a conflict with these rules.

RESPONSE #34: Any future changes to the ANSI standards will not be incorporated into these rules without additional rulemaking including a notice and comment period. If standards change, the standard in this rule will still refer to the 1991 ANSI standards unless amended.

COMMENT #35: ANSI standards adopted in Rule IV (37.115.201) are not intended to be regulations and have no enforcement components.

RESPONSE #35: The department believes that ANSI standards are appropriately adopted as design standards. Since they are now being adopted as the department's standards they are enforceable.

COMMENT #36: A commentor supported adoption of ANSI/ASME standards but believed that the rule will need to be updated periodically to reflect changes to the standards based on current information.

RESPONSE #36: The department acknowledges and appreciates the comment. Any time the ANSI/ASME standards change, the department may review those changes. If the department feels it is beneficial to adopt the new standards, a change in the rules will occur through proper legal steps, including a comment period.

COMMENT #37: There are conflicts between the ANSI standards and specific rules.

RESPONSE #37: The department acknowledges that in some instances the rules depart from an ANSI standard. Rule IV (37.115.201) specifically provides that the ANSI standards apply "unless otherwise specified in these rules".

Rule V (37.115.301)

COMMENT #38: A commentor stated that the inclusion of ANSI and NSPI references makes ensuring "all requirements of these rules" problematic for a design professional, owner, and contractor. The rules from these documents should be published in the rules rather than incorporated by reference.

RESPONSE #38: The inclusion of all of the wording found in the ANSI documents and other standards incorporated by reference would create an extremely large and unfriendly rule book for each facility to maintain. Many of the ANSI and NSPI standards incorporated by reference apply only to the design and construction phase. The rules that will apply to all pool operators during operation and while considering upgrades or renovation are included in their entirety. The incorporated standards are readily available to engineers, architects, and registered contractors for use in designing new pools, spas, or other water features or for upgrading existing pools, spas, or other water features.

COMMENT #39: If a violation of Rule V(1)(c) (37.115.301) can be rectified in a short time (e.g. one hour or less), will a facility have to be closed?

RESPONSE #39: Yes. Anytime the sanitizer does not meet the standard, patrons should not be in the pool until the problem is corrected.

COMMENT #40: A commentor supported the inclusion in Rule V (37.115.301) of specific critical health and safety violations that lead to closure.

RESPONSE #40: The department acknowledges and appreciates the comment.

COMMENT #41: Several commentors stated that while they supported incorporation of the Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA) into these rules, there are many difficulties with assessing compliance with this Act. They stated that the department will need official interpretation on how local jurisdictions are to determine compliance, since this cannot be assessed at poolside. If the department is to enforce compliance, it must be able to accurately determine whether or not a pool is in compliance. It may be that operators must be required to contract with an engineer or pool installation company and provide documentation of compliance.

RESPONSE #41: The department agrees it will be necessary to receive certification that a drain is in compliance with the VGBPSSA. The department has amended the proposed rules to require licensees to obtain such certification and to then submit it to the department.

COMMENT #42: A commentor asked whether not having a "lifeguard not on duty" sign found in Rule V(1)(j) (37.115.301) should be on the list for self closure, but rather considered as one of additional repeat violations that can lead the health department to close a pool.

RESPONSE #42: The department disagrees. If the swimming public believes a lifeguard is on duty when that is not the case, there is a greater risk of a drowning. A temporary sign can easily be posted if a short term situation leaves the pool without an available lifeguard for a short period of time.

COMMENT #43: There are too many forms required by Rule V(4) (37.115.301) and other parts of the proposed rules.

RESPONSE #43: The department disagrees. It is imperative that the department obtains information concerning any serious accident or injury. Much of the information required for documentation will be created in a checklist form, helping to minimize paperwork.

Rule VI (37.115.302)

COMMENT #44: The requirement stated in Rule V(1)(n) (37.115.301) to close the pool when you hear thunder may be hard to enforce.

RESPONSE #44: The department disagrees. If thunder is heard, the pool is to be closed.

COMMENT #45: Rule VI(1)(d)(iii) (37.115.302) requires that a backboard be readily available. Only EMTs are allowed legally to handle a backboard, and having it available as a safety device forces liability on the pool operator. The commentor did not want the backboard available to the public and would rather keep it behind a hotel desk. What does "readily available" mean?

RESPONSE #45: "Readily available" means easy access to the persons in charge of the pool. Lifeguards are trained in using backboards as part of their certification process. If the backboard can be retrieved from behind the desk or a closed room and immediately brought to the pool, it would meet the requirement.

COMMENT #46: A commentor, referring to Rule VI(3) (37.115.302), stated that this rule involved more paperwork, requiring the creation of a written corrective-action plan. The details of corrective plans are also explained in Rule CLX (37.115.2103).

RESPONSE #46: The department disagrees. Appropriate documentation is necessary for the pool inspector to determine whether the facility has ongoing problems. Additionally, written corrective-action plans were required in the past.

Rules V (37.115.301) and VI (37.115.302)

COMMENT #47: A commentor believed Rules CLIX (37.115.2102) and CLX (37.115.2103) should be combined with Rule V (37.115.301) and Rule VI(3) (37.115.302).

RESPONSE #47: The department disagrees. Rules CLIX (37.115.2102) and CLX (37.115.2103) specifically set forth the enforcement procedures and are appropriately located in that section. Violations of other rules may also result in the enforcement procedure in Rules CLIX (37.115.2102) and CLX (37.115.2103) being used.

COMMENT #48: Rule LXXIX (37.115.1101) states there must be a certified pool operator (CPO) available, but that was not added to the immediate closure rule. The wrong rule is cited in Rule VI(2) (37.115.302).

RESPONSE #48: The department has added language to Rule VI(1)(e) (37.115.302) to clarify that the failure of the licensee to have a certified pool operator available within 30 minutes may result in an immediate closure violation and has corrected the typographical error.

COMMENT #49: A commentor believed immediate closure of a pool is appropriate if it is not in compliance with Rule XLVIII (37.115.702).

RESPONSE #49: The department agrees that adoption of the federal law requires that a pool, spa, or other water feature not in compliance with the VGBPSSA may not operate. The department has added (1)(p) to Rule V (37.115.301) to address that issue.

COMMENT #50: Owners should be able to develop a corrective action plan for disease outbreaks and the department should not prescribe the use of a UV system.

RESPONSE #50: The rule as written allows a licensee the opportunity to try to resolve a disease outbreak before the department would require a UV system to be installed. The department acknowledges the comment and appreciates the statement. Scientific evidence shows that UV systems are the most current, effective way to provide a substantial reduction of giardia, cryptosporidium, and other waterborne illnesses. Many other states are also requiring UV systems; therefore, the department will not remove the requirement.

COMMENT #51: Commentor supports the use of a UV system for outbreaks.

RESPONSE: #51: The department acknowledges the statement and appreciates the comments.

COMMENT #52: A commentor noted that cryptosporidium and giardia are spelled incorrectly.

RESPONSE #52: The department acknowledges the statement and appreciates the comments. The department has changed the spelling in Rule VII (37.115.303).

COMMENT #53: A commentor requested that the department add language to incorporate any identification of a waterborne disease outbreak in relation to a

licensed recreational water facility, and to require a quick response with a corrective action plan and possible installation of UV equipment.

RESPONSE #53: The commentor did not provide any suggested language to the rule. It will remain as drafted.

COMMENT #54: A commentor stated that many pool operators are not well informed about cyanuric acid and may not know how to test for it.

RESPONSE #54: The department agrees that the comment may be correct. However, if an operator follows the water testing requirement in Rule LXXXIV (37.115.1301), the test for Cyanuric acid is included in DPD test kits.

COMMENT #55: The department should require UV disinfection on new pools that will be heavily used or subject to contamination from animals in order to help reduce the probability of a waterborne illness outbreak.

RESPONSE #55: The department agrees. For existing pools that have an outbreak and are not corrected under Rule CLX (37.115.1203), the department may require the licensee to install a UV system. Splash decks will also be required to install a UV system. Language in the rule has been changed to clarify that where existing equipment or components is replaced or repaired with identical or substantially similar equipment, no review process is required.

COMMENT #56: The department should add the following language: "UV or other type of additional disinfection approved by the department that has been proven to control disease outbreaks". This would allow for new advances in technology without requiring the department to change the rule.

RESPONSE #56: The department will change the rule should it determine that a new disinfectant method could be used as effectively as a UV system as a secondary disinfectant system.

COMMENT #57: A commentor asked why UV is required after ten users contract waterborne diseases. The commentor noted that it would make more sense to rely on the CDC or some other scientific authority as the basis for this requirement. It could be very expensive for large water features to comply with this requirement. The requirement should be justified by either a best practice or a national standard. Instead, the rule could state that if two or more outbreaks of waterborne diseases (as defined by the CDC) occur within a thirty-day period, the department could require UV disinfection.

RESPONSE #57: The department agrees that the number of persons affected by a waterborne disease that constitutes an outbreak should be based on the number provided by the CDC and has lowered that number from ten to two. Additionally, due to the high risk of contracting waterborne diseases and given a history of outbreaks at water recreational facilities, new splash decks will be required to install

UV disinfection systems. UV disinfection may also be required for swimming pools, spas, and other water features that have a confirmed outbreak. The department has added new language to Rule VII (37.115.303).

COMMENT #58: A commentor asked whether Rule VIII(1) (37.115.305) applies to the replacement of broken equipment. If it does apply, the time required for approval will adversely affect business operations. Instead, plan review should be required when equipment is installed that differs from the equipment that was previously in place.

RESPONSE #58: The department agrees with the comments and appreciates the statement. The department feels the commentor may have intended for the comment to apply to the entire rule and not just Rule VIII(1)(37.115.305). Language in the rules, including in the definitions, has been changed to clarify that where existing equipment or components is replaced or repaired with identical or substantially similar equipment, no review process is required.

COMMENT #59: The department should add language to the rule to include a designee (e.g. a local agency), should the local agency choose to provide plan review.

RESPONSE #59: Language that addresses plan reviews for pools, spas, or other water features will be included in the cooperative agreement between the local agency and the department.

COMMENT #60: A commentor pointed to Rule VIII(2) (37.115.305), which references Rule XI, and asked whether an owner is required to submit additional plan sets to an outside entity based on direction from the department. If outside review is required by the department, the department should be responsible for forwarding plan sets to the reviewer and paying any additional fees.

RESPONSE #60: If the department feels it is necessary to have some aspect of the plan reviewed by a professional engineer, it may do so and the cost of the review will be paid by the applicant.

COMMENT #61: Regarding Rule VIII(3) (37.115.305), if an owner submits plans, specifications, and the checklist to the department, can the owner advertise for bids on a public project, open construction bids, and then wait for approval from the department to issue the Notice to Proceed for construction?

RESPONSE #61: The applicant is allowed to obtain bids on a project at any time.

COMMENT #62: Rule VIII(2) (37.115.305) references Rule XI when it should reference Rule XII (37.115.308).

RESPONSE #62: The department agrees and has made the correction.

COMMENT #63: A commentor believed that it is the responsibility of any builder, engineer, or architect involved in the construction of a new facility to ensure that the rules are met. However, it is difficult to comply with the rules when Rule XI has requirements that are not inclusive and identified. Rule IX (37.115.306) and XI conflict.

RESPONSE #63: The department does not understand what the commentor means by saying Rule XI has requirements that are "inclusive and indentified". The rule gave examples of the type of queries an engineer may need to make for the department. Ultimately, the department has the responsibility to ensure that an application meets the public health and safety requirements. It therefore has a right to obtain any information it needs to determine if public health and safety concerns are met. If it cannot obtain that information, it will need to deny the application for a license. If needed, the department will obtain that information by retaining a private engineer to conduct the review and those costs will be paid by the applicant.

COMMENT #64: A commentor stated that Texas had a rule similar to Rule XI and has since elected to amend the rule because of the number of problems the rule caused.

RESPONSE #64: The department hopes to avoid whatever unspecified problems that the commentor asserts occurred. It is not possible to address the comment further where no details are provided.

COMMENT #65: Maintenance staff often install or replace equipment. The department should clarify the rule so that plans and specifications for minor changes that do require review but that are not part of a major remodel or construction of a new facility can be submitted by pool maintenance personnel.

RESPONSE #65: The department agrees that a full plan review is not required for a maintenance repair or when equipment or components are replaced with identical or substantially similar equipment or components. However, language has been added to clarify that the department must be notified of the change. See changes to Rule VIII (37.115.305) under response to Comment #58. Maintenance personnel may notify the department when equipment or components are replaced with identical or substantially similar equipment or components.

COMMENT #66: A commentor refers to Rule IX (37.115.306) and states that the department should require engineers, not pool contractors, to create plans because the department does not have an engineer to provide technical plan review. This would also alleviate the burden on the department for the additional fees as the state grows.

RESPONSE #66: The department agrees in part. Engineers are licensed and insured for liability. However, it is unclear what the department not having an engineer has to do with where the plans should originate when submitted. The

department will still have the right to obtain an engineering review by an engineer it retains under Rule X (37.115.307).

COMMENT #67: Rule X(2) (37.115.307) is unclear because it states that the department may conduct preliminary inspections of any construction project to determine whether the actual design complies with the plans. The plans and certified checklist are submitted for department review and approval before the project is constructed, not during construction.

RESPONSE #67: The department disagrees. In some instances the complexities of the project will require a department inspector to make one or more site visits at benchmarks that are identified in the phases of construction.

COMMENT #68: A commentor referred to Rule X(3) (37.115.307) and stated that there are times when fixture/plumbing requirements are in conflict with local building/plumbing codes, and asks which entity has final authority in the event of a conflict. The proposed rules state that the department's review will not include any determination of whether a plan is in compliance with building, electric, plumbing, mechanical, or ventilation codes. Do the proposed rules contain plumbing requirements?

RESPONSE #68: The department agrees that there may be conflict with local requirements. In order to clarify, the department is requiring that where a conflict exists between standards set by various agencies with jurisdiction, the most stringent requirements must be met. Written approval by other departments will be required prior to final approval by the department. The department has modified Rule X (37.115.307).

COMMENT #69: A commentor refers to Rule IX (37.115.306) and asks the department to define a "registered construction contractor". Can a registered construction contractor seal and submit plans and specifications for a public entity?

RESPONSE #69: The term "registered construction contractor" is defined in 39-9-102, MCA. It refers to a contractor who is certified by the Montana Department of Labor and Industry, as meeting worker compensation insurance and unemployment insurance requirements. Registration does not ensure that a contractor has any particular level of competency or expertise and no seal. Therefore, a registered construction contractor has no seal and cannot sign off on plans and specifications that require the seal of a professional engineer.

COMMENT #70: Regarding Rule XI, if a licensed engineer has signed off on the design plans, what is the added benefit for the plans to be reviewed by another firm? The department should instead ask for the plan designer's calculations and paperwork. Review by another firm will only cause delays and more financial hardship than necessary. These comments also apply to Rule XL (37.115.522).

RESPONSE #70: First, Rule XI has been absorbed into Rule X(37.115.307). In responding to the above comment, the department disagrees. While in some cases, it may be appropriate for the department to only double check calculations submitted by the applicant, in other cases it will need to retain an engineer to conduct an adequate review. The department will require the calculations worksheet and any other data necessary from the licensed engineer that submitted the plans in order to allow or complete a review to occur and to ensure that rules are met. The department does not see the same concern with Rule XL (37.115.522).

COMMENT #71: A commentor did not object to a secondary review, but stated that the fee should be covered in the department budget. If a conflict in plan interpretation occurs and the reviewing firm requests a change, does their liability insurance cover it the change, or will the state of Montana liable?

RESPONSE #71: The Legislature has imposed the costs of the plan review upon pool owners and operators rather than requiring the taxpayers to pay these costs. They are costs that are simply part of the cost of doing business. The plan review will be provided to the contracted plan reviewer or engineer by the department and the applicant will be responsible for the entire cost. Necessary corrections as a result of the review must be made by the applicant and not by the reviewer. Additional paperwork and calculations can be submitted to the reviewer if needed. Liability will rest with the applicant and any engineers employed by the applicant. The applicant's design must comply with the rules before it will be approved.

COMMENT #72: A commentor referred to Rule XII(1) (37.115.308) and states that they do not have a scaled drawing of their pool due to the age of the pool. Obtaining a scaled drawing would take a great deal of time.

RESPONSE #72: The department understands that an older water facility may not have existing scaled drawings. However, if any upgrades, remodels, or replacements occur, the plans must be submitted to the department by a professional engineer, architect, or construction contractor overseeing the project. At that time a scaled drawing is required. The burden is outweighed by benefit for the owner and the public alike.

COMMENT #73: A commentor pointed to Rule XII(2)(l) (37.115.308) and asks whether the estimation of the bather load can be less than the maximum bather load based on maximum pool capacity.

RESPONSE #73: The department disagrees with allowing a lower bather load. Designs approved must be for the maximum bather load. This is common practice with designing a septic system, choosing an adequate size of walk-in refrigerator for a restaurant, and designing a potable water supply system for the public.

COMMENT #74: A commentor referred to Rule XII(2) (37.115.308) and asks the department to simplify the plan review fee tables.

RESPONSE #74: The department has simplified the fee rule.

COMMENT #75: With respect to Rule XIII(3) and (4), (37.115.309) it is unclear when an additional review fee will be charged. In Rule III(3) (37.115.309), if a set of plans and specifications are submitted, the department returns a comment letter, and the owner responds with clarifications that the initial reviewer missed, is a new review fee charged? Rule III(4) (37.115.309) states at the end there will be additional fees charged. Rule XIII(3) and (4) (37.115.309) appear to conflict.

RESPONSE #75: The department agrees. Rule XIII (37.115.309) has been modified.

COMMENT #76: With respect to Rule XIV (37.115.311), a commentor stated that the fee table is cumbersome and hard to understand. In the draft rules, an outside reviewer fee is listed as "reasonable", which is very open-ended. Instead, the fee should be based on a percentage of the construction costs or a maximum fee amount.

RESPONSE #76: The department agrees in part with this comment. The fee table has been simplified. However, the department specifically rejects the suggestion that a flat fee based on a percentage of the construction costs should be set as the review fee. The fees have been set based upon an assessment of the time that will be needed to complete the assessment and the cost to the taxpayers for that time. If fees were set based on construction costs, licensees who chose to build more luxurious facilities by using the highest grade materials would be assessed more for the same inspection based solely on the higher cost of those materials. That would not be related to the amount of work done during the inspection. It is therefore not an appropriate basis for setting the fees. The department has set the fees for outside experts retained by it to conduct some aspect of the review as "reasonable" fees. The department did this to avoid setting a range in the rule, which would encourage or allow experts to always charge at the high end of the range regardless of what was involved. Under law defining the reasonableness of expert fees, the following factors are applied: (1) the education and training required to provide the expert insight that is sought; (2) the prevailing rates of other comparably respected available experts; (3) the nature, quality and complexity of the inquiry required; and (4) the fees the expert usually charges for such work. Grady v. Jefferson County, 249 F.R.D. 657, 658 2008 U.S. Dist. LEXIS 19853 (Feb. 25, 2008).

COMMENT #77: A commentor supported the use of a fee schedule to fund staff time for plan review. The plan review fee structure could be simpler, however.

RESPONSE #77: See Response #76.

COMMENT #78: Is it possible for counties to do plan review under a cooperative agreement if they have qualified personnel? Counties should be allowed to set their own plan review fees, based on local costs. In addition, if counties are going to

conduct the preopening inspections, there should be a mechanism for counties to get paid for that work.

RESPONSE #78: These rules address the regulation of operators of pools, spas, or other water features. They do not address the relationship between the state of Montana Department of Public Health and Human Services and local health departments. Under the cooperative agreement provided for in 50-53-209, MCA, local health departments and the department will jointly define which inspection duties the local department is reasonable for. Payment is governed by the provisions of 50-53-203(3), MCA.

COMMENT #79: A commentor stated that it needs to be made clear how funds will be allocated to the local agency that provides the interim and preopening inspections.

RESPONSE #79: See Response #78 and 50-53-203(3), MCA.

COMMENT #80: A commentor proposed a one-time construction fee so owners do not have to worry about having to pay more fees. This comment applies to all rules dealing with fees.

RESPONSE #80: The department understands the concern and has modified the fee table. However, if a project requires additional inspections due to its complexity or because there were problems with the applicant failing to comply with requirements and extra review is needed, that applicant will need to pay the additional inspection fees.

COMMENT #81: A commentor requested that language be added to the rule to allow for local health agencies to charge for preopening inspections.

RESPONSE #81: See Response #78.

COMMENT #82: Rule XV(2) (37.115.312) conflicts with the last sentence of Rule XIII(4) (37.115.309).

RESPONSE #82: The department disagrees. Rule XV(2) (37.115.312) addresses the situation in which the department determines it must ask for additional information beyond that originally requested in the plan review packet. Rule XIII(4) (37.115.309) addresses the situation where the applicant has failed to submit all information originally requested in the plan review packet.

COMMENT #83: Several commentors explained that, regarding Rule XVI (37.115.313), following a second reviewer's advice concerning pool review presents an issue of liability may arise if there is a difference of opinion between the applicant's engineer and the reviewer's engineer retained by the department since the completed work may not be certified by the applicant's engineer and that engineer's liability insurance covers the work. The commentors contend that outside

review of plans for items the department staff does not have the expertise to review should be paid for under the fees already submitted.

RESPONSE #83: The department disagrees. The department has the obligation to conduct sufficient review to ensure compliance with the rules. If needed, the department will retain an outside review to assist it. If there is conflict between the applicant's engineer and the engineer retained by the department, the license will not be issued until that conflict is resolved.

COMMENT #84: A commentor supported contracting with an outside engineer in order to ensure compliance with the rules.

RESPONSE #84: The department acknowledges and appreciates the comment.

COMMENT #85: The language in Rule XVI (37.115.313) should be changed to provide that if there are challenges to the department's review, the department may contract with an outside engineer for review. The fees associated with an outside engineer should be the responsibility of the party submitting plans for review. These fees must be paid prior to licensing.

RESPONSE #85: The department disagrees. If a legal dispute arises and the department then retains an expert engineer to assist in defending its decision, the engineer is the department's expert for purposes of the legal proceedings and the cost for that expert must be paid by the department.

COMMENT #86: A commentor asked whether Rule XVII(2) (37.115.314) allowed the department to visit project sites arbitrarily and charge visit fees relating to project components after an owner has already paid the plan review fee for the entire project.

RESPONSE #86: No. Rule XVII(2) (37.115.314) allows the department to identify benchmark points in the construction process where it will need to verify the construction site. Decisions about the benchmarks will be based on the complexities of the project.

COMMENT #87: It is redundant for Rule XVII (37.115.314) to allow the department to charge a fee to verify whether an application is complete. The rule could be omitted.

RESPONSE #87: The department disagrees. Rule XVII (37.115.314) refers to fees for site visits conducted during predetermined benchmark points in the construction process. In addition, Rule XVII(4) (37.115.314) needs to be included into the plan review fee and not stand as its own feet. Table 1 has been retitled "Fee Table".

COMMENT #88: The time for construction to commence after plan review has been approved is too short as set forth in Rule XVIII (37.115.316).

RESPONSE #88: The department agrees and has revised Rule XVIII (37.115.316).

COMMENT #89: Does the state have the manpower and expertise to perform construction observation under Rule XIX (37.115.317)? Does observation relieve the pool designer from design responsibility?

RESPONSE #89: Although the department will not be on the construction site throughout construction, any time there is a question or concern about a component, the department has a right to visit the construction site. Additionally, the department may require the licensee to notify the department of upcoming benchmark points in the construction so that the department's inspector may make a visit before construction continues beyond that point.

COMMENT #90: It is unclear when and how local health departments will be reimbursed for construction inspections.

RESPONSE #90: See Response #75.

COMMENT #91: Rule XX(2) (37.115.319) refers to the review of changes in approved plans. It is unclear what level of change requires department review.

RESPONSE #91: Any time a change occurs from an approved plan the department must receive documentation in advance and must approve the change in writing. The department has added language to Rule XX (37.115.319).

COMMENT #92: A commentor referred to Rule XX (37.115.319) and stated that the designer needed to certify and submit the "record drawing" and noted that the project was built in accordance to the approved plans and current regulations, which is what MT-DEQ utilizes.

RESPONSE #92: The department appreciates the comment to Rule XX (37.115.319) and has taken care of the concerns by revising the language in Rule XX (37.115.319).

COMMENT #93: A commentor believed that Rule XXI (37.115.321) is a good addition to the rules.

RESPONSE #93: The department acknowledges and appreciates the comment.

COMMENT #94: A commentor stated that Rule XXII (37.115.323) is unreasonable. It is unreasonable to require an owner to wait for review when a piece of equipment like a pump needs to be replaced. It could take 30 days and the delay would affect business.

RESPONSE #94: The department agrees and has clarified throughout the rules that review is not required when equipment is replaced with identical or substantially

similar equipment or components. However, the department must be notified of the change to equipment.

COMMENT #95: Several commentors referred to Rule XXIII and stated that the classifications listed in the draft rules do not match ANSI, that the classifications contain many discrepancies, and that the classifications have no real purpose in rule application.

RESPONSE #95: The department agrees and appreciates the comment. The department will not be adopting Rule XXIII.

COMMENT #96: Rule XXV(2) (37.115.503) states that nontempered glass is not allowed in the entrance of any pool. Does entrance refer to the pool room or the pool itself?

RESPONSE #96: The department agrees that Rule XXV(2) (37.115.503) is not clear and has changed the language in Rule XXV (37.115.503) to clarify this concern.

COMMENT #97: Rule XXIX(3) (37.115.507) talks about the depth being marked if there is a bench in the pool. The rule does not state what owners should use to mark the depth or how the depth should be marked. If a bench is of a contrasting color, why would the depth have to be marked? Additionally, a bench placed in the shallow end of a pool would already be marked with "No Diving".

RESPONSE #97: The department agrees that the additional marking requirements in the rule are not clear and has made changes to Rule XXIX (37.115.507). Due to the design of such a pool that is not a spa, there is an increased risk of injury.

COMMENT #98: Rule XXIX (37.115.507) contains numerous discrepancies and redundancies.

RESPONSE #98: The department disagrees and is unable to respond further since any alleged discrepancies and redundancies are not identified.

COMMENT #99: Rule XXVII (37.115.505) needs to be clarified. The rule contradicts the rules on lazy rivers and other special water features.

RESPONSE #99: The department disagrees that the rule is contradictory. Locations of lifeguards are paramount to protecting public safety. ANSI standards state that lifeguard shall be placed in locations that ensure the adequate supervision of bathers.

COMMENT #100: Rule XXVII(37.115.505) is redundant.

RESPONSE #100: The department disagrees. This rule is set out in the design and construction section of the rules to identify general factors that must be considered

at this phase of a project. That does not make it redundant even though other aspects of that topic (shape) must also be considered in the subchapters addressing circulation systems and in sections on lifeguard placement.

COMMENT #101: Rule XXX(3) (37.115.508) does not refer correctly to ASME.

RESPONSE #101: The department acknowledges and appreciates the comment. The correct description should say "ANSI/ASME A112.18.8-2007". For easier interpretation and meaning, this will be removed and the general phrase "VGBPSSA" will be used instead. The Virginia Graeme Baker Act incorporates ANSI/ASME A112.19.8-2007.

COMMENT #102: A commentor stated that some pools are being sold as "Virginia Graeme Baker Act-approved" main drain covers. The design of the pump and filtration does not hold the main drain cover to VGBPSSA compliance; therefore, the filtration is greater than 1.5 feet per second. An engineer should be required to verify that the flow through the VGBPSSA cover on the pool is in compliance.

RESPONSE #102: The department agrees and is requiring certification by a professional engineer that the main drain complies with the requirements of the VGBPSSA, which sets a maximum velocity of 1.5 feet per second for a main drain. The certification will need to be submitted to the department within one year after the effective date of these rules, though no pool, spa, or other water feature may operate until its main drain is in compliance with the VGBPSSA.

COMMENT #103: A commentor stated that the rule needs to be clarified to explain that the sanitarian is not determining the compliance. This responsibility of compliance must rest on the operator to document compliance or have a P.E. provide documentation.

RESPONSE #103: The department acknowledges and appreciates the comment. The pool facilities will have to provide documentation that the velocity through the main drains with the VGBPSSA covers in place do not exceed 1.5 feet per second. Operators will not have the expertise to ensure the velocity through the main drains is 1.5 feet per second or less.

COMMENT #104: A commentor referred to Rule XXXI(1) (37.115.509) and requests that the word "flat" or "horizontal" be inserted before the word "edge".

RESPONSE #104: The department agrees and has added the word "flat" to Rule XXXI (37.115.509).

COMMENT #105: With respect to Rule XXXIII(1) (37.115.511), a commentor supported Rule XXXIII(1) (37.115.511) because many older pools have poor ventilation systems, and the buildup of chloramines can be substantial.

RESPONSE #105: The department acknowledges and appreciates the comment. The buildup of chloramines can be harmful to the lungs and mucus membranes of swimmers and employees when ventilation does not add adequate fresh air from the outdoors.

COMMENT #106: A commentor, referring to Rule XXXIII (37.115.511), recommended adding language that requires any future remodels to bring a facility into compliance with the most current air quality standards. Such facilities should also be required to have a written air-improvement plan to mitigate air quality issues, should problems occur.

RESPONSE #106: The department agrees and has added language to Rule XXXIII (37.115.511).

COMMENT #107: A commentor directed the department's attention to the September 2006 Morbidity and Mortality Weekly Report (MMWR) concerning an outbreak causing respiratory illness in at least 24 people associated with the build-up of chloramines and a lack of ventilation in an indoor swimming pool. Another MMWR documents respiratory illness among employees that work in an indoor water park.

RESPONSE #107: The department acknowledges and appreciates the comment.

COMMENT #108: A commentor referred to Rule XXXIII(2)(a) through (e) (37.115.511) and stated that the rule appears to address ventilation at poolside, but the rule can only be applied to dressing rooms, shower rooms, and bathrooms. It appears that the standards in the rule were meant to apply to the entire facility, including these rooms.

RESPONSE #108: The department agrees and appreciates the comment. Clarification has been added to Rule XXXIII (37.115.511).

COMMENT #109: A commentor stated that there is a conflict with a statement in Rule X(3)(b) (37.115.307). If Rule X(3)(b) (37.115.307) does not relate to air quality, and the department will not be measuring humidity, why is (b) included as a requirement?

RESPONSE #109: Although the department will not be responsible for calculating the air flow in an indoor pool, for new pools, the applicant or operator will be required to have documentation stating that the ventilation meets local building code or ASHRAE requirements. Additionally, if any empirical evidence shows poor air ventilation as shown under Rule XXXIII (37.115.511) as seen to the response for comment #110 below, then the facility will be required to correct the problem.

COMMENT #110: A commentor stated that the standards cannot be met for an indoor pool in October. This has to do with the one degree temperature difference between the air and the pool temperatures and with the amount of air change.

RESPONSE #110: Any indoor pool facility shall have the air recycled adequately to prevent the buildup of stagnant air. This would help prevent condensation buildup as well as provide enough fresh air to not create a health hazard for swimmers or workers due to chloramines. The temperature of the room should be 2 to 3 degrees warmer than the pool water for comfort. The department does not understand how the month of October would create an issue with airflow for a building or altering the temperature of the air in an indoor pool facility. Because many sanitarians as well as pool operators will not be taking ambient (air) temperatures or recording the humidity (which affects condensation), Rule XXXIII(1) (37.115.511) is adequate enough to empirically determine if the air quality is acceptable.

COMMENT #111: Rule XXXIV (37.115.513) does not specify whether it applies to in-pool or deck lighting. The rule should contain more specific or measurable lighting requirements.

RESPONSE #111: The department acknowledges and appreciates the comment. The clarification has been added to Rule XXXIV (37.115.513).

COMMENT #112: A commentor believed that language should be added to Rule XXXIV (37.115.513) to state: "These new rules will help reduce the risk of drowning".

RESPONSE #112: The department acknowledges and appreciates the comment. However, the proposed language need not be added to the rule. The risk of drowning is more related to Rule XCV (37.115.1315) concerning clarity of water.

COMMENT #113: A commentor pointed to Rule XXIV (37.115.502) and stated that the proposed two-inch disk that is supposed to be seen at the bottom of a pool would not be able to be seen with the glare. The commentor believed that the use of a two inch disk is not reasonable and that a six inch should be required by the rule.

RESPONSE #113: The department believes that the commentor most likely meant for this comment to apply to Rule XCV (37.115.1315). The clarity of the water necessary to see the bottom of the pool is the defining measurement for safety. As stated in Rule LXXXIX (37.115.1308) and Rule XCV (37.115.1315), the clarity of the water can be measured using a turbidity test. The department agrees that the six inch disk should be used instead of a two inch disk. The department has changed the language accordingly in Rule XCV (37.115.1315).

COMMENT #114: A commentor referred to Rule XXXV (37.115.515) and would like to see the design requirement based on another factor other than the maximum loading rate of a pool area. Commentor would like to adjust the facility occupancy to a "safer" lower number of allowed occupants and adjust the bath house facilities based upon that number.

RESPONSE #114: The department disagrees. All design requirements are based on maximum capacity. There may always be a lower number of occupants allowed entry to a facility.

COMMENT #115: A commentor referred to Rule XXXVI(2) (37.115.517) and stated that commentor's pool facility has a four-foot deck around the pool. The six-foot requirement in the rule means that a wall would have to be removed at commentor's facility, and removing a wall would not be practical or possible.

RESPONSE #115: The department acknowledges the comment. Rule XXXV(2) provides that the decking around an existing privately owned public pool is only required to have a four-foot deck around the pool. Existing municipal owned pools are required to have a six-foot deck. Any time an applicant undertakes an upgrade or major repair, current standards will need to be met.

COMMENT #116: With respect to Rule XXXVII(3) and (5) (37.115.518), if the deck carpet is six feet from the pool and the deck cannot slope to the carpet, it will have to slope toward the pool. This is not permitted. A deck drain system is needed. The phrase "and to a deck drain" should be added at the end if Rule XXXVII(5) (37.115.318) to clarify the rule.

RESPONSE #116: The department appreciates the comment but does not see how adding "and to a deck drain" would clarify the rule. In many designs the decking slopes toward a gutter or a drain. The carpet, being six feet away from the pool, would not be within the area of the decking. If carpet is provided six feet away from the pool, typically it is at a higher elevation than the gutter or drain because the decking around it is sloping to the gutter or drain.

COMMENT #117: A commentor stated that its facility uses carpet on the step leading into and out of the spa. The commentor believes that the carpet is an important safety feature.

RESPONSE #117: The department acknowledges and appreciates the comment. This comment appears to reflect a unique situation. However, carpet on a step leading into or out of a spa will become unclean and its condition will deteriorate. Therefore, another method will be required to prevent the steps from becoming slippery without creating cleaning concerns. Rubber matting has been utilized in many pool facilities, as well as nonslip surfaces. Deck carpet may no longer be used within six feet of a pool, spa or other water feature.

COMMENT #118: Several commentors referred to Rule XXXVII (37.115.518) and recommended that the department add clarifying language about where indoor deck drains – versus outdoor deck drains – are required to connect. For example, are indoor deck drains required to go to the sanitary sewer? Is landscaping considered a perimeter drain system for outdoor pools, or do outdoor pool drains also have to connect to the sanitary sewer?

RESPONSE #118: The department believes it is clear in Rule XXXVII (37.115.518) of the rule stating "effectively drain either to perimeter areas or to deck drains. Drainage shall be designed to remove splash water, deck cleaning water, and rain water to the waste water disposal system without leaving standing water". Rule XXXVII (3) (37.115.518) also states that outdoor pools shall utilize either perimeter or drain systems. Indoor pools will be required to move grey water to the sanitary sewer with an air gap provided as well. Outdoor pools will be allowed to use a landscape design as long as standing water is not evident.

COMMENT #119: Rule XXXIX (37.115.521) should state that hose connections must be installed to enable all parts of the swimming pool or spa area to be reached for cleaning. Currently the rule only demands that small pools comply.

RESPONSE #119: The department disagrees with the commentor's interpretation. The pressure against a backflow prevention device may be too great if a hose is longer than 50 feet. The rule requires hose connection at many locations as needed to allow all parts of the pool, spa or other water feature to be cleaned by a hose no longer than 50 feet.

COMMENT #120: The 50-foot hose length should be deleted and the existing rule wording "are easily manipulated lengths" kept.

RESPONSE #120: Because many types of backflow prevention are available, the department agrees with the spirit of the comment. The length of hose must be supported by the appropriate backflow prevention device. The department has modified the rule accordingly.

COMMENT #121: It is unclear whether water supply in Rule XL (37.115.522) refers to a public water system.

RESPONSE #121: Any time a privately or publicly owned pool or water feature provides water for transient guests or the community, it is considered a public water supply. A public water supply can originate from a well, spring, reservoir, or public utilities. An example of a water system that is not a public water supply is a private well serving one household and used only by that family.

COMMENT #122: Rule XL (37.115.522) refers to DEQ publications and administrative rules that are not current. The entire rule needs to be replaced with the most current approved DEQ water supply rules.

RESPONSE #122: The department agrees that at the time the proposed draft pool rules were created, the reference to the DEQ water supply rules was not current.

COMMENT #123: Rule XLI(5) (37.115.523) states that mop water or cleaning solutions cannot be disposed of in a toilet or mop sink. How should mop water or cleaning solutions be disposed of?

RESPONSE #123: The department disagrees with the interpretation of Rule XLI(5) (37.115.523). Rule XLI(5) (37.115.523) states that mop water or soiled cleaning water may not be disposed of in any sink other than a mop or utility sink or toilet.

COMMENT #124: A commentor referred to Rule XLIII and stated that the 60 inch fence requirement does not match the ANSI-2 Standard incorporated in Rule IV (37.115.201).

RESPONSE #124: The department agrees. However, the ANSI standard concerning barriers is found in ASI/NSPI-8-1996, and the reference has been removed from Rule IV (37.115.201). Rule XLIII (37.115.602) is more specific and will take priority over the standards in ANSI for height of fencing.

COMMENT #125: With respect to Rule XLIII (37.115.602), a commentor stated that his or her facility gates open inward and asked why the proposed rule says that the gates must open outward.

RESPONSE #125: Since plan review is generally conducted by multiple agencies, the department is attempting to avoid conflicting requirements. Typically the fire department requires gates to open outward.

COMMENT #126: A commentor, referred to Rule XLIV (37.115.603), and asked whether barriers are required for flow-through splash decks and splash decks on recirculation systems and asserts that a five-foot barrier could create more problems than it would solve.

RESPONSE #126: The department will require barriers at least five feet high around splash decks to reduce the potential for contamination by animals that carry diseases and parasites such as cryptosporidium or giardia.

COMMENT #127: A commentor stated that fences are meant to protect splash decks from animals. Splash decks are unattended, which will reduce the effectiveness of the barriers.

RESPONSE #127: The department agrees that an attendant would help facilitate the closing of a gate. However, self-closing gates are available.

COMMENT #128: Rule XLV (37.115.602) is confusing. Clearer wording is needed.

RESPONSE #128: The department has modified the language in Rule XLV (37.115.602) to make it clearer.

COMMENT #129: The date referenced in Rule XLVI (37.115.603) should be changed from January 1, 2010 to January 1, 2012, in order to give owners sufficient time to budget for improvements.

RESPONSE #129: The department agrees that more time is appropriate but will extend the time only to December 31, 2010.

COMMENT #130: A commentor asks whether Rule XLIV (37.115.603) applies to class C or semi-private pools.

RESPONSE #130: Classification of pool rules is being removed and won't be adopted. Rather than considering "class C" or "semi-private" pools, consider the following: indoor pools usually already have walls for barriers; however, a barrier of four feet must remain between a wading pool and a swimming pool. Any outdoor pool that is not a splash deck will still be required to have a barrier 60 inches in height. An indoor pool that does not have a barrier and is in open area such as an atrium will also need to install a barrier to keep anyone using the open area from having unsupervised access to the pool.

COMMENT #131: Rule XLVII(2) and (3) (37.115.701) are confusing and redundant.

RESPONSE #131: The department agrees and has modified Rule XLVII (37.115.701).

COMMENT #132: Rule XLVIII (37.115.702) requires recessed treads and should have similar descriptions. Instead, descriptions vary greatly.

RESPONSE #132: The department disagrees. The rule describes entries into a pool and placement of steps and ladder may be provided in the deep end. Steps or ladders may be provided in the shallow end.

COMMENT #133: It is unreasonable for Rule XLVIII (37.115.702) to require two handrails.

RESPONSE #133: The department disagrees. Rule XLVIII (37.115.702) is specific to ladders, not handrails.

COMMENT #134: What is the intent of Rule LI (37.115.706)? It is unclear whether handholds are required to extend into the pool. There are many different types of coping available. Typically, a place to hang on is inherent with the deck and edge of pool.

RESPONSE #134: Coping or the end of decking may be designed for a handhold. The handhold is not to be any further than 12 inches above the height of the water. In other words, it has to stay within easy reach of a swimmer at the side of the pool. If the commentor is referring to Rule LII (37.115.707), the handrail attached to the ladder must reach to the bottom step of the ladder.

COMMENT #135: Rule LII (37.115.707) conflicts with some building codes. In the event of a conflict, which standard will govern?

RESPONSE #135: The commentor did not identify any specific conflicts, so the department was unable to respond. Rule LII (37.115.707) has been modified to clarify the minimum distance these rules require a handrail to cover.

COMMENT #136: Rule LII(1) (37.115.707) should be simplified to state that handrails are required wherever ladders, stairs, or recessed treads are provided.

RESPONSE #136: See Response #135.

COMMENT #137: A commentor stated that Rule LII(2) and (4) (37.115.707) contradict each other. Either the handrail should go to the last step or it should be 18 inches shy of the last step.

RESPONSE #137: See Response #135.

COMMENT #138: Rule LIII (37.115.801) should be modified to reflect that diving boards may not be used until documentation has been provided showing that the diving boards meet manufacturer specifications.

RESPONSE #138: The department agrees. Rule I(1)(d)(37.115.101) prohibits use of any diving board unless it complies with ANSI-1-1991. The rule has been modified to require documentation that the diving board complies with ANSI-1-1991 or with any manufacturer's guidelines that are more stringent.

COMMENT #139: The title of Rule LIV (37.115.802) should be modified. The rule deals more with general applicability than specific.

RESPONSE #139: The department disagrees. The title of the rule will main as proposed.

COMMENT #140: Figure 2 in Rule LV (37.115.804) references "pt. A" but does not define it. Clarification is needed.

RESPONSE #140: The department agrees and also notes that the use of pool classification labels also confused use of proposed Tables 3 and 4 which are used in conjunction with Figure 2. The figures and tables have been modified to clarify them. The figure and table from the existing rule has been used with correction of a typographical error.

COMMENT #141: With respect to Table 3, the column heading "Pool Type" is confusing. The classifications refer to diving well types listed in the pool classifications in Table 4. The department should consider changing the column headings to height and board length. Combining Tables 3 and 4 into one table would make the rule easier to understand.

RESPONSE #141: See Response #140.

COMMENT #142: Rule LVIII (37.115.902) should be modified to make it clear to which facilities Rule LVIII (37.115.902) applies. Are all facilities required to have toilets, showers, and dressing rooms?

RESPONSE #142: The department appreciates the comment and has clarified the rule. Classification of facilities has been removed.

COMMENT #143: The table for the number of required bathrooms in Rule LIX (37.115.903) begins at too high a number and does not take into account smaller facilities.

RESPONSE #143: The department disagrees. The ratios adopt the International Building Code (IBO) requirements which have been adopted in Montana for building standards.

COMMENT #144: With respect to Rule LIX (37.115.903), how are fixtures in a family changing room or unisex bathroom counted?

RESPONSE #144: Unisex rooms are additional restrooms added at the election of the facility. Installing a unisex or family restroom or changing room does not allow a facility that is otherwise not meeting the minimal requirements for facilities for men and women to come into compliance with the rule. A unisex bathroom would need to meet the requirements under Rule LXII for a pool associated with a motel, a hotel, or other lodging. That means at a minimum it must have at least a toilet, sink, and changing table available. If it is a unisex or family changing room, it must also have a shower and dressing room.

COMMENT #145: One commentor stated that the standards set forth in Rule LIX (37.115.903) are not very stringent standards, especially for hand sinks. Does Rule LIX (37.115.903) provide an adequate fixture count to help prevent waterborne outbreaks? Does the Department of Labor and Industry control the number of fixtures?

RESPONSE #145: The department disagrees with the comment. The numbers of fixtures required are set by the International Building Code (IBC). Those are the current applicable standards used in Montana.

COMMENT #146: Do the shower requirements in Rule LX(1) (37.115.904) apply to Class C pools?

RESPONSE #146: The classification of "Class C" will be removed from the rules. However, new pools at hotels, motels or lodging need to provide at least one shower near the pool. Rule LVIII (37.115.902) has been clarified to described what is required.

COMMENT #147: A commentor asked whether hand sanitizer is strong enough to be used in lieu of soap and water at changing tables. It is better to wash hands with soap and water, and it takes 800 ppm of bleach to kill E coli.

RESPONSE #147: The department agrees and has clarified the rule to require EPA approved disinfectant wipes to be available to clean the changing table. Sinks with tempered water and soap are also required in the restroom.

COMMENT #148: A commentor states that having changing tables in locker rooms will increase safety risks and vandalism. Also, the diaper changing stations will increase the risk of transmission of disease. Moreover, maintaining supplies will be an unnecessary expense.

RESPONSE #148: The department disagrees. The benefit of having the changing table outweighs the burden associated with a risk of vandalism. Moreover, when diapers are changed at a central location and hand-washing facilities are available, there is a decrease in disease transmission. This will eliminate diaper changing poolside.

COMMENT #149: Rule LXIII (37.115.1001) is redundant. It repeats definitions found elsewhere. The portion of the rule that references circulation and recirculation can be added to Rule III (37.115.105).

RESPONSE #149: The department appreciates the comment, but is keeping the rule.

COMMENT #150: The department should maintain current turnover rates. Costs increase 45 percent by increasing the turnover rates due to electricity use, chemical use, and possibly having to replace existing pipes with larger pipes and larger pumps. If the water becomes cloudy, the owner has to shut down the pool anyway. This is a subject for resolve between an owner and an engineer.

RESPONSE #150: The department has reviewed the issue of turnover rates, particularly with the length of time that a secondary ultraviolet disinfectant needs to increase its effectiveness and is modifying the proposed rule to retain current turnover rates.

COMMENT #151: There are many factors that influence the transmission of waterborne diseases other than turnover rate. There are also many methods of water treatment to prevent illness. Turnover rate is not the problem concerning disinfection; the problem is whether the chlorine level is adequate.

RESPONSE #151: See Response #150.

COMMENT #152: The turnover rates listed for catch pools, lazy rivers, vortex pools, and interactive play attractions are inconsistent among themselves in terms of time/bather load composition. If you use ultraviolet or ozone for giardia or

cryptosporidium inactivation, the time of exposure to those elements increases the success of inactivation. If turnover rates are increased, the time of concentration is reduced therefore lowering the inactivation possibility.

RESPONSE #152: See Response #150.

COMMENT #153: A commentor proposed that a maximum 6-hour turnover rate be imposed on pools with an average depth greater than five feet; a 4-hour turnover rate on pools with an average depth of four feet; and a 3-hour turnover rate on pools with an average depth of three feet. Pools that have a maximum depth of 24 inches should have a turnover rate of one hour. A filtration system for a splash deck with no standing water should be 30 minutes. All spas and hydrotherapy pools should have a 30-minute turnover, and all flow-through pools should have an 8-hour turnover. Proposed Table 6 of the rule conflicts with ANSI/AF-9-2005 Section 4.15 (Turnover Time).

RESPONSE #153: See Response #150.

COMMENT #154: What is the purpose of clockwise flow, as referenced in Rule LXV(5) (37.115.1003)?

RESPONSE #154: Clockwise flow is the natural circulation of water flow in the northern hemisphere. The department has removed the reference to clockwise flow from the rule to prevent misunderstanding. Rule LXV (37.115.1003) has been modified.

COMMENT #155: Commentor requests that the use of vacuum sand filters should be listed as not needing a strainer or screen.

RESPONSE #155: The department has reviewed information on sand filters and has modified the proposed rule to address this issue.

COMMENT #156: Commentor believes that (5) should be removed from Rule LXVI (37.115.1005) or moved to the construction portion of the rule. The reference to the Standard is incorrect and should say NSF/ANSI 50 2008.

RESPONSE #156: The department acknowledges and appreciates the comment. However, the pump requirement of meetings standards will remain in this rule. The typographical error has been corrected.

COMMENT #157: The reference to ANSI/NSF 50-2000 should be removed. The department should add the requirements of the standards in this section.

RESPONSE #157: The department acknowledges and appreciates the comment. The reference to ANSI/NSF has been corrected. Adding the requirements of the standards would be too cumbersome. Many pumps can be found on an approved list by NSF/ANSI.

COMMENT #158: The requirement for floor inlets is problematic in light of Montana's northern climate. The inlets freeze and break if they are not drained. Why is the department requiring floor inlets on pools over 40 feet in width? Floor inlets are maintenance items. They cause more problems than they solve.

RESPONSE #158: The department agrees that the climate in Montana is not conducive to the use of floor inlets. The department will not require such designs; instead, the department will allow owners to choose whether they want to use floor inlets. Rule LXVII(4) (37.115.1006) has been eliminated.

COMMENT #159: Rule LXVII(2) (37.115.1006) requires a minimum of two inlets regardless of the size of the pool. This provision contradicts (3)(a) and (3)(b)

RESPONSE #159: The department disagrees with commentor's interpretation that there is a conflict. Rule LXVII(2) (37.115.1006) creates a minimum requirement for two inlets for smaller water features. They cannot be more than 15 feet apart, but can obviously be closer to allow the minimum of two inlets.

COMMENT #160: A commentor believed that Rule LXVII(4) (37.115.1006) is incorrect. Pools with widths greater than 40 feet will require gutter systems.

RESPONSE #160: The department is confused by the comment. Inlets are addressed in Rule LXVII (37.115.1006). Gutters are addressed in Rule LXIX (37.115.1008).

COMMENT #161: The first sentence of Rule LXVII(1) (37.115.1006) is a definition. A definition should not be included in the rule section.

RESPONSE #161: The department agrees and has deleted the redundant portion of (1) in Rule LXVII (37.115.1006).

COMMENT #162: The reference to ANSI/APSP-7 2006 in Rule LXVIII (37.115.1007) should be replaced with corresponding wording into the body of the rules.

RESPONSE #162: The department has clarified the applicable standard for safety features for outlets by referring to the VGBPSSA throughout these rules where outlets are addressed.

COMMENT #163: Rule LXVIII(5)(b) (37.115.1007) states that "there must be an inlet within five feet of any corner in the pool". This statement should be placed in Rule LXVII (37.115.1006) instead of Rule LXVIII (37.115.1007).

RESPONSE #163: The department agrees and has relocated the statement from Rule LXVIII (37.115.1007) to Rule LXVII (371.115.1006).

COMMENT #164: With respect to Rule LXVIII(5)(c) (37.115.1007), a commentor stated that if skimmer drains cannot be isolated from other skimmers, it will be impossible to vacuum a pool. The commentor believed that without the use of shut-off valves, a certain percentage of water flow cannot be regulated through the skimmers.

RESPONSE #164: The department has reviewed the comment. However, the change will not be made because it would not comply with the safety requirements of the VGBPSSA,

COMMENT #165: The reference to ANSI/APSP-7 2006 should be removed from Rule LXVIII(6) (37.115.1007). The department should add the language found in ANSI/APSP-7 2006 to the rule.

RESPONSE #165: See Response #164.

COMMENT #166: The 100 percent requirement in Rule LXIX(4) (37.115.1008) conflicts with the 70 percent requirement in Rule LXV(1) (37.115.1003). The 100 percent requirement will cause pipes to be oversized so that during normal operation, the velocity of flow could cause sediment deposition. This could foster growth of bacteria.

RESPONSE #166: The department agrees with the comment and appreciate the statement. Because the department has not observed any issues with undersized gutters, Rule LXIX(4) (37.115.1008) has been removed.

COMMENT #167: Rule LXIX(7) (37.115.1008) should say percent below the overflow gutter, not above. The rule should also be changed to say that the water level in the pool, spa, or other water feature must be maintained within two inches to the overflow of the gutter, or as required by the manufacturer.

RESPONSE #167: The department acknowledges and appreciates the comment. However, in order to obtain a continuous skimming of water from the pool and filling the gutter system, the requirement must be "above" the gutter. If a gutter system includes skimmers, it may operate as designed by the manufacturer, which might require the water level to be maintained at a lower level.

COMMENT #168: Rule LXX(3) (37.115.1009) conflicts with the 70 percent requirement in Rule LXV(1) (37.115.1003).

RESPONSE #168: The department disagrees with the comment. Rule LXX(3) (37.115.1009) refers to requirement that the skimmer be designed to handle 100 percent of the flow, while Rule LXV(1) (37.115.1003) requires at least 70 percent of actual filtration to occur by the skimmers, when used along with a main drain.

COMMENT #169: With respect to Rule LXX(6) (37.115.1009), a commentor stated there are not equalizer covers available.

RESPONSE #169: The department disagrees. According to CPSC, the Consumer Product Safety Commission, there are equalizer line covers available and currently in production to include other equalizer designs. Also, another method for meeting compliance is to have the equalizer lines completely blocked off. For newly installed skimmers, owners have the option of not installing the equalizer line component of the skimmer. Equalizer lines should not be used until they comply with VGBPSSA.

COMMENT #170: A commentor referred to Rule LXXI (37.115.1010) and states that the department should add sand vacuum filters and hair lint filers on vacuum D-E filters into the rule.

RESPONSE #170: The department acknowledges and appreciates the comment; however, it is unclear where the commentor thinks the language should be placed in Rule LXXI (37.115.1010). If the commentor is meaning to ensure that all components are included, (4) was added. This rule is intended for vacuum equipment that attaches to a skimmer and cleans the bottom of the pool where the patrons swim.

COMMENT #171: Rule LXXII(3) (37.115.1011) identifies one particular manufacturer's specifications for the installation of a flow meter. Instead, the rule should state that the flow meter must be installed per manufacturer specifications.

RESPONSE #171: The department acknowledges and appreciates the comment. Language has been modified to require compliance with the manufacturer's guidelines.

COMMENT #172: Rule LXXII(5) (37.115.1011) references ANSI/NSF 50-2008. The reference should be removed and the department should add corresponding wording to the rules.

RESPONSE #172: The department disagrees. See Response #38.

COMMENT #173: Rule LXXII(6) (37.115.1011) uses the word "filter" when it should state "replacement cartridges".

RESPONSE #173: The department acknowledges and appreciates the comment. However, by using the term "filter" to replace a cartridge, the rule may be interpreted as sand filter media. "Cartridge" will remain in Rule LXXII (37.115.1011).

COMMENT #174: The color specifications in Rule LXXIV (37.115.1015) are contrary to standards used by the water treatment industry.

RESPONSE #174: The department agrees that specifying the method marking of pipes is not necessary for these regulations and is revising Rule LXXIV (37.115.1015).

COMMENT #175: Small community pools do not have the labor force to take care of ORP readers required by Rule LXXV (37.115.1016) correctly, so they read precisely and they do fine with the approved DPD test kit approved by the state.

RESPONSE #175: The department disagrees. A certified pool operator should have no problem in taking care of an ORP reader. The department does agree that some facilities do perform accurate and timely water testing and successfully maintain proper chemistry for their pool. The department has therefore modified the rule so that new upgraded pools are not all required to install ORP systems. However, if there are repeated problems with water quality during successive inspections, the department may require the installation and use of an ORP system.

COMMENT #176: A commentor supported Rule LXXV (37.115.1016). The commentor has seen a marked decrease in the number of critical item violations and pool closures in facilities that have automatic systems. These systems are able to respond quickly to increases in bather load keeping water chemistry more consistent.

RESPONSE #176: The department acknowledges and appreciates the comment.

COMMENT #177: A commentor requested scientific reasoning for requiring the ORP when manual testing and documentation works.

RESPONSE #177: Please visit the TCC website for scientific study done on ORP and chlorine readings in NSPI Water Chemistry Symposium, Phoenix, AZ published in NSPI Symposium Series, Vol. I (1996). Additional information on ORP can be found by logging into www.montanapublichealthtcc.org.

COMMENT #178: A commentor referring to Rule LXXV (37.115.1302), stated that a 0.2 ppm combined chlorine level is unrealistic; 0.5 pmm is the current standard and is very difficult to reach once swimmers are in the pool; maintain the current standard.

RESPONSE #178: The department agrees that identifying a 0.2 ppm combined chlorine level is difficult to identify with many DPD test kits and difficult to maintain with high bather loads. By requiring use of showers for aquatic facilities and by not allowing the use of cyanuric acid for indoor pools, the combined chlorine levels should take longer to build up, leaving more free chlorine available for a longer period of time. Most pools do not have a reader that discriminates in 0.1 increments. The department has therefore modified the rule and will monitor the effectiveness of these measures to determine if in the future it should amend the rule to set a lower level.

COMMENT #179: A commentor, referring to Rule LXXXVII(2) (37.115.1305), asked about (2)(a) through (c), whether the limits in the rule were established from existing data, industry standards, or other state requirements and would like a comparison.

RESPONSE #179: The numerical values included in the rule have been set by EPA, Quality Criteria for Water, for the maximum amount of bacteria that may be found in water before an individual becomes sick from contact with that water. Additional information may be found by contacting Procedures for Developing compliance Rules for Water Quality Protection, Criteria and Standards Division, Office of Water Regulations and Standards Environmental Protection Agency, 401 M Street SW, Washington, DC 20640 or www.epa.gov/waterscience/criteria. See also response #178.

COMMENT #180: A commentor stated that maintaining a level of 0.2 for combined chlorine is very difficult to achieve and that the rules should remain with the 0.5 ppm value.

RESPONSE #180: The department agrees and has revised the language in Rule LXXXVIII (37.115.1307). See also response #178.

COMMENT #181: A commentor asked the department to remove the word "continuous" in Rule LXXV (37.115.1016) and use a more appropriate word.

RESPONSE #181: The department appreciates the comment and has modified Rule LXXV (37.115.1016).

COMMENT #182: The commentor also asked to define or explain "industry standard".

RESPONSE #182: The department believes the term "industry standard" may have been confusing and has modified the proposed rule as noted in subsection (1) and (8) of Rule LXXV (37.115.1016).

COMMENT #183: A commentor recommended specific changes to the language of Rule LXXV, requiring that the water be automatically disinfected and to change the term "disinfectant" to "sanitizer".

RESPONSE #183: The department has modified the rule.

COMMENT #184: Automatic systems are required in the pool code of Alaska, Florida, Illinois, Ohio, South Carolina and Utah.

RESPONSE #184: The department thanks the commentor for the information.

COMMENT #185: One commentor, referring to Rule LXXV(4) (37.115.1016) requests that the department remove the reference to ANSI/NSF 50-2008 and add "corresponding wording".

RESPONSE #185: See Response #38.

COMMENT #186: The commentor pointed out that requiring written approval for a change in method of disinfection as indicated in Rule LXXV(7) (37.115.1016), would result in another fee.

RESPONSE #186: The department has modified the fee table in Rule LXXV(7) (37.115.1016) to clarify that a fee is required for change in a disinfectant system only where there is a substantial modification in the disinfectant system.

COMMENT #187: Portions of Rule LXXV (37.115.1016) are redundant.

RESPONSE #187: The department has modified Rule LXXV (37.115.1016) to eliminate redundancy.

COMMENT #188: Several commentors asked for the department's rationale for excluding catch pools for slides in Rule LXXVII(2) (37.115.1019), and point out that many saline solution pools are well maintained and should be allowed.

RESPONSE #188: The department has reviewed this issue and agrees to modify the rule. There is no data conclusively showing health concerns for salt generators used in Montana. The department is allowing the use of salt generators for now.

COMMENT #189: A commentor supported the adoption of Rule LXXIX (37.115.1101) requiring a Certified Pool Operator (CPO) on staff, noting a marked increase in compliance from pools with a CPO on staff, and would prefer the effective date to be sooner.

RESPONSE #189: The department appreciates the comment, but believes the current effective date will allow most licensees reasonable time to either train or hire a CPO.

COMMENT #190: A commentor noted that Rule LXXXIX(2)(a) (37.115.1308) allows for one CPO to supervise multiple pools and requests that the rule allow the local jurisdiction to approve or disapprove of that.

RESPONSE #190: The department agrees that CPO availability may be more difficult for remote areas. Also, larger communities with a greater number of pools close by one another may be effectively maintained by a single CPO and placing a number in the rule as to the number of facilities a CPO can manage may not be practical. However, assessing the response of the CPO in a time of need and their ability to react is crucial. The department has modified the rule to require the CPO to respond to a telephone contact within 30 minutes and provides measures to address a failure to do so.

COMMENT #191: One commentor indicated that Rule LXXIX (37.115.1101), is confusing and contradictory.

RESPONSE #191: The department has made multiple changes to the rule, which will hopefully remove any confusion.

COMMENT #192: The term "remote areas" is not defined.

RESPONSE #192: The department agrees that the term is not defined, but as noted, the term has been removed from the rule.

COMMENT #193: Becoming a CPO is not cost effective because of the travel required, the cost of the training, and because on-the-job training is more appropriate than classroom training.

RESPONSE #193: CPO certification is a nationally recognized certificate and is recognized in many other states. The department will provide opportunities as it is able to, for what it believes will be very affordable training. Private entities will also likely be providing seminars. The training is needed to protect public health and safety.

COMMENT #194: Is Rule LXXIX (37.115.1101) applicable to all pools, spas, and water features? It will be difficult and costly for small operators such as tourist homes to employ a CPO for such a limited basis.

RESPONSE #194: Yes, the rule is applicable to all licensees. However, tourist homes will not be required to employ a CPO unless the use of any pool, spa or other water features exceeds the exception provided in Rule CLIV(1)(d).

COMMENT #195: There was a study done by the Nebraska Health Department is 2006 that showed the facilities with Certified Pool Operators on site were less likely to have critical violations during inspection.

RESPONSE #195: The department appreciates your comment.

COMMENT #196: The forms in Rule LXXX(5) (37.115.1103) and throughout the document are cumbersome.

RESPONSE #196: The department disagrees. Most information that must be maintained for a month will fit on one or two pages of forms. Other forms are needed only if an accident or serious incident occurs.

COMMENT #197: A commentor stated that in Rule LXXXI(1) (37.1115.1201) there is no mention of chlorine gas detector or alarm. The commentor asserted that the rules should follow the recommended guidelines and need review. The commentor stated he believes the intent is to read: "Gas chlorine may be used as disinfectant only when the main pool recirculation pump is running and circulating pool water and the chlorine supply to the recirculation system is delivered under a vacuum condition". The commentor indicated the suggested language would mean that if a

leak occurs in the vacuum gas supply line, no chlorine gas can be pulled out of the chlorinator.

RESPONSE #197: The department agrees and has modified the language in Rule LXXXI(1) (37.115.1201).

COMMENT #198: A commentor disagreed with requirements set forth in Rule LXXXI(3) (37.115.1201), and stated, "If you are blowing chlorine out, then it will strip the vent".

RESPONSE #198: The department disagrees. It is common practice that any gas chlorine storage room has a vent located at the floor.

COMMENT #199: Rule LXXXI(3) (37.115.1201) does not allow for locker-style chlorine storage. The use of a locker-style chlorine storage cabinet where no person can enter need not have a ventilation system if it has double doors that open and all chlorine equipment is accessible without entering the storage closet. This is currently allowable by the MT-DEQ. See Section 5.4.2 from Mt-DEQ Circular #1.

RESPONSE #199: Review of MT-DEQ Circular #1 does allow for a locker type of chlorine. Language has been added to Rule LXXXI(7) (37.115.1201).

COMMENT #200: Rule LXXXIII(b) (37.1115.1203) states the area not large enough to allow a person to enter so the oxygen requirement is not an issue here.

RESPONSE #200: The department disagrees with the commentor. The size of the room is not noted here. If the room is designed for physical entry by the personnel then the oxygen demand requirements for safe entry is 19.5 percent.

COMMENT #201: Rule LXXXIV (37.115.1301) says that no chemical or other agent may be used in the water unless an approved test kit is available. There aren't any testing kits for water clarifiers, algaecides, and other chemicals used in basic pool maintenance. If the health department uses a different test kit and gets different readings what is approved and what is recognized?

RESPONSE #201: Many of the pool chemicals used and approved by EPA do have test kits available. However, knowledge of the ingredients is essential. For example, many algaecides have chlorine as a main ingredient and are already identified with the basic DPD test kit. To prevent confusion, however, (1) has been removed and a portion of (5) has been removed. Test strips are not accurate and do not meet accuracy reading criteria as outlined in this rule. Finally, new (5) has been added to allow the department to approve a test kit in situations where a DPD kit will not test for higher pH levels allow in some hot springs.

COMMENT #202: Why Rule LXXXV(1) (37.115.1302) requires that testing has been done every four hours when an electronic or automatic equipment is required?

RESPONSE #202: The two most important readings that need to be done every four hours are the chlorine and pH values. If an ORP reader is in place, simply writing down the values and understanding the meaning is an accurate way to keep control of your water chemistry after initial water testing with the DPD test kit. Actual water testing may be required for calibrating ORP equipment as well.

COMMENT #203: A commentor, referring to Rule LXXXV(3) (37.115.1302), noted that it provides that adjustments shall be made to the water as needed to maintain the water chemistry within established parameters. The commentor asserted that this should be done without anyone in the pool, spa, or other water feature.

RESPONSE #203: The department agrees. The pool must be closed pursuant to Rule XC (37.115.1309) if the water chemistry is outside the established parameter. Additionally, Rule LXXXVII(3) (37.115.1305) requires that all bathers be out of the water if super chlorination (shocking) is used.

COMMENT #204: A commentor believed more research is needed because ORP at 700 mV (as required in Rule LXXXVI (37.115.1304)) will be too high in many applications.

RESPONSE #204: The department agrees that data at this time does not support raising the maximum ORP level reading from 650 mV to 700 mV. The proposed rule has been modified to retain the standard currently set in ARM 37.111.1147(6).

COMMENT #205: A commentor was in favor of Rule LXXXVI (37.115.1304) and had seen a decrease in violations and pool closures that use the ORP readers. The commentor also favored the idea of using the ORP reader as a potential requirement to correct repeat violations.

RESPONSE #205: The department acknowledges and appreciates the comments. While new or remodeled pool facilities will not be required to install an ORP reader, the department will be able to require licensees with repeated violations to install an ORP reader.

COMMENT #206: The ORP has other influences than chlorine levels, so must be calibrated based on chlorine levels – each pool water source should be calibrated to the ORP reading and chlorine residual.

RESPONSE #206: The department acknowledges and appreciates the comments. Any ORP device should be calibrated, installed, maintained, and used per the manufacturer's instructions.

COMMENT #207: A commentor referred to proposed Table 7 of Rule LXXXIX (37.115.1308) and states that there is some evidence indicating that cyanuric acid interferes with the oxidation reduction potential of sanitizers. This evidence supports a limit of 50 ppm and indicates that levels over 10-30 ppm CYA have no benefit.

Commentor directs the department to the article located at: www.ppoa.org/pdfs/PrP_Cyanurics%20Benefactor%200r%20Bomb.pdf.

RESPONSE #207: The department agrees and has modified the values in the table as appropriate and as supported by scientific evidence.

COMMENT #208: Rule XCI(37.115.310) is redundant.

RESPONSE #208: The department disagrees.

COMMENT #209: A commentor stated that the saturation index in Rule XCIII (37.115.1313) is missing TDS (total dissolved solids).

RESONSE #209: The department agrees and has corrected Rule XCIII (37.115.1313) to include the needed figures.

COMMENT #210: The saturation index table in Rule XCIV (37.115.1314) is missing TDS.

RESPONSE #210: See Response #209.

COMMENT #211: Elements of (2) and (2)(a) are redundant within Rule XCV (37.115.1315).

RESPONSE #211: The department appreciates the comment and has modified the rule to make it more clear.

COMMENT #212: A commentor asked where the 1.0 NTU level, referred to in Rule XCV(3) (37.115.1315) as the required clarity level, was obtained. Were tests run at various NTU levels to verify the visual test, and do the NTU values have a correlation?

RESPONSE #212: The Association of Pool and Spa Professionals have created NTU values for water clarity for pools. Information is available at www.apsp.org/200906NewsletterClarity.html.

COMMENT #213: With respect to Rule XCV(3) (37.115.1315), a commentor agreed with the rule and stated that it is imperative to include a quantifiable measurement such as can be taken with a turbidity meter in these rules for situations in which there is dispute over the subjective clarity reading.

RESPONSE #213: The department agrees and appreciates the response.

COMMENT #214: A commentor stated, regarding Rule XCV(3) (37.115.1315), that "[a]ccording to National Swimming Pool Foundations Pool Inspector Training, NSF recommends a turbidity standard of .5 NTU. NSF also mentions that there are

several states that have adopted this standard into their code. This is an industry standard".

RESPONSE #214: The department agrees that the standard NTU of 0.5 is ideal; however, the American Pool and Spa Professionals (APSP) states that during peak bather loads the NTU reading may reach 1.0 and that the turbidity has six hours to reach 0.5. That is the range the department includes in the new rule.

COMMENT #215: A commentor referred to Rule XCV(4)(c) (37.115.1315) and states that "poor" water clarity requires closing of pool or spa.

RESPONSE #215: The department agrees and appreciates the comment.

COMMENT #216: A commentor agreed with the types of signs required in Rule XCVI (37.115.1401). The language of the rule is clearer and better addresses public health and safety.

RESPONSE #216: The department agrees and appreciates the comment.

COMMENT #217: A commentor referred to Rule XCVI (37.115.1401) and states that it needs to be clear that the signage is required for all water attractions.

RESPONSE #217: The department believes the statement "Every pool, spa, or other water feature shall conspicuously post signs" is clear because it includes every water facility and states the three categories the facility may fall under.

COMMENT #218: A commentor asked whether Rule XCVI (37.115.1401) applies to class C pools.

RESPONSE #218: The department has removed the classification "C pools" from the rules.

COMMENT #219: Some of the signs required by Rule XCVI (37.115.1401) are offensive.

RESPONSE #219: The department disagrees. Rule XCVI (37.115.1401) merely sets out the categories of warning that must be provided.

COMMENT #220: A commentor stated that the wording for signs in Rule XCVI (37.115.1401) is similar to what is proposed by the National Spa & Pool foundation (NSPF) in their inspector training. In fact, the proposed wording in that training contains more stringent signage, including a message about entering and exiting the spa slowly and notification that long exposures in a spa may result in dizziness, fainting, and nausea. NSPF or APSP may have guidelines for pool and splash deck features also. Signage specifying no swimmers with diarrhea is much better; no one other than a health professional understands the term "communicable disease".

RESPONSE #220: The department agrees that the term "communicable disease" may not be clear to all users, therefore that term has been replaced with "transmitted" or with reference to a specific disease. The additional spa safety languages requested have been added.

COMMENT #221: Rule XCVI (37.115.1401) contains redundant or unnecessary language.

RESPONSE #221: The department appreciates the comment and has modified the rule.

COMMENT #222: A commentor referred to Rule XCVII (37.115.1402) and states that there are several new signs and requirements set forth in the rule. From where were these signs and requirements derived, and what is their basis? Do other states impose similar requirements? These new signs need to be reviewed. Commentor states that his or her comment also applies to Rule XCIX (37.115.1404), C (37.115.1405), and CI (37.115.1406).

RESPONSE #222: Many of the same requirements are listed in California regulations. See: www.abag.ca.gov/plan/members/secure/Pool%20And%20Spa%Sample%20Checklists#20and%20Rules.pdf. They are also found in Indiana regulations, as well. Because there are new water facilities in Montana, as well as outbreaks of waterborne illness; the added language is necessary to inform the public of proper, hygienic behavior. The department does not feel a need to have the signs reviewed because other states have adopted the same signs in their rules.

COMMENT #223: The word "communicable" in Rule XCVII(3)(b) (37.115.1402) should be replaced.

RESPONSE #223: See Response #221.

COMMENT #224: The department should remove "or the deck area" from Rule XCVII(3)(a) (37.115.1402).

RESPONSE #224: The department agrees and has modified Rule XCVII (37.115.1402).

COMMENT #225: A commentor asked whether the spa sign requirements in Rule XCVIII (37.115.1403) apply to Class C pools.

RESPONSE #225: The department has removed the pool classifications from the proposed rules, including reference to Class C pools. Any spa for public use, except those at tourist homes, must have the required spa signs posted. That includes the pools operated in conjunction with lodges, such as hotel and motel pools.

COMMENT #226: Rule XCVIII(1)(a) (37.115.1403) refers to pool when it should refer to spa.

RESPONSE #226: The department agrees and has modified Rule XCVIII (37.115.1403).

COMMENT #227: The word "communicable" in Rule CXI (37.115.1702) should be replaced with a word that is more generally understood.

RESPONSE #227: See Response #220.

COMMENT #228: A commentor referred to Rule CIII(1) (37.115.1503) and asks why the rule specifies within one foot to the shallow side. The rule should specify that it be on the shallow side of five feet to indicate the change (by definition) of shallow to deep water.

RESPONSE #228: The department has modified CIII(1) (37.115.1503).

COMMENT #229: A commentor asked whether the first-aid kit referred to in Rule CIV (37.115.1505) can be located at the front desk, or whether the kit must be available by the pool.

RESPONSE #229: The first-aid kit may be kept at the front desk as long as it is readily accessible at all times.

COMMENT #230: A commentor referred to Rule CV (37.115.1507) and asks whether an intercom rather than a phone can be used, so long as the intercom or phone routed to the office or front desk is manned at all times. Please specify how far away the phone or intercom can be from the spa, pool, or other water feature.

RESPONSE #230: An intercom may not be used to route to the front desk. Many times front-desk personnel have to attend to another job task that is away from the front desk. The rule states that the phone must be affixed to the wall near the pool.

COMMENT #231: A commentor asked whether the portion of Rule CIX (37.115.1604) that states that the "pool must have at least one lifeguard per 2,000 square feet of pool area or fraction thereof, with a minimum of one lifeguard regardless of the size of the pool" is worded correctly. It is not clear if the 2,000 square feet also includes decking around the pool or just pool surface area. The commentor referred to ARM 37.111.1154(2)(e), which is not addressed in the new proposed pool rules. Commentor states: "The required number of lifeguards must be on duty at all times when a swimming pool is open for use by bathers". This change will force facilities to close or severely limit hours the pool is open for use.

RESPONSE #231: The requirements for lifeguards for municipal pools or the square footage area requirement of pool surface has not changed from the rule presently in force. The square footage area does not include decking. The new

requirements for lifeguards include the requirement for lifeguards for newer water features such as flume slides, wave pools, and vortex pools, but excludes wading pools and splash decks. The newer features are more likely to present potential safety issues. For such features, owners must employ lifeguards, as specified, whether or not the water feature is in a municipal pool or a privately owned public pool. When a smaller population is served, a portion of the pool may be closed, which would result in fewer lifeguards being needed.

COMMENT #232: A commentor stated that under Rule XVI (37.115.313), his or her facility would always need a minimum of two lifeguards on duty at all times, regardless of the number of patrons. The community is small and it will be difficult to find lifeguards to fulfill this requirement. Why is there a need for two lifeguards when there are twenty-five patrons or less? The facility would have to cut back on activities, limit public services and revenue, and at the same time double hourly cost.

RESPONSE #232: The department believes the commentor is referring to Rule CIX (37.115.1604). The rule states there must be at least one lifeguard for the first 2,000 square feet of pool area and another lifeguard for any amount over that up to 6,000 square feet. The rule is used in the lifeguard training programs where a lifeguard has 10 seconds to scan the area for a troubled swimmer and 20 seconds to reach the swimmer. Again, a portion of the pool may be closed if the area is greater than 2,000 square feet and another lifeguard is not available.

COMMENT #233: A commentor referred to Rule CVI (37.115.1601) and Rule CVII (37.115.1602) and states that the requirements for lifeguards at privately owned public pools are unclear. Rule CVII (37.115.1602) states that private pools do not need lifeguards. Rule CVI (37.115.1601) lists the specific types of pools that need lifeguards.

RESPONSE #233: Rule CVI (37.115.1601) identifies the situations in which lifeguards are required. It includes all municipal pools. It also includes all privately owned public pools with the specifically listed water features. If a pool does not fall within rule CVI (37.115.1601), it falls within Rule CVII (37.115.1602).

COMMENT #234: Rule CVII(1) (37.115.1602) refers to Rule CVII (37.115.1602) when it should refer to Rule CVI (37.115.1601).

RESPONSE #234: The department agrees and appreciates the response. The department has modified Rule CVII (37.115.1602).

COMMENT #235: A commenter referred to Rule CIX (37.115.1604) and asks whether the number of lifeguards and lifeguard placement requirements are coordinated with the Red Cross – Montana Municipal Insurance Authority (MMIA) requirements.

RESPONSE #235: Although the department is unsure of MMIA's requirements for insurance, the 2,000 square foot of pool surface area per lifeguard requirement is

widely accepted in states across the United States. This requirement does not differ from the requirement in the rule currently in place. There have been no requests or comments from insurance companies concerning lifeguard placement or ratios.

COMMENT #236: Does Rule CXII (37.115.1703) apply to class C pools?

RESPONSE #236: Rule CXII (37.115.1703) applies to all municipal or privately owned public pools, including pools operated in conjunction with lodging, such as motels and hotels. If the MMIA requirements for lifeguards is higher, a licensee may always exceed the minimum set in the rules.

COMMENT #237: A commenter believed that Rule CXIII(2) (37.115.1704) may conflict with rules pursuant to the Americans with Disabilities Act (ADA).

RESPONSE #237: The department disagrees. Public health, safety and welfare requires animals not be near enough to a pool to contaminate it with parasites or insects or other disease-bearing micro-organisms. It is not a reasonable accommodation to allow a service animal nearer to the water than what is provided in the rule.

COMMENT #238: A commenter asked whether the approval process referred to in Rule CXIV (37.115.1801) will occur during plan review.

RESPONSE #238: Rule CXIV (37.115.1801) states that the department has a right to review a nonconforming specialty pool and apply the rules for compliance. That would occur during the plan review process.

COMMENT #239: A commenter stated that it is unclear whether all sections of these rules apply to these special purpose pools, or only the pertaining sections in this subchapter.

RESPONSE #239: Any nonconforming specialty pool that has components in the design that are addressed in the rules must meet the requirements of those rules. In the future, if any new pool designs that are not are created yet classified in these rules, Rule CXIV (37.115.1801) allows the department to apply these rules to such water features and to require that they comply with these rules.

COMMENT #240: Splash decks and wading pools should not be exempt from the rest of the rules by the language in Rule CXIV (37.115.1801). The way the current rules are written, only the section on wading pools can be applied to wading pools. A section at the beginning of this subchapter that identifies that "all special use pools and water features must meet all applicable standards and those specifically identified as follow" would eliminate confusion as to which rule applies.

RESPONSE #240: The department disagrees with this interpretation of Rule CXIV (37.115.1801). Rule CXIV (37.115.1801) requires that any specialty pool, spa, or other water feature must meet all substantive requirements in these rules. In

addition, they must also meet any requirements specific to that type of water attraction. Additionally, because of the nature of wading pools not all substantive provisions in these rules that apply to other pools will be applicable. The language in Rule XCIV (37.115.1801) merely acknowledges that.

COMMENT #241: Some of the slide configurations referenced in Rule CXVIII(1)(b)(i) (37.115.1806) require a 24-foot minimum plunge pool.

RESPONSE #241: Rule CXVIII (37.115.1806) provides mandatory distances from sides and other vertical surfaces. The department is unclear if the commenter is describing a 24-foot distance to a wall. The department has modified the rule to provide for longer distances if such distances are required by the manufacturer.

COMMENT #242: A commenter stated that a speed slide with a run-out trough or a plunge pool option needs to be included in Rule CXIX (37.115.1807).

RESPONSE #242: The department acknowledges and appreciates the comment. Use of a run-out trough or plunge pool shall be determined by the design of the slide per the manufacturer's instructions. The rule requires installation in accordance with those instructions.

COMMENT #243: Parts (2) and (4) of Rule CXXI (37.115.1809) conflict.

RESPONSE #243: The department agrees and has modified the rule.

COMMENT #244: A commenter referred to Rule CXXIII(4) (37.115.1811) and states that there is a need to reference the table for recirculation rates to prevent misunderstanding if the rules are modified in the future.

RESPONSE #244: The department disagrees. The rules properly reference the time limits in more than one location in the rules. If the time limits are changed, both rules will be amended. (See Response #244.)

COMMENT #245: A commenter referenced Rule CXXIII(8) (37.115.1811) and asks, "[w]hat is the purpose of having inlets in the tank?"

RESPONSE #245: The inlets referenced in Rule CXXIII(8) (37.115.1811) are not the same as pool inlets. When discussing a holding or surge tank, there are inlets that allow water to enter or leave the tank. These are the type of inlets referenced in (8). These inlets allow a holding tank to acquire a certain volume of water before the water spills out of the chamber and exits through an inlet.

COMMENT#246: A commenter asked why splash decks referred to in Rule CXXVI (37.115.1814) are not required to have shower facilities. A large number of current cryptosporidium cases in the United States are associated with splash decks. Why does the department exempt splash decks from providing shower facilities?

RESPONSE #246: The department agrees that splash decks should not be exempt from providing shower facilities. The rule has been changed.

COMMENT #247: Rule CXXVI (37.115.1814) is redundant because Rule LVIII (37.115.902) also includes "other water feature".

RESPONSE #247: The department disagrees. The department has chosen to identify requirements specific to a particular water feature even if that requirement may also be included in general provisions.

COMMENT #248: Rule CXXIX(f) (37.115.1819) states the recirculation rate instead of referencing the table. This is confusing.

RESPONSE #248: The department agrees that restating a 30-minute turnover rate may be repetitive and appreciates the comment. However, stating in (f) and also (g) that circulation components such as the pump and the filter must be of a design to accommodate a 30-minute turnover rate helps support the circulation design of a commercial type of spa, and also helps to exclude the residential type of circulation system.

COMMENT #249: Why does Rule CXXX(2) (37.115.1821) disallow the use of salt generators in spas?

RESPONSE #249: Salt generators are corrosive to decking, parts of pools, and equipment. However, there are a handful of salt generators in the state that have proved adequate for providing sanitizer to the water facility based on inspection reports. The department will allow salt generators. The department has modified Rule CXXX (37.115.1821).

COMMENT #250: With respect to Rule CXXXII(3) (37.115.1824), commentor states there is no power to the main drain. Rule CXXXII(3) (37.115.1824) does not make sense.

RESPONSE #250: The department agrees and has removed main drain from the description in Rule CXXXII (37.115.1824). The main purpose is to cut off power to the pumps.

COMMENT #251: Why does Rule CXXXIII (37.115.1825) require permanent depth markers visible from all obvious points of entry instead of on the vertical walls of the spa itself?

RESPONSE #251: Depth markers for spas are treated differently than depth markers for pools and other water features because the depth of a spa is constant. Markers are to be 25 feet apart; therefore, only one marking is required for a spa.

COMMENT #252: With respect to Rule CXXXVIII (37.115.1836), what is the basis for a 30 minute turnover rate?

RESPONSE #252: The department has reviewed this proposed change and has decided to change the turnover rate to one hour until more data supports shorter turnover times.

COMMENT #253: Rule CXXXVIII conflicts with the compliance date referenced in Rule II(1)(c).

RESPONSE #253: Rule II(1)(c) (37.115.104) refers to fill and drain wading pools that will no longer be allowed in use after December 31, 2010. Rule CXXXVIII references those wading pools with a recirculation and disinfectant system.

COMMENT #254: What does the term "applicable provisions" mean? This is unclear and unenforceable. Please do not exempt the wading pools from the rest of the rules.

RESPONSE #254: The department does not understand this comment. Rule CXXXVII (37.115.1835) does not use the term "applicable provisions". See Response #247.

COMMENT #255: A commentor stated that the turnover time in Rule CXXXVIII (37.115.1836) should remain at one hour. There would have to be major changes to the filtration equipment to accommodate a thirty-minute turnover rate. Commentor would like the department to provide scientific evidence that the change in the turnover rate is necessary.

RESPONSE #255: See Response #252.

COMMENT #256: What is the intent of Rule CXL (37.115.1838)? Wouldn't the maximum distance be seven inches? What type of pool manufacturer requires seven inches? What is the purpose for specifying the deck-to-water distance? Manufacturers only make a standard-sized skimmer.

RESPONSE #256: The department has reviewed (3) and decided to remove it from the rule to eliminate confusion.

COMMENT #257: The eight-hour turnover rate in Rule CLXIII (37.115.1845) is unreasonable when a spa is emptied and cleaned every night. Rules require cleaning every three days. To help maintain acceptable temperature, the flow into the pool must be turned off for a period of time. A pH of 9.4 seems high; other parts of the rules state 8.5. The natural 106 degree temperature is duplicated in the rule.

RESPONSE #257: A facility may choose to empty and clean a spa every night if the facility so chooses. If there is a high bather load, more frequent cleaning of the spa is in the best interest of the bathers. The rule sets minimum standards. The department notes that pH and the hot spring swimming temperature is high; however, the standards are set at 9.4 by statute. Section 50-53-115, MCA allows the pH for flow-through hot springs to be as high as 9.4. The repetition in the

temperature is a typographical error. A hot springs pool used for active swimming shall not be higher than 100° F, even though a hot springs spa may be as high as 106° F. The department has corrected the typographical error.

COMMENT #258: A commentor stated that an ORP meter is needed to prove the oxidation reduction potential in the water when facilities are allowed to have a pH over 7.8. What are the public health reasons to justify a pH over 7.8? These facilities could add hypochlorous acid concentration to lower pH levels.

RESPONSE #258: The Legislature has specifically allowed flow-through hot springs to operate and be licensed with a pH up to 9.4. Hot springs water is naturally hard and typically has a higher pH. Hot springs are typically flow-through systems; they may maintain a higher pH because they do not use chlorine. If a hot springs licensee wishes to use chlorine, the licensee will need to comply with DEQ requirements and would need to establish a dechlorination chamber prior to releasing the water into a nearby stream or channel.

COMMENT #259: A commentor referred to Rule CXLV (37.115.1847) and asks whether the department will itself set additional safety requirements or whether it will just follow the attraction supplier's requirements for items (b) through (e).

RESPONSE #259: The department will review the safety recommendation provided by the manufacturers. At a minimum they must be followed. If the department determines that more stringent requirements are needed to protect public health and safety, it will set any such requirements as licensing requirements.

COMMENT #260: A commentor referenced Rule CXLVI (37.115.1901) and asks whether the late fee is not the same as other licensed establishments. Twenty-five dollars per month is different than some other licenses.

RESPONSE #260: The department believes that the comment is in reference to Rule CL(1)(c) (37.115.1907). That late fee is set by the Legislature in 50-43-203(2), MCA. The Legislature may have set different late fees for other types of licenses.

COMMENT #261: With respect to Rule CLII (37.115.1910), may the license be displayed at the front desk rather than in the pool area?

RESPONSE #261: The pool license shall be displayed at the pool, at the water feature, or at the front desk in a conspicuous place to be seen by the public. It should not be stored in a folder where it cannot be seen by patrons.

COMMENT #262: Rule CLIV (37.115.1912) should contain a separate section for tourist homes and bed and breakfasts.

RESPONSE #262: The department acknowledges and appreciates the comment. The department agrees that tourist homes should have their own written rules;

however, at bed and breakfasts, multiple transient guests use the facilities and food is also served by hosts.

COMMENT #263: A commentor stated that if a public accommodation or other type of consumer license is required, pools and tubs associated with them should also be licensed. Most, if not all, of these tubs are of a "residential" type and currently do not meet codes. Under the draft pool rules, they may fall under "self-contained tubs". Commentor currently offers the owner an option to drain, clean, and refill after each guest, or to have a Certified Pool Operator to monitor and balance the water prior to each guest.

RESPONSE #263: The department acknowledges and appreciates the comment.

COMMENT #264: A commentor disagreed with Rule CLIV(1)(c) (37.115.1912). Apartment pools should be licensed. Members of the public rent these apartments. The public would likely expect these pools to be licensed and inspected.

RESPONSE #264: The department agrees and has removed (c) from Rule CLIV (37.115.1912).

COMMENT #265: A commentor disagreed with Rule CLIV(1)(e) (37.115.1912) and believes that it is unenforceable. Tourist home spas may require a different set of rules for spas that are provided for a single tourist home. Perhaps spas that are located at very small bed and breakfasts could also be regulated under a different set of rules. Spas that are shared by more than one tourist home, or, at most, bed and breakfasts, should be regulated under these rules.

RESPONSE #265: The department agrees and appreciates the comment. Bed and breakfasts, however, will need to be inspected because multiple transient guests frequent the facility. The rules provide that tourist homes that drain and clean the spa between guests do not need to be licensed. If a complaint comes to a health department about a tourist home, an investigation can be initiated as to whether the spa is being drained and cleaned between each use. If the department finds that it is not being drained and cleaned between each use, the spa will need to be licensed or will not be allowed to operate.

COMMENT #266: A commentor referred to Rule CLVI (37.115.2002) and states that sanitarians inspecting pools should be certified pool operators, at a minimum. Training by the department for inspections needs to be available and affordable to local health departments. The commentor's biggest concern was with the new enforcement and administrative procedures. These rules undoubtedly spell out the state procedures well, but they will not be effective in counties that do pool inspections and enforcement. The department needs to allow counties working under a cooperative agreement to adopt local enforcement procedures and administrative procedures for swimming pools and spas to provide training to local sanitarians.

RESPONSE #266: The department agrees in part and disagrees in part. See Response #78. Cooperative agreements will spell out the duties local inspectors have. Additionally, the department will be providing training for local inspectors. However, the Legislature has not delegated rulemaking authority for enforcement to local departments. The enforcement provisions have been carefully drafted to comply with constitutional requirements, the specific statutory provisions for enforcement actions involving pools, spas, and other water features, the Montana Administrative Procedure Act, and State ARM requirements for contested cases. They must be followed state wide.

COMMENT #267: A commentor referred to Rule CLVI (37.115.2002) and stated that there is a comprehensive and detailed data collection tool available for use the first time a pool is opened. Please refer to www.cdc.gov/nceh/ehs/Docs/Pool_Systems_Tool_06-2005.pdf. After the initial inspection, the monthly, quarterly, and annual follow-up inspections are shorter and oriented towards process verification and monitoring. This approach is the best of both worlds and promotes closer understanding between public health officials, facility operators, and management.

RESPONSE #267: The department thanks commentor for the information and reference material.

COMMENT #268: A commentor referred to Rule CLVI(5)(a) (37.115.2002) and states that a particular year-round facility only gets inspected once a year. The rules state that it should be inspected twice a year.

RESPONSE #268: The rule requires year-round facilities to be inspected twice a year. Only one is required to be a full inspection.

Rules CLXIII through CLXVIII

A total of four comments were received on the published proposed rules pertaining to the hearing procedures to be followed when there is a hearing set or requested regarding negative action that has occurred or is proposed against a license issued for a swimming pool, spa, or other water feature.

COMMENT #269: A commentor noted that the term "imperative risk" used in Rule CLIX(37.115.2102) is not used correctly and suggests that the term "imminent" would be more appropriate.

RESPONSE #269: The department agrees. The language of Rule CLIX(37.115.2102) has been modified to correct the grammatical use of the terms "imperative" and "imminent", while still reflecting the statutory use of the word "imperatively" in Section 2-4-631(3), MCA.

COMMENT #270: A commentor expressed concern that the language in Rule CLXV (37.115.2205) which requires that a notice of hearing indicate that formal

proceedings may be waived pursuant to Section 2-4-603, MCA, may conflict with Section 2-4-603(2), MCA. That subsection provides that formal proceedings may not be waived if the proceedings are held under Title 37 or under "any other provision relating to licensure to pursue a profession or occupation".

RESPONSE #270: The department has reviewed the language in the statutes and disagrees that there is a conflict. Section 2-4-601, MCA, specifically requires that the notice include a statement that formal proceedings may be waived. Any negative licensing action involving a license for a swimming pool, spa, or other water feature is not a license for a profession or occupation. It is a business license for operation of the specific pool, spa, or other water feature. No changes will be made to this language.

COMMENT #271: A commentor expresses concern that the term "prevailed" as used in Rule CLXVII(37.115.2209) might be a term that is unclear and which will result in disputes.

RESPONSE #271: The department agrees. The language in Rule CXLVII(1)(37.115.2209) using the term "prevailed" has been changed to instead describe what relief would constitute prevailing in a fair hearing.

COMMENT #272: A commentor expresses concern that some of the provisions in Rule CLXVII(37.115.2209) may conflict with Article IV of the Montana Rules of Evidence and that the Rules of Evidence should govern.

RESPONSE #272: The department has reviewed Rule CLXVII(37.115.2209 and agrees that subsection (2) could arguably conflict with some rules of evidence in particular situations. The department also agrees that the Rules of Evidence would prevail in those instances. Therefore, Rule CXLVII(2)(37.115.2209) has been eliminated, subsection (3) has been modified and renumbered as subsections (2) and (4), and only a narrow portion of the original (2) that is consistent with the Rules of Evidence has been kept as subsection (3).

/s/ Shannon McDonald
Rule Reviewer

/s/ Hank Hudson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 4, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 42.9.204) and amendment of ARM 42.9.102, 42.9.103, 42.9.104, 42.9.105, 42.9.106, 42.9.202, 42.9.203, 42.9.301, 42.9.401, 42.9.402, and 42.9.540 relating to income tax	)))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-809 regarding the proposed adoption and amendment of the above-stated rules at page 1883 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 18, 2009, to consider the proposed adoption and amendment. Oral and written comments are summarized as follows along with the responses of the department:

COMMENT NO. 1: Ms. Mary Whittinghill, Executive Director for the Montana Taxpayers' Association asked why a person would not be allowed to take the carry-forward or carry-back on their own losses?

RESPONSE NO. 1: It is only when it is part of the composite return that the carry-forward or carry-back losses can't be taken.

COMMENT NO. 2: Ms. Whittinghill further asked what type of credits would fall under the composite return election?

RESPONSE NO. 2: The credits cannot be taken on a composite return. The rule does not address credits, only net operating losses.

COMMENT NO. 3: Ms. Whittinghill suggested that the title to ARM 42.9.106 should be expanded to more clearly address what was covered in the rule.

RESPONSE NO. 3: ARM 42.9.106 explains how information about second-tier entity owners is reported on the different types of pass-through returns: partnerships, S corporations and disregarded entities. In the updated rule, this has not changed and the department does not think that the title should be amended.

COMMENT NO. 4: Mr. Tom Armbruster, of Heritage Propane asked if a company had a disregarded entity that was included on that entity's return would the company be required to also file a return for that disregarded entity.

RESPONSE NO. 4: The disregarded entity has always been required to file

an information return, Form DER-1, for each taxable period that it has Montana source income. The rule changes only clarify that the Form DER-1 does not provide for a composite return for its owners.

COMMENT NO. 5: Ms. Lindsay Sander with the National Association of Publicly Traded Partnerships (NAPTP) stated that the association had worked proactively with the department for more than two years to address prior Montana statutory provisions that require partnerships to file composite returns and withhold an appropriate amount to cover any potential liability for Montana source income of nonresident unit holders.

Ms. Sander thanked the department for working with the NAPTP to address their members' concerns and working with them to find a mutually agreeable solution to the overall compliance issue. She further stated that the compromise enacted by the legislature will provide the department the information it needs to ensure the proper payment of income tax by NAPTP's members' unit holders while also providing relief to the members from a provision with which the publicly traded partnerships (PTPs) simply cannot comply. Further, the provision relating to composite returns and withholding is in line with the model statute adopted by the Multistate Tax Commission.

NAPTP expressed a need for clarification with regard to the manner in which PTPs report the required information to the department. Under the proposed rule and revised statute, PTPs must supply information in an electronic format that is acceptable to the department. However, there is no specific format mentioned. NAPTP would recommend the format be in Excel or a similar format. This would minimize compatibility problems, as the Excel program is in wide use, and would allow the department to easily sort, export or merge information as it sees fit. This format has been accepted by the other states that have adopted similar measures.

NAPTP does not believe the format needs to be included in the final rule, as PTPs should not be limited in their ability to adapt their reporting to ongoing developments and improvements in technology, but does believe it should be on record for the PTPs to reference that Excel is the required format at this time.

RESPONSE NO. 5: The department has contacted PTP representatives to confirm that Excel is an acceptable format for supplying the required information.

3. The department adopts New Rule I (ARM 42.9.204) and amends ARM 42.9.102, 42.9.103, 42.9.104, 42.9.105, 42.9.106, 42.9.202, 42.9.203, 42.9.301, 42.9.401, 42.9.402, and 42.9.540 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although

the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson	Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 4, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.101, 42.17.103, 42.17.105, 42.17.111, 42.17.113, 42.17.114, 42.17.120, 42.17.122, 42.17.131, 42.17.133, 42.17.134, 42.17.135, 42.17.304, 42.17.305, 42.17.306, 42.17.308, 42.17.309, 42.17.310, 42.17.311, 42.17.312, 42.17.313, 42.17.314, 42.17.315, 42.17.316, 42.17.317, 42.17.601, 42.17.602, 42.17.603, 42.17.604, 42.17.605 and repeal of ARM 42.17.136, 42.17.137, and 42.17.138 relating to withholding taxes	))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-812 regarding the proposed amendment and repeal of the above-stated rules at page 1912 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 24, 2009, to consider the proposed amendment and repeal. No one appeared at the hearing to testify. Written testimony was received subsequent to the hearing and is summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Terry Hilgendorf, President of the Montana Land Title Association, stated a concern with ARM 42.17.122 as it doesn't appear to be consistent with the Internal Revenue Service (IRS) regulations guiding when 1099s are to be filed. The proposed rule change refers only to "conform to specification" which appears to mean the technical specification when transmitting the information. Montana Land Title Association is concerned that the omission excludes the provision to follow the IRS timetable, which allows for electronic filing of 1099s as late as March 31st, or later as approved by extension.

Without that additional language, title agents have to file their 1099s by February 28th, rather than March 31st, which the IRS allows. Montana Land Title Association had understood that the department recommends and was willing to follow the IRS guidelines.

Ms. Mary Whittinghill, President of the Montana Taxpayers Association, provided written comment in support of the comments provided by the Montana Land Title Association as stated above.

RESPONSE NO. 1: The department appreciates the comments submitted by the Montana Land Title Association and the Montana Taxpayers Association, and

amends ARM 42.17.122 as shown below to address this concern.

3. As a result of the comments received the department amends ARM 42.17.122 with the following changes:

42.17.122 RETURNS OF INFORMATION AGENTS (1) Federal form 1099s, U.S. Information Returns are required to be filed for certain dividends, interest in excess of $10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions as specified in 15-30-2616, MCA. Federal form 1099s may be filed on paper documents~~,~~ or electronically. ~~They are due on or before February 28 following the close of the calendar year with respect to which the payments made are being reported~~ The dates for filing the information returns with the department are the same as the due dates for filing the corresponding federal return. The returns are to be filed with:

Montana Department of Revenue
P.O. Box 5835
Helena, Montana 59604-5835.

(2) and (3) remain as proposed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2616, MCA

4. The department amends ARM 42.17.122 with the amendments shown above and amends ARM 42.17.101, 42.17.103, 42.17.105, 42.17.111, 42.17.113, 42.17.114, 42.17.120, 42.17.131, 42.17.133, 42.17.134, 42.17.135, 42.17.304, 42.17.305, 42.17.306, 42.17.308, 42.17.309, 42.17.310, 42.17.311, 42.17.312, 42.17.313, 42.17.314, 42.17.315, 42.17.316, 42.17.317, 42.17.601, 42.17.602, 42.17.603, 42.17.604, and 42.17.605, and repeals ARM 42.17.136, 42.17.137, and 42.17.138 as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 4, 2010

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2009. This table includes those rules adopted during the period October 1, 2009, through December 31, 2009, 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2009, 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 2009 Montana Administrative Register.

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

8.119.101 Tourism Advisory Council, p. 1066, 1590

(Board of Housing)
8.111.602 Low Income Housing Tax Credit Program, p. 952, 1589

EDUCATION, Department of, Title 10

(Board of Public Education)
I Sign Language Interpreters, p. 1205, 1659
10.54.3610 and other rules - Communication Arts Content Standards and Performance Descriptors, p. 2196
10.54.4010 and other rules - Math Content Standards and Performance Descriptors, p. 767, 1201, 1657
10.57.102 and other rules - Educator Licensure, p. 1712, 2244
10.57.412 and other rule - Mentor Teachers, p. 789, 1259

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)
12.6.1101 and other rules - Falconry Regulation in Montana, p. 792, 1470
12.6.2205 Noncontrolled Species, p. 2419
12.11.3215 Recreational Water Use on Holter Lake, p. 2240
12.11.6601 and other rules - Emergency Closures of Department Lands and Public Waters, p. 1208, 2146
12.14.101 and other rules - Commercial Use Rules in Montana, p. 1436, 2245

ENVIRONMENTAL QUALITY, Department of, Title 17

I-V Underground Storage Tanks - Underground Storage Tank Operator Training, p. 1529, 2250
17.36.802 and other rule - Fee Schedules - Changes in Subdivision, p. 1725, 2477
17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326
17.53.111 and other rules - Hazardous Waste Fees - Registration of Generators - Information Requests - Annual Reports, p. 1717, 2371
17.55.102 and other rules - Definitions - Facility Listing - Facility Ranking - Delisting a Facility on the CECRA Priority List - Incorporation by Reference - Proper and Expeditious Notice - Third-Party Remedial Actions at Order Sites - Additional Remedial Actions Not Precluded - Orphan Share Reimbursement - Purpose, p. 1730, 2077
17.56.101 and other rules - Underground Storage Tank Operation Requirements - Leak Detection - License Renewal Training, p. 1450, 2247

(Board of Environmental Review)
17.4.101 and the Department - Model Rules, p. 129, 1011

Reporting Frequency for Approved Automated Accounting Systems - Exceptions - General Requirements of Operators - Manufacturers - Manufacturers of Illegal Devices - Distributors - Route Operators of Video Gambling Machines or Producers of Associated Equipment - Live Keno and Bingo Record Keeping, p. 2078, 2480

23.16.202 and other rules - Gambling Business License - Approval of Variations of Standard Bingo Cards - Credit Play - Card Dealer Licenses - Card Room Contractors License Requirements - Sports Tab Game Seller License - Distributor Licenses - Route Operator Licenses - Manufacturer Licenses - Accounting System Vendor Licenses - Manufacturer of Illegal Gambling Devices License - Raffle Record Keeping Requirements, p. 912, 1260

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Licensee Lookup Database, p. 61, 1167

I-XIII Workers' Compensation Claims Examiner Certification, p. 1213, 2019

24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 1840

24.29.1533 and other rule - Workers' Compensation Medical Fee Schedules, p. 2086, 2482

24.301.161 Model Energy Code, p. 1844

(Alternative Health Care Board)

24.111.401 and other rule - Fees - Licenses, p. 1550, 2257

(Board of Architects and Landscape Architects)

24.114.401 and other rules - Fee Schedule - Applications - Education and Experience - Examinations, p. 1457, 2151

(Board of Barbers and Cosmetologists)

24.121.401 Fees, p. 2337

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923, 2152

(Board of Dentistry)

24.138.402 and other rules - Fee Schedule - Dental Auxiliaries - Requirements and Restrictions - Continuing Education - Restricted Volunteer Licensure, p. 1743

24.138.508 and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068, 2091

(State Electrical Board)

24.141.301 and other rules - Definitions - Apprentice Registration - Fee Schedule - Electrician Applications - Examinations - Licensure - Contractor Licensing - Continuing Education - Unprofessional Conduct - Complaint Procedure - Electrician Qualifications, p. 1365, 1665

(Board of Medical Examiners)

24.101.413 and other rules - Renewal Dates - Medical Examiners-Licensure - Telemedicine - Podiatry - Nutrition Practice - Acupuncture - Physician Assistant-Scope of Practice - Reciprocity - Board Report Obligations, p. 2340

24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610

(Board of Nursing)

24.159.1006 and other rules - Cosmetic Procedure Standards - Nonroutine Applications, p. 252, 1404

(Board of Nursing Home Administrators)

24.162.420 and other rules - Fee Schedule - Documentation for Licensure - Temporary Permit - Reciprocity Licenses - Continuing Education, p. 1072, 2024

(Board of Outfitters)

24.171.401 and other rules - Fees - Qualifications, p. 256, 1406

24.171.602 and other rules - Guide or Professional Guide License - Emergency Guide License - Unprofessional Conduct - Guide to Hunter Ratio, p. 1616

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Administration of Vaccines - Prescriptions - Transmission of Prescriptions - Objectives - Internship - Registration Requirements - Pharmacy Technician - Record Keeping - Registration Conditions - Emergency Drug Kit - Renewal - Unprofessional Conduct - Agent of Records, p. 1079

(Board of Physical Therapy Examiners)

24.177.405 and other rules - Physical Therapy Aides - Temporary Licenses - Out of State Applicants - Foreign Trained Applicants - Topical Medication Protocols - Continuing Education - Physical Therapists, p. 586, 2153

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rules - Definitions - Fees - Private Alternative Adolescent Residential and Outdoor Programs, p. 303, 1478

24.181.401 and other rules - Registration Fee Schedule - Licensing Fee Schedule - Renewals - Private Alternative Adolescent Residential and Outdoor Programs, p. 339, 870, 1799

(Board of Professional Engineers and Professional Land Surveyors)
24.183.408 and other rules - Authorization - Applications - Examination Procedures - Continuing Education - Screening Panel, p. 1554

(Board of Radiologic Technologists)
24.204.501 and other rules - Permit Application Types - Practice Limitations - Course Requirements - Permit Examinations - Code of Ethics - Unprofessional Conduct, p. 1089

(Board of Real Estate Appraisers)
24.207.401 and other rule - Fees and USPAP, p. 1223, 1800

(Board of Realty Regulation)
24.101.413 and other rules - Renewal Dates - Brokers and Salespersons - Property Management - Timeshare Licensure and Registration, p. 1748
24.210.301 and other rules - Definitions - Licensing - Renewals - Unprofessional Conduct - Continuing Education, p. 928, 2373

(Board of Social Work Examiners and Professional Counselors)
24.219.301 and other rules - Definitions - Fees - Application - Licensure - Status Conversion - Application - Continuing Education - Unprofessional Conduct - Social Work Examiners and Professional Counselors, p. 2583, 812, 2158

(Board of Veterinary Medicine)
24.225.401 and other rules - Fee Schedule - Veterinarian Licensure - Embryo Transfer - Euthanasia Technicians and Agencies - Continuing Education Providers, p. 1561, 2483

LIVESTOCK, Department of, Title 32

32.3.104 and other rules - Trichomoniasis - Deputy State Veterinarians, p. 1852, 2092, 2356
32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1096, 1591
32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 2095
32.23.101 and other rules - Purchase and Resale of Milk, p. 1762, 2258
32.28.202 and other rule - Uncoupling Horses for Wagering Purposes, p. 1098, 1592

MILITARY AFFAIRS, Department of, Title 34

34.6.101 and other rule - Education Benefit Program, p. 2357

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.10.129 and other rule - Wildland-Urban Interface - Guidelines for Development Within the Wildland-Urban Interface, p. 1101, 1667
36.12.1901 and other rule - Filing a Change Application - Change Application - Historic Use, p. 814, 2259

(Board of Oil and Gas Conservation)
36.22.302 and other rules - Oil and Gas Provisions and Production, p. 1619, 2165

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient Treatment Costs for Individuals with Mental Illness, p. 1624, 1807
I-VI State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient Treatment Costs - Contracts for Crisis Beds - Emergency and Court-Ordered Detention Beds for Persons With Mental Illness, p. 1871, 2360
I-XXVII Behavioral Health Inpatient Facilities (BHIF), p. 844, 1801
37.5.117 and other rules - Swimming Pools, Spas, and Other Water Features, p. 604, 1104
37.8.126 Grandparents and Relative Caregivers Access to Birth Records, p. 1007, 1671
37.36.101 and other rules - The Montana Telecommunications Access Program (MTAP), p. 1226, 1672
37.40.307 and other rule - Medicaid Nursing Facility Reimbursement, p. 997, 1411
37.40.405 and other rule - Medicaid Reimbursement for Swing-Bed Hospital Services, p. 1642, 2166
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 596, 1020
37.78.102 and other rule - Temporary Assistance for Needy Families (TANF), p. 1863, 2380
37.79.101 and other rules - Implementing the Healthy Montana Kids Plan Act, p. 1235, 1673
37.81.104 and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx Program), p. 1769, 2378
37.81.1002 and other rules - Montana PharmAssist Program and Medicaid Reimbursement Rates for Some Services with Rates Not Set Under Resource Based Relative Value Scale (RBRVS), p. 1570, 2029

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42