

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING
Rules I through IX pertaining to bank debt) ON PROPOSED ADOPTION
cancellation contracts and debt)
suspension agreements)

TO: All Concerned Persons

1. On September 1, 2011, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 342 of 301 South Park, at Helena, Montana, to consider the proposed adoption 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 August 26, 2011, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The proposed new rules will be effective October 1, 2011, or the date of adoption, whichever is later.

4. The proposed new rules provide as follows:

GENERAL STATEMENT OF REASONABLE NECESSITY: HB 432 was passed by the 2011 Montana Legislature and signed into law by the Governor on April 7, 2011. Its effective date is October 1, 2011. The law authorizes state chartered banks, with department approval, to offer debt cancellation contracts and debt suspension agreements to their customers in connection with loans or extensions of credit. The law states that such contracts are not insurance and requires the department to adopt rules that are substantially equivalent to or more stringent than federal laws, regulations, and guidelines applicable to national banks that offer debt cancellation contracts and debt suspension agreements. The federal regulations pertaining to debt cancellation contracts and debt suspension agreements are at 12 CFR Part 37.

NEW RULE I DEFINITIONS (1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge. Under this method, a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Contract" means a debt cancellation contract or a debt suspension agreement.

(3) "Customer" means an individual who obtains from a bank an extension of credit that is primarily for personal, family, or household purposes. For purposes of this subchapter, the term means the same thing as "borrower."

(4) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequently.

(5) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The agreement may be separate from or a part of other loan documents. The term "debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the bank's unilateral decision to allow a deferral of repayment.

(6) "Guaranteed asset protection (GAP) waiver or agreement" means an extension of credit or contractual arrangement modifying terms of an extension of credit for the purchase of titled personal property under which a bank agrees to cancel the customer's obligation to repay the portion of the extension of credit that exceeds the amount paid by the primary insurer of the titled personal property upon the insurer's declaration that the titled personal property is a total loss or determination that the titled personal property is stolen and not recoverable.

(7) "Loan or extension of credit" means a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf. The term also includes any liability of a bank to advance funds to or on behalf of any customer pursuant to a contractual commitment.

(8) "Residential mortgage loan" means a loan for personal, family, or household purposes secured by a one- to four-family residential property.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: Definitions of the terms in sections (1), (2), (3), (4), (5), and (8) are substantially equivalent to the definitions of the same terms in 12 CFR 37.2. The department has determined that the federal definitions will be sufficient to serve the department's purposes and meet the Legislature's intent. Because these definitions already exist, the department saw no need to write its own original definitions.

The definition of "guaranteed asset protection (GAP) waiver or agreement" in (6) is substantially equivalent to and adapted from Office of the Comptroller of the Currency (OCC) Interpretive Letters #1028 and #1032 concerning GAP waivers or

agreements as they relate to debt cancellation contracts. The department believes the OCC's description of GAP waivers or agreements in the interpretive letters is clear and that the definition adapted from the letters is sufficient to serve the department's purposes and meet the Legislature's intent.

The definition of "loan or extension of credit" in (7) is substantially equivalent to and adapted from 12 USC 84(b)(1). The definition was selected because it encompasses both advanced funds and commitments to advance funds such as letters of credit. The department chose to define "loan or extension of credit" for clarification purposes because the term is used throughout 12 CFR Part 37 upon which these rules are patterned, but the term is not defined in that part.

NEW RULE II DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS (1) A bank offering debt cancellation contracts and/or debt suspension agreements shall:

(a) manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with bank safety and soundness principles by establishing and maintaining effective risk management and control processes over its debt cancellation contracts and debt suspension agreements to include:

(i) appropriate recognition and financial reporting of income, expenses, assets, and liabilities;

(ii) appropriate treatment of all expected and unexpected losses associated with the contracts; and

(iii) assessment of the adequacy of its internal control and risk mitigation activities in view of the nature and scope of the bank's debt cancellation and debt suspension program; and

(b) obtain and maintain in effect insurance approved by the State Auditor and Commissioner of Insurance to cover all of the bank's risk associated with its debt cancellation contracts and debt suspension agreements.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: Subsection (1)(a) is substantially equivalent to 12 CFR 37.8. The department has determined that the federal regulation, together with subsection (1)(b), will be sufficient to serve the department's purposes and meet the Legislature's intent.

Subsection (1)(b) adds a requirement that has no counterpart or equivalent in the federal regulations making this rule more stringent than 12 CFR 37.8. National banks are permitted but not required to manage the risk associated with their debt cancellation contracts and debt suspension agreements by obtaining insurance coverage. The department believes the best practice, consistent with bank safety and soundness principles, is to require insurance coverage. The potential losses that a bank is exposed to when it offers debt cancellation contracts and debt suspension agreements could be significant. Ideally, a bank could maintain a robust and effective internal program of monitoring and managing the risk without insurance, but that ideal may not always be met. A bank may not fully appreciate the extent of its risk exposure at all times if, for example, it does not retain an

actuarial consultant. The department believes this reality poses an unacceptable risk to the bank's safety and soundness.

Bank service organizations and other vendors offer services to banks related to administration of the banks' debt cancellation and debt suspension programs. The service organizations' and vendors' products include an insurance component that was cited by the industry and by vendors in their discussions with the department regarding HB 432 prior to its passage. The insurance component was an important consideration of the department in its decision not to oppose the bill. The department does not believe that requiring a bank to obtain insurance coverage for its risks associated with offering debt cancellation contracts, for example, changes the essential character of the two-party debt cancellation contract or converts it to an insurance product.

Under HB 432, debt cancellation contracts and debt suspension agreements between customers and banks under which there is no obligation on the part of a third-party insurer to pay the customer's loan balance or make loan payments on behalf of the customer upon the occurrence of the identified event are not insurance. By contrast, under an insurance contract between a bank and an insurer covering the bank's risks associated with offering debt cancellation contracts, for example, the insurer is obligated to pay the bank for the loss it sustains when a debt cancellation contract is activated by the occurrence of the identified event. Clearly, the latter transaction is an insurance transaction that is subject to the provisions of Title 33, MCA.

NEW RULE III REQUIRED DISCLOSURES (1) A bank shall provide the following disclosures to the bank's customer at the time of offering the customer a debt cancellation contract or debt suspension agreement:

- (a) notice of the prohibited acts or practices contained in [NEW RULE IV];
- (b) the fee applicable to the contract and any payment options;
- (c) any refund policy if the fee is paid in a single payment and added to the amount borrowed;
- (d) whether the customer is barred from using the credit line to which it pertains if the debt cancellation contract or debt suspension agreement is activated;
- (e) eligibility requirements, conditions, and exclusions;
- (f) that a debt suspension agreement, if activated, does not cancel the debt, but only suspends payment requirements; and
- (g) notice that cancellation of debt may result in a tax liability to the customer if activated.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: Subsections (1)(b) through (1)(f) are substantially equivalent to 12 CFR 37.6. The department has determined that the federal regulation, when combined with subsections (1)(a) and (1)(g) of this rule, provides sufficient information to enable a bank customer to make an informed decision concerning the purchase of a debt cancellation contract or debt suspension agreement.

Subsection (1)(a) requires a bank to give the customer notice of what acts or practices of a bank pertaining to debt cancellation contracts and debt suspension agreements are prohibited under New Rule IV. The department believes that customers with knowledge of the prohibited acts and practices can more effectively assert the protections that the law affords them. Subsection (1)(a) may also protect banks from unfounded customer claims that the customer was unaware of relevant information or was misled.

Subsection (1)(g) has no equivalent or counterpart in the federal regulation pertaining to debt cancellation contracts and debt suspension agreements. During the hearings on HB 432, Sen. Balyeat asked the bill proponents whether activation of a debt cancellation contract was a taxable event. While subsection (1)(g) does not require a bank to give its customer tax advice on Internal Revenue Code §6050P or any other provisions of the tax code, it requires that the customer be given notice of the potential tax liability if a debt cancellation contract is activated. The requirement in (1)(g) makes this rule more stringent than 12 CFR 37.6. The department believes that, given Sen. Balyeat's comment, it is important that the customer know of a potential tax liability.

NEW RULE IV PROHIBITED ACTS OR PRACTICES (1) A bank is prohibited from engaging in any of the following acts or practices:

- (a) extending credit or altering the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation agreement or debt suspension agreement with the bank. The prohibition is commonly referred in the regulatory context as the anti-tying provision;
- (b) engaging in any practice or using any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under [NEW RULE III], including what is being offered, the cost, and/or the terms of the contract;
- (c) offering debt cancellation contracts or debt suspension agreements that contain terms:
 - (i) giving the bank the right unilaterally to modify the contract unless:
 - (A) the modification is favorable to the customer and is made without additional charge to the customer; or
 - (B) the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or
 - (ii) requiring an up-front, lump-sum single payment for the contract if the extension of credit to which the contract pertains is a residential mortgage loan.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.3. The department believes that the federal regulation will serve the department's purposes and meet the Legislature's intent. This rule adds examples of the areas in which a customer could be misled or come to an erroneous belief as a result of a bank's practices or advertising. The examples were cited in a

recent case in which a federal regulator imposed large civil penalties against a national bank related to its marketing of credit protection products. The department believes that inclusion of specific examples in (1)(b) provides more clarity to the rule.

NEW RULE V REFUNDS OF FEES UPON TERMINATION OR PREPAYMENT OF COVERED LOAN (1) If a debt cancellation contract or debt suspension agreement is terminated, including, for example, when the customer prepays the covered loan, a bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.

(2) A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

(3) A bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011
IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.4. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and ensure fairness to a bank's customer by providing refund options as well as overall clarity to the refund issue.

NEW RULE VI METHOD OF PAYMENT OF FEES (1) Except as provided in [NEW RULE IV(1)(c)(ii)], a bank may offer a customer the option of paying the fee for a debt cancellation contract or a debt suspension agreement in a single payment, provided the bank also offers the customer a bona fide option of paying the fee for that contract in periodic installment payments.

(2) If a bank offers the customer the option to finance the single payment by adding it to the loan principal, the bank must also disclose, in accordance with [NEW RULE V], whether the customer may cancel the agreement and receive a refund, and, if so, the time period during which the customer may do so.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011
IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.5. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and, together with NEW RULE V, provide overall clarity to the refund issue.

NEW RULE VII AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES (1) Before entering into a debt cancellation contract or debt suspension agreement, a bank shall obtain the customer's written affirmative election to purchase the contract and a written acknowledgment of receipt of the disclosures required under [NEW RULE III].

(2) The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.

(3) The election and acknowledgment information satisfies these standards if it conforms to the following requirements:

(a) if the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided that the bank:

(i) maintains sufficient documentation to show that the customer received the short-form disclosures substantially similar to [NEW RULE VIII(1)] and then affirmatively elected to purchase the contract;

(ii) mails to the customer the affirmative written election and written acknowledgment together with a long-form disclosure substantially similar to [NEW RULE VIII(2)], within three business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long-form disclosures to the customer.

(b) if the contract is solicited through written materials such as mail inserts or "take one" applications and a bank provides only the short-form disclosures in the written materials, then the bank shall mail the acknowledgment of receipt of disclosures, together with a long-form disclosure as provided under [NEW RULE VIII(2)], to the customer within three business days, beginning on the first business day after the customer contacts the bank or otherwise responds to the solicitation. A bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank:

(i) maintains sufficient documentation to show that the bank provided the acknowledgment of receipt of disclosures to the customer;

(ii) maintains sufficient documentation to show that the bank made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long-form disclosures; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long-form disclosures to the customer.

(4) The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. and the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.7. The department believes that the federal regulation is sufficient to serve the department's purposes, meet the Legislature's intent, and protect both the bank and its customer. Subsection (3)(c) includes a citation to state

law relating to electronic transactions that is not included in 12 CFR 37.7. The addition of the reference to state law will clarify for banks that a customer's affirmative election and acknowledgment pertaining to the purchase of a debt cancellation or debt suspension contract may be in electronic form.

NEW RULE VIII DISCLOSURE FORMS (1) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model short form disclosure at 12 CFR 37 App A revised as of January 1, 2010. The form must be adapted by the bank to include the disclosures required under [NEW RULE III(1)(a) and (g)].

(2) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model long-form disclosure at 12 CFR 37 App B revised as of January 1, 2010. The form must be adapted by the bank to include the disclosures required under [NEW RULE III(1)(a) and (g)].

(3) The model forms in (1) and (2), which are available at Title 12, Volume I, Part 37, Appendices A and B in the Code of Federal Regulations, are not mandatory, but a bank that provides disclosures in a form substantially similar to the adapted model forms will be deemed to have satisfied the disclosure requirements applicable to the bank concerning its debt cancellation and/or debt suspension program.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR Part 37, Appendices A and B, except this rule requires a bank to adapt the federal forms to include the requirements imposed by these rules that have no counterpart or equivalent in federal regulations so that the disclosures are consistent with these rules.

NEW RULE IX GUARANTEED ASSET PROTECTION (GAP) FEATURE

(1) A debt cancellation contract with a GAP feature offered in connection with an extension of credit for the purchase of titled personal property for personal, family, or household use is a single product and does not require a separate agreement related to financing for the GAP feature. A bank offering a debt cancellation contract with a GAP feature may do so through nonexclusive agents such as automobile dealers.

AUTH: 32-1-218, MCA; Sec. 1, Ch. 138, L. 2011

IMP: 32-1-429, MCA; Sec. 1, Ch. 138, L. 2011

STATEMENT OF REASONABLE NECESSITY: This rule pertaining to Guaranteed Asset Protection features of debt cancellation contracts derives from OCC Interpretative Letters #1028 and #1032 addressing whether GAP features are debt cancellation products, whether they run afoul of the anti-tying provision in NEW RULE IV(1)(a), and whether they may be offered through nonexclusive agents such as automobile dealers. Based on the numbers and types of inquiries from national banks to the OCC about GAP features of debt cancellation contracts, the

department believes that in the absence of this rule, there would likely be confusion about such matters among banks. The department believes this rule is necessary to clarify that potential area of confusion.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to lschneider@mt.gov; and must be received no later than 5:00 p.m., September 8, 2011.

6. Lorraine Schneider, Department of Administration, has been designated to preside over and conduct this hearing.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the 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 division rulemaking actions. 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 Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; 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 department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. On May 19, 2011, Rep. Tom Berry, primary bill sponsor of HB 432, was sent a letter with enclosed draft rules to the address on file for him with the Secretary of State. No comments were received.

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 August 1, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 8.119.101 pertaining to the) AMENDMENT
Tourism Advisory Council)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 10, 2011, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on September 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Barbara Sanem, Department of Commerce, Montana Office of Tourism, 301 South Park Avenue, P.O. Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2769; fax (406) 444-841-2871; TDD (406) 841-2702; or e-mail bsanem@mt.gov.

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

8.119.101 TOURISM ADVISORY COUNCIL (1) remains the same.

(2) The Tourism Advisory Council incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~February 2009~~ June 2009, as amended ~~June 2009~~ 2011," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana ~~Promotion Division~~ Office of Tourism, Department of Commerce, 301 South Park Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors" bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~February 2009~~ June 2009, as amended ~~June 2009~~ 2011."

AUTH: 2-15-1816, MCA

IMP: 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule because the "Regulations and Procedures for the Regional/CVB Tourism Organizations, June 2009" were

amended by the Tourism Advisory Council in June 2011 to include the addition of open meeting policy requirements and RFP requirements.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Barbara Sanem, Department of Commerce, Montana Office of Tourism, 301 South Park Avenue, P.O. Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2769; fax (406) 444-841-2871; TDD (406) 841-2702; or e-mail bsanem@mt.gov, and must be received no later than 5:00 p.m., September 8, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Barbara Sanem at the above address no later than 5:00 p.m., September 8, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 persons based on 12 Convention and Visitor Bureaus, six Tourism Regions, and at least 182 potential applicants for grants of accommodation tax funds.

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 contact requirements of 2-4-302, MCA, do not apply.

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State August 1, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.50.203 pertaining to completion of)
shielding)
)
)
)
)
)
)

NOTICE OF PROPOSED
AMENDMENT

(MOTOR VEHICLE RECYCLING
AND DISPOSAL)

(NO PUBLIC HEARING
CONTEMPLATED)

TO: All Concerned Persons

1. On September 12, 2011, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and 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., August 22, 2011, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.50.203 COMPLETION OF SHIELDING (1) If the department decides, after determining that an applicant for a license has met all the licensing requirements of this subchapter except for the shielding requirements in ARM 17.50.202, that a license should be issued when the applicant has complied with shielding requirements, the department shall issue and mail to the applicant a written statement that the applicant has complied with all requirements, other than shielding, of Title 75, chapter 10, part 5, MCA, and this subchapter, and that it has decided that a license should be issued if the shielding requirements are satisfied within eight months. If the applicant then complies with the shielding requirements in ARM 17.50.202 and submits acceptable evidence of that compliance to the department within eight months after the date that the department issued the statement, and otherwise remains in compliance with Title 75, chapter 10, part 5, MCA, and this subchapter, the department shall inspect and determine compliance under ARM ~~17.50.502(3)~~ 17.50.202(3). If it determines that the applicant is complying with shielding and other requirements, the department shall issue the license.

(2) remains the same.

AUTH: 75-10-503, MCA
IMP: 75-10-503

REASON: The department is proposing to amend ARM 17.50.203 to correct a citation error. Adopting the correct cite will eliminate confusion regarding compliance with shielding requirements prior to the issuance of a motor vehicle wrecking facility or motor vehicle graveyard license.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than September 8, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to 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, no later than September 8, 2011.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 21 based on the 208 motor vehicle wrecking facilities and graveyards in Montana.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

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

By: /s/ Richard H. Opper
RICHARD H. OPPER
Director

Certified to the Secretary of State, August 1, 2011.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.114.501 architect) PROPOSED AMENDMENT
examination, 24.114.1401 and)
24.114.1402 landscape architect)
applications, education and)
experience)

TO: All Concerned Persons

1. On September 1, 2011, at 2:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects and Landscape Architects (board) no later than 5:00 p.m., on August 26, 2011, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdlar@mt.gov.

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

24.114.501 ARCHITECT EXAMINATION (1) through (2)(a) remain the same.

(b) hold a degree in architecture from a school of architecture, the degree curriculum of which was accredited by the National Architectural Accrediting Board (NAAB) not later than two years after graduation, or meet the alternate education criteria available on the NCARB web site; and

(c) through (4) remain the same.

(5) The ARE is a proprietary examination developed and administered by NCARB. Applicants who fail the examination are provided commentary on areas of weakness, along with notice of the failed examination. Neither the board nor NCARB provides additional examination review of any type.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the exam review available to candidates who fail the National Council of

Architects Registration Boards' (NCARB) ARE examination. The amendment will clarify that neither the board nor NCARB will allow any additional review of the ARE examination beyond the written explanation of individual vignettes presented on the exam and the areas in which the candidate failed to meet the content requirement that NCARB provides directly to the candidate. NCARB provides no further type of review of the examination. Further, any allowable state review would include the identical information already provided by NCARB, but with the requirement that the candidate pay fees to both NCARB and the state for costs incurred by both in providing the review.

24.114.1401 LANDSCAPE ARCHITECT APPLICATIONS (1) An application for original licensure, license reinstatement, or licensure by endorsement must be made on a form provided by the department. The application may be submitted ~~on-line~~ online or by mail accompanied by the nonrefundable fee(s), and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 66, MCA, and these rules.

(2) through (2)(b)(ii) remain the same.

(iii) experience detail sheets verified by the licensed landscape architect(s) design professionals as defined in ARM 24.114.1402, under whose supervision the applicant has worked; and

(iv) through (5) remain the same.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-301, 37-66-304, MCA

REASON: The board is amending this rule and ARM 24.114.1402 to address questions from landscape architect applicants regarding the availability of electronic or distance modes of acceptable supervision, while acknowledging the small number of licensed landscape architects available for supervision in Montana. The board is amending these rules to allow design professionals other than licensed landscape architects to conduct a portion of a landscape architect's supervision. The board concluded this change is consistent with nationally recognized standards and notes that a significant majority of the supervision must still be conducted by a licensed landscape architect. These amendments will clearly delineate the board's intentions regarding the diverse scope of experience required and will provide objective criteria by which the board and staff will evaluate landscape architect applications.

24.114.1402 EDUCATION AND EXPERIENCE REQUIRED FOR LANDSCAPE ARCHITECT LICENSURE (1) through (1)(e) remain the same.

(2) Practical experience must be gained under the direct supervision of a licensed ~~landscape architect~~ design professional as defined in (2)(d), and is subject to review and approval by the board.

(a) "Practical experience" means a diversity of experience directly related to landscape architecture.

(b) "Direct supervision" means working conditions where a licensed landscape design professional, regularly employed in the same physical location as

the applicant, is directly responsible for all tactical and technical decisions on the applicant's work.

(c) "Year" means a total of 2,000 hours comprised of:

(i) at least 35 hours per week for at least two continuous months; or

(ii) at least 20 hours per week for at least four continuous months.

(d) "Licensed design professional" means a licensed landscape architect for at least two-thirds of the applicable experience requirement. The remaining experience may be obtained under the direct supervision of a licensed civil engineer, licensed architect, or a city planner certified by a nationally recognized certifying body (e.g. American Institute of Certified Planners).

(3) remains the same.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-304, MCA

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdlar@mt.gov, and must be received no later than 5:00 p.m., September 9, 2011.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdlar@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Brooke Jasmin, board administrator, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, 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 August 1, 2011

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.183.404 fee schedule,)
24.183.408 certificate of)
authorization, 24.183.502 and)
24.183.503 application, 24.183.510)
grant and issue licenses, and)
24.183.1104 and 24.183.1107)
uniform standards)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 1, 2011, at 9:00 a.m., a public hearing will be held in B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on August 26, 2011, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpel@mt.gov.

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

24.183.404 FEE SCHEDULE (1) through (3)(g)(v) remain the same.
(vi) FE exam score retrieval 50
(4) remains the same.

AUTH: 37-1-134, 37-67-202, 37-67-311, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-311, 37-67-312, 37-67-313, 37-67-320, 37-67-321, MCA

REASON: The board determined it is reasonably necessary to add an exam score retrieval fee for engineer interns who do not complete the application process, but request their score. It is the board's responsibility to maintain the national exam score records of the National Council of Examiners for Engineers and Surveyors (NCEES). The board staff will maintain such scores in a holding file and will need to

search for a particular score when requested by an individual. This fee will affect approximately 67 applicants and generate \$3,350 in additional annual revenue.

24.183.408 CERTIFICATE OF AUTHORIZATION (1) Applications received by the department must be on a ~~board-approved~~ board-approved form and accompanied by the appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions.

(a) through (2) remain the same.

(3) A professional engineer or professional land surveyor in responsible charge who leaves the employment of a sole proprietorship, firm, partnership, or corporation (who has obtained the required certificate of authorization from the board), for whatever reason, must provide written notification to the board office of that fact, within ~~ten~~ 45 working days. The sole proprietorship, firm, partnership, or corporation must provide the board office within ~~ten~~ 45 working days, on a prescribed form, the change of the professional engineer and/or professional land surveyor in responsible charge. Failure to name another professional engineer and/or professional land surveyor in responsible charge within ~~ten~~ 45 working days ~~shall~~ may be cause for suspension of the certificate of authorization and cause for revocation.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-320, MCA

REASON: The board is amending this rule to expand the time in which licensees must notify the board when the professional engineer or professional land surveyor designated as the firm's licensee in responsible charge leaves a firm and a replacement is appointed. The board concluded that 45 days is a much more reasonable timeframe for firms to accomplish this notification. The board is also amending this rule to allow the board more discretion to consider mitigating and aggravating circumstances when deciding whether or not to suspend a firm's certificate of authorization.

24.183.502 APPLICATIONS (1) Applications received must be on a board-approved form ~~provided by the department~~ and accompanied by appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be deemed incomplete. Fees will be deposited as received.

(2) through (4)(b) remain the same.

(c) advise the applicant of the ~~application's rejection~~ status of the application in accordance with provisions of the law.

~~(5) A rejected applicant may request reconsideration under the section originally applied for, within one year of the date of notification, without additional fees. Additional evidence pertaining to the application must be furnished. However, reconsideration does not take into account experience or education subsequent to the date of application.~~

~~(6) An applicant who applies under a different section than that previously submitted shall submit a new complete application accompanied by the appropriate fee.~~

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

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-104, 37-67-303, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-312, 37-67-313, MCA

REASON: The board is amending this rule to address applicant questions and confusion regarding the application process. The board determined it is reasonably necessary to clearly set forth current application process by deleting provisions that no longer apply to current department policies and procedures. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.183.503 APPLICATION REFERENCES (1) remains the same.

~~(2) No reference will be accepted by the board, unless the reference form is fully completed and bears the signature of the reference. Until such time as the required reference forms are received, the board will not take action on the application. If the required reference forms are not received within a period of three months after the date of receipt of the application in the office of the board, the application shall be rejected and the application fees forfeited.~~

AUTH: 37-67-202, MCA

IMP: 37-67-303, 37-67-305, 37-67-308, MCA

REASON: The board is amending this rule to remove the three-month deadline for applicants to submit references. The board concluded that this abbreviated window for submission is unnecessarily restrictive and burdensome for applicants.

24.183.510 GRANT AND ISSUE LICENSES (1) remains the same.

~~(2) The engineer intern license will be valid for six years. Upon termination of the license, the board will dispose of the application according to department policy. Pursuant to an agreement with the National Council of Examiners for Engineering and Surveying (NCEES), the board has agreed to retain examination scores. Upon request, the individual may obtain the national exam score and verification for a fee prescribed by the board.~~

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

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-67-305, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-320, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clarify the termination date for engineer intern licenses. This amendment will facilitate the retention of exam scores and the maintenance and disposition of

terminated application records according to the department's records retention schedule. Implementation cites are being amended to accurately reflect all statutes implemented through this rule.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) A certificate of survey may not be filed by a county clerk and recorder, unless it complies with the following requirements:

(a) A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 1/2 inch margin on the binding side.

(b) and (c) remain the same.

(d) A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.

(i) A title or title block including the quarter-section, section, township, range, principal meridian, and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision," or any title other than "Certificate of Survey."

(ii) The name(s) of the person(s) who commissioned the survey, the name(s) of the owner of the land to be subdivided, if other than the person(s) commissioning the survey, and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.

(iii) The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line, or retrace an existing parcel of land.

(iv) and (v) remain the same.

(vi) The location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c).

(A) through (viii) remain the same.

(ix) The bearings, distances, and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.

(A) remains the same.

(B) For purposes of this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(x) Data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, these data must at least include radius and arc length. For nontangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.

(xi) through (xii)(A) remain the same.

(B) If the survey depicts the retracement or division of a one or more parcels ~~parcel or lot~~ ~~lots~~ that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.

(C) remains the same.

(D) If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels not shown on the filed certificate of survey or plat, the information required by this subsection is the legal description of the encompassing parcel.

(E) remains the same.

(xiii) Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions, ~~and~~ area of each parcel, and the acreage of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot, part of a U.S. government section, or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.

(xiv) remains the same.

(xv) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with Parts 1 through 4 of the Montana Subdivision and Platting Act (76-3-101 through ~~76-3-625~~ 76-3-411, MCA) and the regulations adopted under that Act.

(xvi) through (f) remain the same.

(i) A certificate of survey of a division of land that would otherwise be a subdivision, but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder, unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

(ii) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed, unless it bears or is accompanied by a signed and acknowledged recitation of the covenant signed and acknowledged by all parties to the agreement.

(iii) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family:

(A) the The certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee; and

(B) The certificate must be accompanied by the documents transferring ownership to the grantee.

(iv) and (A) remain the same.

(B) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation; and

(C) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel. The certificate must be accompanied by the documents transferring ownership of the area being joined to the adjacent parcel.

(v) If a boundary line will be completely eliminated pursuant to 76-3-207(1)(f), MCA, the certificate must clearly distinguish the prior boundary location (shown, for

example, by a dashed or broken line or a notation number) and establish the boundary of the resulting parcel.

~~(v)~~ (vi) A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey and comply with all other requirements of ARM 24.183.1104 as applicable. ~~The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.~~

~~(vi)~~ (vii) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey:

~~(A) must~~ Must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid;

~~(B) Must be accompanied by a certificate of a title abstractor showing the names of the owners of record of the land to be divided and the names of any lien holders or claimants of record against the land, and the written consent to the division by the owners of the land, if other than the person commissioning the survey, and any lien holders or claimants of record against the land; and~~

~~(C) If applicable, lots less than 20 acres in size must be accompanied by a certification from the Montana Department of Environmental Quality stating that it has approved the plans and specifications for water supply and sanitary facilities pursuant to 76-4-104(2), MCA.~~

~~(vii)~~ (viii) For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner," and "owner" mean the seller of the parcel under the contract-for-deed.

(g) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205, and 76-3-209, MCA, and divisions of federally owned land made by a United States U.S. government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule, and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act, or, when applicable, that the land surveyed is owned by the federal government.

AUTH: 76-3-403, 76-3-411, MCA

IMP: 76-3-101 through 76-3-411, ~~76-3-403~~, 76-4-104, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.183.1107 to separate the legal boundary elements and related plat content utilized by licensed professional land surveyors from the land use elements imposed during subdivision and exemption reviews by planning authorities. In 2007, the board initially considered concerns of planners, clerks and recorders, and county

commissioners regarding some counties' requirement that land surveyors provide what was believed to be excessive information on the face of plats. Following extensive review and discussion, the board determined the proposed amendments are necessary to provide consistency among county governments regarding information placed on certificates of survey and subdivision plats.

Implementation and authority cites are being amended to provide the complete sources of the board's rulemaking authority and to accurately reflect all statutes implemented through these two rules.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder, unless it complies with the following requirements:

(a) Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.

(b) and (c) remain the same.

(d) A survey that modifies property boundaries in a filed subdivision plat must be entitled "amended plat of (lot, block, and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder, unless it meets the filing requirements for final subdivision plats specified in this rule.

(2) Except as provided in ARM 24.183.1107(4), a final plat submitted for approval must show or contain, on its face or on separate additional sheets referred to on the plat, as provided in ARM 24.183.1107(1)(c), the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.

(a) A title or title block indicating the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".

(b) remains the same.

(c) A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use of buildings constructed thereon, are not shown on the face of the plat.

(d) A statement that buyers of property should ensure that they have obtained and reviewed all sheets, supplements, and attachments to the plat and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

(e) A statement that a supplementary exhibit depicting conformance with the conditions of approval of the preliminary plat application, entitled "Supplement to [insert name of] Subdivision," will be filed with the plat.

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

~~(e)~~ (h) The location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c).

(i) and (ii) remain the same.

~~(f)~~ ~~The location of any section corners or corners of divisions of sections pertinent to the survey.~~

~~(g)~~ (i) Witness and reference monuments and basis of bearings. For purposes of this rule, the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

~~(h)~~ (j) The bearings, distances, and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.

(i) remains the same.

(ii) For purposes of these regulations, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

~~(i)~~ (k) Data on all curves sufficient to enable the ~~re-establishment~~ reestablishment of the curves on the ground. For circular curves, these data must at least include radius and arc length. For ~~non-tangent~~ nontangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.

(j) through (l) remain the same, but are renumbered (l) through (n).

~~(m)~~ (o) All streets, alleys, avenues, roads, and highways; their widths (if ascertainable) from public records, bearings, and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads, and highways.

~~(n)~~ (p) The location, dimensions, and areas of all parks, common areas, and other grounds dedicated for public use.

(o) through (p)(i) remain the same, but are renumbered (q) through (r)(i).

(ii) If the plat depicts the division of a ~~parcel~~ one or more parcels or ~~lot that is~~ lots shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.

(iii) remains the same.

(iv) If the plat establishes the boundaries of a subdivision containing one or more ~~interior~~ interior parcels not shown on a filed certificate of survey or plat, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.

~~(q)~~ (s) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the survey portion of the final plat has been prepared in conformance with Parts 1 through 4 of the Montana Subdivision and Platting Act (76-3-101 through 76-3-625 76-3-411, MCA), and the regulations adopted under that Act.

(r) remains the same, but is renumbered (t).

~~(s)~~ (u) The dated, signed, and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the

terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.

(t) remains the same, but is renumbered (v).

~~(u)~~ (w) Space for the clerk and recorder's filing information. (See ARM 24.183.1107(2)).

~~(3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing. The following certifications of final plat approval must appear on the face of the final plat or on an additional sheet referred to on the face of the plat:~~

~~(a) If applicable, the owner's certificate of dedication of streets, parks, playground easements, or other public improvements.~~

~~(b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements. An acceptance of a the dedication is ineffective without this certification.~~

~~(c) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.~~

~~(d) Copies of any covenants or deed restrictions relating to the subdivision.~~

~~(e) If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.~~

~~(f) (c) A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.~~

~~(g) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.~~

~~(h) remains the same, but is renumbered (d).~~

~~(i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.~~

~~(j) remains the same, but is renumbered (e).~~

~~(f) If applicable, certification of the sanitarian.~~

~~(4) If applicable, a supplementary exhibit to the plat depicting conformance with the conditions of approval of the preliminary plat application shall be entitled "Supplement to [insert name of] Subdivision," with a title block indicating the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town in which the subdivision is located and shall contain:~~

~~(a) Any text or graphic representations of requirements by the governing body for final plat approval as set forth in the preliminary plat approval, including, but~~

not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, the use of particular parcels, or clear vision triangles. Information described in this subsection as well as covenants and restrictions shall not be shown on the face of the plat.

(b) A certification that the supplementary exhibit of the final plat following the sheets certified by a professional land surveyor has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-411, MCA), and the regulations adopted under the Act by a dated signature and the seal of a Montana licensed surveyor, engineer, or architect who is the representative of the subdivider that conditions for final plat approval as shown on the supplementary exhibit have been satisfied.

(c) A notation stating that the information shown is current as of the date of the certification, and that changes to any land use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

(5) Any change to a supplementary exhibit, which is approved by the governing body, must be depicted upon an amended supplementary exhibit. An amended supplementary exhibit is not an amended plat as referenced in ARM 24.183.1107(1)(d), but is required to comply with ARM 24.183.1107(4), except it shall be entitled "Amended Supplement to [insert name of] Subdivision."

(6) The following documents must accompany the approved final plat, and recording information for each document must be referenced on a sheet of the plat when it is presented to the county clerk and recorder for filing:

(a) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided, and the names of any lien holders or claimants of record against the land, and the written consent to the subdivision by the owners of the land if other than the subdivider, and any lien holders or claimants of record against the land.

(b) Any covenants or deed restrictions relating to the subdivision.

(c) If applicable, for lots less than 20 acres in size, a certification from the Montana Department of Environmental Quality stating that it has approved the plans and specifications for water supply and sanitary facilities pursuant to 76-4-104(2), MCA.

(d) If required by the governing body, for lots of 20 acres or greater in size, written documentation that the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and replacement drainfield for each lot in accordance with 76-3-604(8)(b), MCA.

(e) If applicable, a copy of any subdivision improvements agreement, securing the future construction of any additional public improvement to be installed.

(f) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both. When plans and specifications are

filed with a government official other than the county clerk and recorder, a document stating where the plans can be obtained shall be required in lieu of the plans and specifications.

(g) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.

(h) Any other documents satisfying preliminary plat approval required to be recorded by the governing body.

AUTH: 76-3-403, 76-3-411, MCA

IMP: 76-3-101 through 76-3-411, ~~76-3-403~~, 76-3-604, 76-4-104, MCA

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpel@mt.gov, and must be received no later than 5:00 p.m., September 9, 2011.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdpel@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Mary Tapper, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, PRESIDING OFFICER

/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 August 1, 2011

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	AMENDED NOTICE OF
ARM 32.8.101 and 32.8.202	)	PROPOSED AMENDMENT AND
pertaining to grade A pasteurized milk	)	EXTENSION OF COMMENT
and time from processing that fluid	)	PERIOD
milk may be sold for public)	
consumption)	

TO: All Concerned Persons

1. On March 10, 2011, the Department of Livestock published MAR Notice No. 32-11-216 pertaining to the proposed amendment of the above-stated rules at page 289 of the 2011 Montana Administrative Register, Issue Number 5.

2. The Department of Livestock 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 Livestock no later than 5:00 p.m. on September 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov

3. This amended notice is necessary because the formal evidentiary hearing process has not been completed. The original Notice No. 32-11-216 stated the department would use a combined two-part hearing under the requirements of 2-4-302 and 315, MCA, and the notice announced the dates and times of the hearings. The first part of the combined hearing allowed for submission of evidence by designated parties in a formal setting, presided over by a hearings examiner, and governed by rules of evidence. The second part of the combined hearing, presided over by the board, presented an opportunity for members of the public to appear and present testimony regarding the proposed amendments as found in the petition submitted by Core-Mark. The second part has been completed. The first part has not been completed. After the first part has been completed, which includes the presentation of written finding of fact and conclusions of law, and legal briefing by the designated parties, the hearing examiner will be presenting to the board, a proposed decision based on the testimony and evidence received at that first part of the hearing. As noted in the original published notice on March 10, 2011, MAR Notice No. 32-11-216 at page 289 of the 2011 Montana Administrative Register, Issue Number 5, the Board of Livestock will consider equally all testimony and comment received in both parts of the hearing, and the official record will contain all testimony and comment received in both parts of the hearing.

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: Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov, and must be received no later than 5:00 p.m., September 15, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. September 15, 2011.

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

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 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.

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

/s/ George H. Harris
George H. Harris
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

Certified to the Secretary of State August 1, 2011.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.404, 32.3.201, 32.3.224,	)	AMENDMENT AND ADOPTION
32.3.224A, 32.3.401, 32.3.403,)	
32.5.101, 32.18.204, and the	)	NO PUBLIC HEARING
adoption of NEW RULE I pertaining	)	CONTEMPLATED
to department livestock permit fees,)	
miscellaneous fees, definitions, bison,)	
unlawfully estrayed and public-owned)	
migratory bison from herds affected)	
with a dangerous disease, use of)	
brucella abortus vaccine, domestic)	
bison permit before removal from)	
county or state, livestock market)	
releases)	

1. On September 19, 2011, the Department of Livestock proposes to amend and adopt the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.2.404 DEPARTMENT OF LIVESTOCK PERMIT FEES (1) through (7) remain the same.

(8) Domestic bison transportation permit as required by 81-5-211, MCA 1.00

AUTH: 81-1-102, 81-22-102, MCA

IMP: 81-3-205, 81-3-211, 81-3-214, 81-5-112, 81-7-504, 81-8-256,
81-8-276, MCA

32.3.201 DEFINITIONS (1) through (1)(b) remain the same.

(c) "Livestock" means cattle, horses, mules, asses, sheep, swine, goats, domestic bison, llamas, and ratites.

(d) through (h) remain the same.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-20-101, MCA

32.3.224 DOMESTIC BISON (1) Domestic bison may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211 and in addition:

- (a) and (i) remain the same.
- (ii) domestic bison consigned directly to an official slaughtering establishment for immediate slaughter;
- (iii) remains the same;
- (iv) domestic bison originating in an official certified Brucellosis free bison herd;
- (b) domestic bison required to be tested for Brucellosis prior to entry may be quarantined for a 45 to 120 day Brucellosis retest, at owner's expense, after arrival in Montana. Included here will be all female domestic bison from states or areas with Brucellosis classification of A, B, or lower;
- (c) female domestic bison must be officially calfhood vaccinated by a deputy state veterinarian prior to entry into Montana, with a Brucella abortus vaccine approved by the administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture except the following:
 - (i) spayed domestic bison;
 - (ii) domestic bison consigned directly to an official slaughtering establishment for immediate slaughter;
 - (iii) nonvaccinated domestic bison four to 11 months of age placed under quarantine upon arrival, for official calfhood vaccination or spaying by a deputy state veterinarian, within 30 days of their entry;
 - (iv) nonvaccinated domestic bison less than four months of age, imported without their dams, placed under quarantine upon arrival, for official calfhood vaccination or spaying by a deputy state veterinarian, within six months of their entry; and
 - (v) all domestic bison imported under this rule shall be officially identified prior to importation and listed on the official health certificate; and
 - (d) all domestic bison imported into Montana must meet the interstate requirements set forth in Title 9 CFR.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

32.3.224A UNLAWFULLY ESTRAYED AND PUBLIC-OWNED MIGRATORY WILD BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE

(1) When estrayed or migratory wild bison exposed to or affected with Brucellosis, a dangerous, contagious, zoonotic disease of man and animals, enter into or are otherwise present within the state of Montana one of the following actions ~~will~~ may be taken:

- (a) The live wild bison may be physically removed by the safest and most expeditious means from within the state boundaries. This means may include but not be limited to capture, trucking, hazing/aversion, or delivery to a departmentally approved slaughterhouse.

(b) If live wild bison cannot safely by reasonable and permanent means be removed from the state they shall be summarily destroyed where they stand by the use of firearms. If firearms cannot be used with due regard to human safety and public property wild bison may be relocated to such a danger free area and destroyed by firearms or by any other practicable means of euthanasia.

(c) When wild bison of necessity or unintentionally are killed through actions of the department, the carcass remains will be disposed of by the most economical means possible. This may include but not be limited to burying, incineration, rendering, or field dressing for delivery to a departmentally approved slaughterhouse or slaughter destination.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

32.3.401 DEFINITIONS (1) remains the same.

(2) An "animal" is any quadruped of a species which can become infected with brucellosis. The term includes, but is not limited to a member of the bovine, porcine, canine, ovine, bison (wild or domestic), caprine, or feline species, or the genus cervidae.

(3) An "approved brucella vaccine" is a brucella product approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison (wild or domestic) to enhance their immune response to brucella.

(4) through (8) remain the same.

(9) A "Designated Surveillance Area (DSA)" is a geographically defined region as specified in ARM 32.3.434 in which cattle or domestic bison may be exposed to brucellosis from wildlife.

(10) remains the same.

(11) An "official adult vaccinate" (AV) is a sexually intact animal of the genus bos or domestic bison vaccinated with an approved brucella vaccine, using approved procedures, and of an age older than that permitted for official calthood vaccination.

(12) through (20) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

32.3.403 USE OF BRUCELLA ABORTUS VACCINE (1) remains the same.

(2) The state veterinarian, upon discovery that the owner of imported livestock eligible for official vaccination cannot or will not otherwise have those cattle or domestic bison officially vaccinated, shall arrange for the official vaccination of such eligible cattle or domestic bison at a reasonable cost to the owner.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

32.5.101 DEFINITIONS The following definitions apply to this subchapter:

(1) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, domestic bison, swine, ostriches, rheas, emus, goats, alternative livestock as defined in 87-4-406, MCA, and other animals for purposes of disease prevention, control and eradication.

(2) through (5) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.18.204 LIVESTOCK MARKET RELEASES -DURATION AND CIRCUMSTANCES UNDER WHICH DIVERSION ALLOWED (1) Neither a licensed livestock market, nor a person having possession or control of livestock consigned to a Montana licensed livestock market may remove livestock from the market until the release required by 81-3-211(3), MCA has been issued. The release shall describe the livestock for which it is issued by sex, brand, breed, and number and is valid for 36 hours ~~after the livestock leave the market~~ the release is issued. Diversion from the destination shown on the release may not occur until the person making the diversion has obtained either a brand inspection or an appropriate transportation permit authorizing movement of the livestock to the new destination.

AUTH: 81-3-202, MCA
IMP: 81-3-211, MCA

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

NEW RULE I DOMESTIC BISON PERMIT BEFORE REMOVAL FROM COUNTY OR STATE (1) In any county of the state of Montana where the Department of Livestock must issue permits for domestic bison before removal from that county or state, as provided for in 81-5-112, MCA, any person removing or causing to be removed from the county or state any domestic bison must first obtain from a state stock inspector or deputy state stock inspector, a permit for removal.

(a) The permit must be issued on an approved Department of Livestock, Brands Enforcement Division form.

(b) The owner or his agent must sign the permit and certify as to approximate number and the description.

(c) The department form shall, when used for a domestic bison permit, show destination in or out of the state of Montana.

(d) An owner's account of sale purchase sheet shall constitute a domestic bison permit for those domestic bison leaving an auction market.

AUTH: 81-5-202, MCA
IMP: 81-5-112, MCA

REASON: Legislative amendments were made to 81-1-120, 81-2-121, 81-3-201, 81-4-603, 81-5-101, 85-1-104, and 87-1-216, MCA to clarify the definition regulation

of bison and granting the department rulemaking authority to establish a permit and inspection system for the transportation of bison.

5. This amendment shall be applied effective July 1, 2011 per SB207.

6. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to bison@mt.gov to be received no later than 5:00 p.m., September 15, 2011.

7. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. September 15, 2011.

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

9. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. 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 the area of interest that the person wishes to receive notices regarding. 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 Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsors, F. Moore, Warburton, Arthun, D. Barrett, Brown, and Steinbeisser were notified August 1, 2011 by e-mail.

DEPARTMENT OF LIVESTOCK

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

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 1, 2011.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.201, 32.3.212, 32.3.501,	)	AMENDMENT
32.3.502, 32.3.503, 32.3.505,)	
32.3.506, 32.3.507 and 32.3.508	)	NO PUBLIC HEARING
pertaining to definitions, additional	)	CONTEMPLATED
requirements for cattle, official)	
trichomoniasis testing and)	
certification requirements, reporting)	
trichomoniasis, movement of animals)	
from test positive herds and epizootic)	
areas, epidemiological investigations)	
and exposed herd notification,)	
common grazing and grazing)	
associations, and penalties)	

1. On, October 17, 2011, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, October 3, 2011 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.201 DEFINITIONS (1) In this subchapter:

(a) through (h) remain the same.

(i) "Virgin heifer" means a sexually intact female cattle less than 24 months of age that is accompanied by a signed affidavit from the owner or agent as having had no potential breeding contact with sexually intact male cattle.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-20-101, MCA

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) remains the same.

(2) All sexually intact male cattle entering Montana must meet the ~~Trichomoniasis~~ trichomoniasis testing and certification requirements set forth in ARM 32.3.502, except as provided below:

(a) through (d) remain the same.

(e) those imported on a Certificate of Veterinary Inspection for exhibition or rodeo purposes, and held in confined facilities, and destined to return to their home state within 30 days. They shall not be used for semen collection or natural breeding;

(f) those imported to a CSS (certified semen services) bull stud or its equivalent (ARM 32.3.220) providing testing is performed upon admittance;

(g) ~~those imported as part of state veterinarian approved seasonal grazing operations without changing ownership, following a risk assessment.~~ Sexually intact male cattle imported as part of state veterinarian approved seasonal grazing operations without changing ownership may be subject to herd specific testing and certification requirements as determined by the state veterinarian, following a risk assessment.

(3) Any ~~Trichomoniasis~~ test eligible ~~bovine~~ cattle used for sporting or exhibition purposes that breaches a fence and commingles with other ~~bovine~~ cattle shall be tested for ~~Trichomoniasis~~. The owner of the trespassing ~~bovine~~ cattle shall bear all costs for the requested test on that bovine.

(4) Any ~~Trichomoniasis~~ test eligible bull that remains in Montana for breeding purposes, change of ownership, or grazing must adhere to the conditions in ARM 32.3.502.

(5) Animals must not have originated from a trichomoniasis positive herd.

(6) All sexually intact female cattle over 12 months of age must be either:

(i) spayed within 30 days of arrival; or

(ii) verified as a virgin by owner/agent affidavit; or

(iii) verified by an accredited veterinarian to be greater than 120 days pregnant; or

(iv) verified to be not exposed to an intact bull within the last 120 days by owner/agent affidavit; or

(v) be destined directly to slaughter or to a feedlot and then to slaughter.

(5) remains the same but is renumbered (7).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

32.3.501 DEFINITIONS In this subchapter:

(1) "Acceptable specimen" means a specimen determined to be satisfactory for diagnostic testing by an approved laboratory, which was collected by a ~~Trichomoniasis~~ certified veterinarian and submitted with a completed and signed lab form.

(2) remains the same.

(3) "Approved laboratory" means a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) or a laboratory approved by the state veterinarian to identify ~~Trichomonas~~ T. foetus.

(4) remains the same.

(5) ~~"Bovine" means any sexually intact male and female animal of the genus Bos~~ refers to all sexually intact domestic cattle.

(6) and (7) remain the same.

(8) "Complete herd ~~T~~trichomoniasis test" means an official T. foetus test from each nonvirgin bull in the herd.

(9) remains the same.

(10) "Epidemiological investigation" means the scientific investigation conducted to determine the population of ~~cattle or cattle herds~~ bovines that may be affected with or exposed to ~~T~~trichomoniasis.

(11) remains the same.

(12) "Exposed herds" means cattle herds that have, within the previous twelve months, ~~had direct commingling~~ commingled or had cross-fence contact with a test positive animal or a test positive herd during the time of potential breeding activity.

(13) "Herd" means a group or groups of sexually intact ~~cattle~~ bovines 12 months of age or older under common ownership or supervision that have commingled during the previous 12 months.

(14) "Individual ~~T~~trichomoniasis identification" means a Montana ~~O~~fficial ~~T~~trichomoniasis ~~T~~tag that must be placed in the ear at the time of the first test. Other acceptable means of identification ~~are one of the following:~~

~~(a) an official United States Department of Agriculture (USDA) ear tag and a readable ranch tag; or~~

~~(b) a unique breed registry tattoo and a readable ranch tag; or~~

~~(c) any other means of official identification approved by the state veterinarian may be approved by the state veterinarian.~~

(15) "Licensed ~~T~~trichomoniasis approved feedlot" means any facility which is licensed, annually, by the state veterinarian's office where:

(a) all T. foetus positive animals ~~must be~~ are individually identified and branded with a "V" on the right tailhead;

(b) there ~~will be~~ is no commingling of intact male and female cattle;

(c) no animals entering the feedlot ~~will be~~ are allowed back into the Montana breeding herd;

(d) all T. foetus positive animals ~~must be~~ are kept for a minimum of 30 days before being sold directly to slaughter or through a licensed livestock market and then to slaughter;

~~(e) all T. foetus positive animals will be branded with a "V" on the right tailhead;~~

(f) and (g) remain the same but are renumbered (e) and (f).

(16) "Negative T. foetus bull" is a bull that T. foetus has not been detected in preputial scraping by an official trichomoniasis test, which has not commingled with female cattle since that test, and which qualifies by one of the following:

(a) originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last ~~90~~ 60 days; or

~~(b) originate from a positive herd, but has a series of three negative official T. foetus bull tests at intervals of at least seven days and has tested negative to three consecutive PCR tests at least one week apart; or~~

(c) has a negative official T. foetus import bull test; or

(d) remains the same.

(17) "Official ~~T~~trichomoniasis test" means the sampling procedure conducted by a deputy state ~~T~~trichomoniasis certified veterinarian of the preputial content of a

sexually intact male bovine and submitted to an approved laboratory to identify ~~Trichomonas~~ T. foetus by three weekly cultures, an individual PCR test, or other test approved by the state veterinarian. Bulls must be sexually rested for at least two weeks prior to the first test. For the culture tests:

(a) the tests must be conducted at intervals of no less than seven days between each test;

(b) there must be no breeding activity during the intervals between the three tests or between the final of the three negative tests and the time of import, sale, loan, or lease.

(18) "Official Trichomoniasis retest" means an official ~~Trichomoniasis~~ Trichomoniasis test conducted at least seven days, but not more than twenty-one days apart, after any previous official ~~Trichomoniasis~~ Trichomoniasis test.

(19) "Premises" means the ground, area, building and/or equipment occupied by one or more bovine.

(20) remains the same.

(21) "Quarantine release" means that all quarantined animals have completed all regulatory requirements to eliminate T. foetus infection ~~in that herd and is no longer classified a positive herd.~~

(22) remains the same.

(23) "Seasonal grazing permit" means a permit issued by the Montana State Veterinarian's office to Montana livestock producers who utilize pasture lands and other livestock operations in one or multiple states that are contiguous with Montana as outlined in ARM 32.3.212(2)(g).

(24) remains the same.

(25) "Test positive animal" means an animal in which an approved ~~Trichomoniasis~~ Trichomoniasis laboratory has identified ~~Trichomonas~~ T. foetus by an official ~~Trichomoniasis~~ Trichomoniasis test.

(26) "Test positive herd" means a herd of cattle in which an approved trichomoniasis laboratory has identified ~~Trichomonas~~ T. foetus in one or more animals by an official ~~Trichomoniasis~~ Trichomoniasis test, and has not completed a post breeding negative whole herd bull test.

(27) "Trichomoniasis" means a sexually transmitted disease of cattle caused by the protozoan organism Trichomonas (Trichomonas) foetus (T. foetus) that causes infertility, pyometra, abortions, and reproductive inefficiency in female cattle.

(28) "Trichomoniasis certified veterinarian" means a deputy state veterinarian who has attended a Montana ~~Trichomoniasis~~ Trichomoniasis training and has been certified by the Montana State Veterinarian ~~and is able to provide an acceptable specimen to the approved laboratory.~~

(29) "Trichomoniasis epizootic area" is an area as defined in ARM 32.3.111 determined to have a higher risk of trichomoniasis and included the entirety of:

(a) Glacier County;

(b) Pondera County;

(c) Teton County;

(d) Cascade County;

(e) Carbon County;

(f) Yellowstone County;

(g) Big Horn County;

(h) Treasure County;

(i) Rosebud County;

(j) Powder River County.

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

~~(30) (31) "V Brand" means a 2"X3" hot iron single "V" character brand, recorded by the Animal Health Division of the Department of Livestock, applied to the right tailhead of a bovine signifying that the bovine has tested positive for the venereal disease Trichomoniasis (applied within 14 days of diagnosis when the animal is presented to a licensed trichomoniasis approved feedlot).~~

(31) remains the same but is renumbered (32).

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) ~~The following official Trichomoniasis testing and certification requirements apply to all nonvirgin, sexually intact male cattle~~ Test eligible bovines imported into Montana and test eligible bovines or sold, loaned, leased, or otherwise acquired in or from trichomoniasis epizootic areas in Montana, except as provided in ARM 32.3.212: , must be negative T. foetus bulls.

~~(a) Nonvirgin male cattle must be negative to one Trichomoniasis test by PCR and originate from a herd not known to be infected with T. foetus, or to three official Trichomoniasis culture tests. Bulls must be sexually rested for at least two weeks prior to the first test. For the culture tests:~~

~~(i) The tests must be conducted at intervals of no less than seven days between each test;~~

~~(ii) There must be no breeding activity during the intervals between the three tests or between the final of the three negative tests and the time of import, sale, loan, or lease; and~~

~~(iii) All tested male cattle must be individually Trichomoniasis identified at the time of test.~~

(b) remains the same but is renumbered (a).

~~(c) (b) Tests expire within 90 60 days or immediately upon commingling with female cattle.~~

~~(d) Test eligible bulls sold, loaned, leased, or otherwise acquired without a negative test are considered in violation of ARM 32.3.502 and must be quarantined away from females and tested. The owner is liable for any fine, expenses, and/or misdemeanor ticket as stated in new penalty rule.~~

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

32.3.503 REPORTING TRICHOMONIASIS (1) Trichomoniasis is reportable to the state veterinarian's office per ARM 32.3.104. Reports shall include the names of the trichomoniasis certified veterinarian and owner, date tested, animal identification, type of test, and the name of the approved laboratory. All approved

laboratories and Trichomoniasis certified Montana veterinarians conducting trichomoniasis testing of cattle in Montana shall report: ~~test positive animals~~

(a) positive tests to the department within one working day of such test or diagnosis.

~~(2) (b) Test negative animals shall be reported on a weekly basis to the state veterinarian's office by all in-state labs or the certified veterinarian, which includes the names of the Trichomoniasis certified veterinarian and owner, date tested, animal identification, type of test, and the name of the approved laboratory negative tests to the department within one week of such test or diagnosis.~~

~~(3) (2) All Montana veterinarians conducting Trichomoniasis testing must be certified by the state veterinarian's office in accordance with ARM 32.3.502.~~

AUTH: 81-2-102, 81-2-103, MCA

IMP 81-2-102, 81-2-107, MCA

32.3.505 DISPOSITION OF TEST POSITIVE ANIMALS MOVEMENT OF ANIMALS FROM TEST POSITIVE HERDS AND EPIZOOTIC AREAS ~~(1) Test positive animals shall be individually identified with an identification device approved by the state veterinarian.~~

~~(2) remains the same but is renumbered (1).~~

~~(a) consigned directly to a licensed slaughterhouse; or~~

~~(b) remains the same.~~

~~(c) "V" branded and consigned directly to a licensed Trichomoniasis approved feedlot and then directly to a licensed slaughterhouse.~~

~~(3) (2) The ~~test~~ positive herds shall be subject to an immediate quarantine and all animals shall remain on the current premises, the owner's premises, or another premises approved by the state veterinarian except:~~

~~(a) any individually identified animal consigned directly to a licensed livestock market, slaughterhouse, or Trichomoniasis licensed trichomoniasis approved feedlot;~~

~~(b) remains the same.~~

~~(c) bulls that have been individually tested negative to three consecutive official T. fetus PCR tests at least one week apart;~~

~~(d) virgin heifers with no exposure to a bull;~~

~~(e) remains the same.~~

~~(i) exposed to only known negative T. fetus bulls;~~

~~(ii) and (iii) remain the same.~~

~~(4) remains the same but is renumbered (3).~~

~~(a) all remaining bulls 12 months of age and older, shall individually test negative to three consecutive official T. fetus PCR tests at least one week apart; and~~

~~(b) all requirements in (3)(e)(i) through (iii) have been met as applicable.~~

~~(5) Breeding by artificial insemination is allowed while under quarantine.~~

~~(6) (4) Release of Trichomoniasis test positive herds must have status will be when a negative whole herd bull test including virgin bulls 12 months of age and older, within 90 days prior to the following year's breeding season is completed prior to the next breeding season.~~

(5) All sexually intact female cattle over 12 months of age that are sold, loaned, leased, or otherwise acquired in or from epizootic areas; and all sexually intact female cattle over 12 months of age from trichomoniasis test positive herds must comply with ARM 32.3.212(6)(i) through (v).

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

32.3.506 EPIDEMIOLOGICAL INVESTIGATION AND EXPOSED HERD NOTIFICATION

(1) Upon receipt of a report of a test positive animal or a test positive herd, the department shall conduct an epidemiological investigation to identify animals or herds that were potentially exposed to a test positive animal or a test positive herd.

~~(2) Upon completion of the epidemiological investigation, the department or its agent and shall issue an exposed herd notification, notifying all owners or managers of likely exposed herds that the herd may have been exposed to a test positive animal or test positive herd. The department will provide owners of exposed herds with educational materials pertaining to Trichomoniasis, including detection, prevention, control, eradication, and management strategies.~~

~~(3)~~ (2) Exposed herds may be subject to quarantine and official Trichomoniasis testing and certification requirements as set forth in ARM 32.3.502.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

32.3.507 PUBLIC COMMON GRAZING AND GRAZING ASSOCIATIONS

(1) All ~~bulls~~ herds from multiple sources commingling in common pasture(s) that include male and female cattle shall have all nonvirgin bulls tested with the official Trichomoniasis T. fetus test as in ARM 32.3.502(1)(a) conducted after the last breeding season and within ten months prior to next season's turn out. This test is valid for the next year's breeding season unless bulls are commingled with female cattle. ~~Virgin bulls added to a herd are exempt from testing requirements during their first breeding season.~~

(a) If any bull in the common grazing association is found to be positive, ~~the entire bull population not including bull calves less than 12 months of age, regardless of owners,~~ all test eligible bulls, will be required to have three consecutive negative weekly tests prior to turn-out time subject to the requirements set forth in ARM 32.3.505.

(b) remains the same.

(c) The expense of testing shall be the responsibility of the bull's owner.

(2) Commingled grazing herds may be exempt from annual testing provided that a signed, written health plan including best management practices for all of the individual herds grazing in common exists. This health plan must be approved and signed by both a local deputy state veterinarian and the state veterinarian.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

32.3.508 PENALTIES (1) Persons in possession of a bull that has been sold, loaned, leased, or otherwise acquired shall have proof of current Trichomoniasis negative test or violation of ARM 32.3.502, 32.3.504, 32.3.505, or 32.3.507 will be subject to all of the following:

(a) quarantine and testing;

(a) remains the same but is renumbered (b).

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

(2) and (3) remain the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

Reasons: Changes are needed to add missing definitions and focus existing definitions to aid in enforcement and epidemiological investigation. Stylistic changes will provide readability, brevity, and clarification of import requirements. ARM 32.3.505 and 32.3.212 were renamed to best reflect regulations, clarify management of positive herds, and address specific restrictions consistent with importation requirements. Under ARM 32.3.508 "quarantine and testing" provisions were added for consistency and clarification. Creation of a trichomoniasis epizootic area is based on a higher risk area.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to trich@mt.gov to be received no later than 5:00 p.m., October 12, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. October 12, 2011.

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

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 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.

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

DEPARTMENT OF LIVESTOCK

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

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 1, 2011.

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

In the matter of the amendment of ARM)
36.25.110 regarding the rental rate for)
state grazing leases)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold four public hearings at 7:00 p.m. on the following dates to consider the amendment of the above-stated rule:

September 12, 2011, at the University of Montana Western, Lewis and Clark Room, Mathews Hall, 710 S. Atlantic, Dillon, Montana;

September 13, 2011, at the MSU Great Falls Campus, College of Technology, Heritage Hall Auditorium, 2100 16th Avenue South, Great Falls, Montana;

September 14, 2011, at the Glasgow High School Auditorium, #1 Scotty Pride Drive, Glasgow, Montana; and

September 15, 2011, at the Miles City Community College, 2715 Dickinson Street, Room 106, Miles City, Montana.

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 September 1, 2011, to advise the department of the nature of the accommodation that you need. Please contact Kevin Chappell, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620; telephone (406) 444-3847; fax (406) 444-2684; e-mail grazingfee@mt.gov.

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

36.25.110 MINIMUM RENTAL RATES

(1) remains the same.

(2) The department may authorize a lease or license upon a basis other than cropshare. In those cases the rental shall at least equal the value of the usual landlord share prevailing in the district.

(a) Such accommodations may occur only once during the term of the lease unless changes in crops are contemplated.

(b) 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 annual rental rate per AUM is:

(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 13.18. 6.71 for grazing leases issued or renewed between July 1, 1993, and June 30, 2001, until the first date of renewal after July 1, 1993;~~

~~(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 all grazing leases issued or renewed after June 30, 2001, and all grazing licenses.~~

(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.

(a) 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.

(b) Appraisal records shall be maintained in the department's files.

(5) Summer following shall not entitle any lessee or licensee to a refund or reduction of the rental. The lessee or licensee shall pay a rental price equal to:

(a) the rental price for the entire year when ~~When a lease or license term begins after February 28 but before July 1 during the first year of the lease or license; or, the lessee or licensee shall pay a rental price equal to the rental price for an entire year.~~

(b) the rental price equal to half of the yearly annual rental when ~~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 half of the yearly annual rental. Summer following shall not entitle any lessee or licensee to a refund or reduction of the rental.~~

(6) and (7) remain the same.

AUTH: 77-1-106, 77-1-209, 77-6-502, MCA

IMP: 77-1-106, 77-1-202, 77-6-201, 77-6-502, 77-6-507, MCA

REASONABLE NECESSITY: At the request of the Board of Land Commissioners, the DNRC commissioned a study from Bioeconomics, Inc. comparing the rates that the state charges for grazing leases, as compared to what other entities are charging. The study found that based on average state rental rates, the state is not obtaining full market value for its grazing leases. These amendments are reasonably necessary to update the formula used to calculate grazing lease rates in order to obtain full market value for the trust. The increase in the minimum grazing rental would impact approximately 4500 lessees. If all leases are continued into the future, the increase is estimated to generate an additional \$5.2 million annually. The amendments also correct minor grammatical and formatting errors.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearings. Written data, views, or arguments may also be submitted

to Kevin Chappell, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620; telephone (406) 444-3847; fax (406) 444-2684; e-mail grazingfee@mt.gov, and must be received no later than 5:00 p.m. on September 30, 2011.

5. Kevin Chappell, Agriculture and Grazing Management Bureau Chief for the Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearings.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment 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 Amendment 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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding 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 4 above or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on August 1, 2011.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II, the amendment of) PROPOSED ADOPTION,
ARM 37.115.104, 37.115.105,) AMENDMENT, AND
37.115.301, 37.115.302, 37.115.303,) REPEAL
37.115.306, 37.115.307, 37.115.311,)
37.115.312, 37.115.313, 37.115.316,)
37.115.317, 37.115.319, 37.115.321,)
37.115.504, 37.115.505, 37.115.508,)
37.115.509, 37.115.513, 37.115.517,)
37.115.518, 37.115.521, 37.115.522,)
37.115.602, 37.115.603, 37.115.604,)
37.115.605, 37.115.701, 37.115.707,)
37.115.804, 37.115.807, 37.115.902,)
37.115.905, 37.115.1001,)
37.115.1002, 37.115.1003,)
37.115.1006, 37.115.1007,)
37.115.1009, 37.115.1011,)
37.115.1101, 37.115.1202,)
37.115.1301, 37.115.1302,)
37.115.1307, 37.115.1308,)
37.115.1309, 37.115.1314,)
37.115.1402, 37.115.1403,)
37.115.1406, 37.115.1501,)
37.115.1505, 37.115.1507,)
37.115.1601, 37.115.1602,)
37.115.1701, 37.115.1704,)
37.115.1803, 37.115.1809,)
37.115.1810, 37.115.1811,)
37.115.1814, 37.115.1815,)
37.115.1817, 37.115.1819,)
37.115.1823, 37.115.1837,)
37.115.1839, 37.115.1840,)
37.115.1845, 37.115.1905,)
37.115.2101, the repeal of)
37.115.314, 37.115.904,)
37.115.1021, and 37.115.2102)
pertaining to pools, spas, and other)
water features)

TO: All Concerned Persons

1. On August 31, 2011 at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of

Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I CHEMICAL STORAGE (1) Chemicals and testing equipment shall be stored in a manner that prevents spillage and intermixing, that may cause dangerous chemical reactions such as poisonous gas, fire, or explosion.

(2) Chemicals shall be stored with the covers in place and not in proximity of dripping, leaking, or standing water.

(3) Scoops may not be shared between containers with different chemicals.

(4) Chemicals shall be stored in a correctly labeled container.

(5) Placards identifying the oxidation reactivity must be located on the main door where the chemicals are kept.

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

NEW RULE II EQUIPMENT ROOM (1) The equipment room shall be so located that it cannot be entered directly from the shower rooms. If the equipment room is accessed from a public area, the equipment room must be kept locked at all times.

(2) The equipment room shall have a floor drain.

(3) The floor shall have a minimum slope of one-quarter inch per foot toward the drains with no low spots which would allow the water to stand.

(4) The circulation equipment shall be located for convenient inspection and servicing. Adequate headroom shall be provided above pressure filters to allow easy observation and reading of gauges.

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

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

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, subchapters 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) Existing pools with slopes that exceed 1:3 in a deep end or diving well ~~must be renovated to no greater than a 1:3 slope by January 1, 2011. Pools that do not meet this requirement will not be licensed after December 31, 2010~~ are exempt from this requirement until major renovations are proposed to the department in a plan review.

(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, ~~and 37.115.604~~ by December 31, 2012, or later date set in these rules. Facilities that do not meet this requirement will not be licensed after December 31, ~~2014~~ 2013.

(c) and (d) remain the same.

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

(f) ~~Under the provisions of the 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. All pools, spas, and other water features must comply with the VGBPSS Act. Licensees are responsible for compliance with the VGBPSSA.~~

(2) remains the same.

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

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

(1) through (33) remain the same.

(34) "Circulation system" means the arrangement of mechanical equipment components, connected by piping to and from a pool, spa, or other water feature, causing it to flow through the various system components for purposes of:

(a) clarifying;

- (b) heating;
 - (c) ~~purifying~~ disinfection; and
 - (d) returning the water back to the original body of water.
- (35) through (37) remain the same.

(38) "Critical point inspection" means an inspection performed by the department or its designee that minimally addresses critical health and safety violations outlined in ARM 37.115.301 and 37.115.302, and would include other health and safety violations that may be present, or are pending from prior inspections.

(38) through (44) remain the same but are renumbered (39) through (45).

~~(45) "Diatomite" means the filtering medium of a diatomaceous earth filter that is composed of microscopic fossil skeletons of the diatom, a tiny freshwater aquatic plankton.~~

(46) "Disinfectant" (sanitizer) means any oxidant, which includes but is not limited to, chlorine, chlorine dioxide, bromine, chloramines, and ozone that is added to water in any part of the treatment or distribution process and that is intended to kill or inactivate pathogenic microorganisms.

(47) "Disinfection" (sanitizing) means the process of destroying organisms that may cause illness.

(47) through (63) remain the same but are renumbered (48) through (64).

~~(64)~~ (65) "Free available chlorine" means the portion of the total chlorine remaining in chlorinated water that is not combined with ammonia, or nitrogen, or other organic compounds and that will react chemically with undesirable or pathogenic organisms.

(66) "Full facility inspection" means an inspection performed by the department that addresses compliance with all applicable rules, including review of records.

(65) through (69) remain the same but are renumbered (67) through (71).

~~(70)~~ (72) "Hydrotherapy pool" or "therapeutic pool" or "therapy pool" means a unit that may have a therapeutic use; a heated pool used for aerobic exercise classes or physical therapy which may be prescribed by a physician and excludes general swimming recreation. Its features may include, but are not limited to:

(a) through (f) remain the same.

(71) and (72) remain the same but are renumbered (73) and (74).

~~(73)~~ (75) "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.

(74) through (82) remain the same but are renumbered (76) through (84).

~~(83)~~ (85) "Local board of health" or "board" means a local board as defined in 50-2-101 50-1-101, MCA.

~~(84)~~ (86) "Local health officer" or "officer" means a local health officer as defined in 50-2-101 50-1-101, MCA.

(85) through (96) remain the same but are renumbered (87) through (98).

~~(97)~~ (99) "Parts per million (ppm)" means a unit of measurement of a chemical concentration which indicates the parts by weight in relation to one million parts by weight of water. It is equivalent to the term milligrams per liter (mg/l).

(98) through (102) remain the same but are renumbered (100) through (104).

~~(403)~~ (105) "Plummet line" means a vertical line extending through the center from the center point of the front edge of the diving platform or springboard to the water's surface.

(104) through (112) remain the same but are renumbered (106) through (114).

~~(113)~~ "Recreational water" means a facility or area together with associated buildings, facilities, and equipment, in conjunction with artificial or natural ponds, springs, lakes, streams, or other bodies of water that is designated for public bathing, recreational and swimming use, and is licensed and operated by the Montana Department of Fish, Wildlife and Parks.

~~(114)~~ "Redecorate" means to make cosmetic changes or to add accessories.

(115) through (122) remain the same.

(123) "Sanitizer". See "Disinfectant".

~~(123)~~ "Sand Bottom Pools" mean pools that use sand as an interior floor finish over an impervious surface and are equipped to treat and filter the water in the sand areas to maintain a healthful sand condition.

(124) "Saturation index" means a mathematical calculation, based on the interrelation of temperature, calcium hardness, total alkalinity and pH, that predicts if pool water is corrosive, scale-forming, or neutral. It can also mean a number that indicates whether water will have a tendency to deposit calcium carbonate scale from a solution, or whether it will be potentially corrosive. When correctly balanced, the water will be neither scale-forming nor corrosive. Also see "Langelier Index". Five factors are used in the computation:

(a) through (133) remain the same.

~~(134)~~ "Single-use spa" means a spa that is completely drained, sanitized, and refilled between each guest. ~~Single-use spas are not required to be licensed.~~

(135) through (140) remain the same but are renumbered (134) through (139).

~~(441)~~ (140) "Spa" means an artificial pool that is designed for recreational bathing or therapeutic use and is not drained, cleaned, or refilled for individual use. A spa includes, but is not limited to, a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath. A spa consists of a warm water reservoir with hydromassage jets, ~~that are manufactured of prefabricated material at a factory.~~ A spa may be "self-contained" or "nonself-contained".

~~(442)~~ (141) "Splash deck" means a constructed area over which water is sprayed or jetted to contact bathers, but is not allowed to gather and stand. A splash deck may also be known as an "Interactive Play Attraction", a "spray pool", or a "zero depth spray pool". Flow-through splash decks do not recirculate water through a filtration system; whereas recirculation splash decks reuse treated water.

(143) through (161) remain the same but are renumbered (142) through (160).

~~(462)~~ (161) "Velocity" means the speed at which a liquid flows between two specified points. Velocity is expressed in feet per second (FPS).

(163) through (173) remain the same but are renumbered (162) through (172).

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

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 pool, spa, or other water feature and related facilities until the safety violations have been resolved:

(a) through (m) remain the same.

(n) at an outdoor pool, when thunder is heard or lightning has been sighted, 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~~ or the last flash of lightening is observed, whichever is greater;

(o) remains the same.

(p) pH of the water is less than 7.0 or higher than 7.8 and ~~the chlorine or bromine reading is at or near the minimum required levels~~; and

(q) ~~the main drain pool, spa, or other water feature 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 based on a visual inspection from the pool or spa deck, and documentation.~~

(2) remains the same.

(3) The pool owner or operator shall prepare and maintain a ~~report~~ record of each instance in which the pool is self-closed to correct a safety violation under this rule. The report shall be signed by the person responsible for correcting the safety violation and it shall document:

(a) through (e) remain the same.

(4) If any drowning other serious accident or injury has occurred, the report shall be submitted to the department within 48 hours of the incident by faxing it to the Food and Consumer Safety Division, Department of Public Health and Human Services, (406)444-4135 444-5055.

(5) remains the same.

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

37.115.302 HEALTH AND SAFETY VIOLATIONS THAT MAY REQUIRE IMMEDIATE POOL CLOSURE (1) remains the same.

(2) The department or its designee may order immediate closure of any swimming pool, spa, or other water feature that is operating without a valid license.

~~(2)~~ (3) The department may close any pool, spa, or other water feature for any of the violations listed in ARM ~~37.115.2104~~ 37.115.301 or 37.115.1309.

(3) remains the same but is renumbered (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

37.115.303 REQUIRED INSTALLATION OF ULTRAVIOLET OR OZONE SECONDARY DISINFECTANT DISINFECTION SYSTEM (1) remains the same.

(2) If the corrective action fails to bring the disease outbreak under control, the department will require that the facility install and utilize an ultraviolet ~~disinfectant~~ disinfection system as a secondary ~~disinfectant~~ disinfection system or other type of additional disinfection approved by the department that has been proven to control disease outbreaks as a secondary ~~disinfectant~~ disinfection system.

(3) remains the same.

(4) The department or its designee may require a supplemental UV or ozone disinfection system on a pool, spa, or other water feature in a plan of corrective action when health and safety is threatened as indicated by repeated and documented violations.

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

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. The licensed professional engineer shall include his seal and signature on any plans and specifications submitted to the ~~health authority~~ department. Stamps or seals may be provided electronically.

(2) remains the same.

(3) Any plans for any slide structure must be reviewed and approved by a structural engineer licensed in the state of Montana and the plan for the slide must include his or her seal.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.307 SCOPE OF REVIEW BY THE DEPARTMENT (1) remains the same.

~~(2) 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) and (4) remain the same but are renumbered (2) and (3).

~~(5)~~ (4) 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~~ contract 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

37.115.311 FEE TABLE

Table 1.

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 Modification to Existing Filtration or Disinfection systems		\$75	
Engineering Review		\$75	

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

37.115.312 PAYMENT OF PLAN REVIEW FEES (1) and (2) remain the same.

(3) 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, 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.

(4) The fee for any pre-opening of a pool, spa, or other water feature is outlined in Table 1. A pre-opening fee applies to each pool, spa, or other water feature opening at the facility to ensure that construction is in compliance with the plan.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.313 OUTSIDE ENGINEERING REVIEW FEES (1) remains the same.

(2) If the department contracts with an engineering firm to conduct an engineering review, the applicant will be notified in writing. ~~†~~The applicant will be required to reimburse the department for the engineering costs charged to the department by the engineering firm. This fee is in addition to any other applicable review fees set out in ARM 37.115.311, Table 1.

(3) remains the same.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.316 PLAN REVIEW APPROVAL AND EXTENSIONS (1) and (2) remain the same.

(3) In any instance in which construction is not initiated within one year of plan approval or within the time granted for an extension, ~~construction must cease and~~ plans, specifications, and supporting documents, and appropriate fees must be resubmitted for another review.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.317 PLAN REVIEW DURING CONSTRUCTION PHASE

(1) Whenever plans and specifications must be submitted to the department for review, the department shall review the construction or ~~reconstruction~~ renovation of any pool, spa, or other water features and related facilities to ensure that it is constructed in compliance with the applicable requirements of these rules.

(2) Depending upon the complexity of the project, the department or its designee 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 the same.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.319 CHANGES FROM ORIGINALLY APPROVED PLANS AND FINAL CERTIFICATION (1) remains the same.

~~(2) The department's fee for conducting a review of a change to an approved plan schematic or disinfectant system will be \$75.~~

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

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.321 INFORMATION AND TRAINING TO BE PROVIDED TO LICENSE APPLICANT (1) Upon completion of any construction or installation at a pool, spa, or other water feature, the ~~contractor, subcontractor, and suppliers must provide the license applicant or licensee of the facility with complete~~ must obtain written plans and operating instructions pertaining to all features or equipment constructed or installed at the pool, spa, or other water features, including the plans and instructions for any and all equipment, the circulation system, and maintenance required for the swimming pool or spa water.

~~(2) The contractor, subcontractor, and suppliers must meet with the owner/licensed operator of the facility and provide training to the license applicant on:~~

~~(a) the operation and maintenance of all equipment installed during the project;~~

~~(b) the operation and maintenance of any circulation system installed during the project; and~~

~~(c) the maintenance required for any swimming pool, spa, or other water feature to meet the requirements of these rules.~~

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.504 SURFACES (1) The inside surface of the pool, spa, or other water feature shall be constructed of materials that ~~are:~~

~~(a) are nontoxic to humans and the environment;~~

~~(b) that are impervious and enduring; and~~

~~(c) that will provide a smooth and easily cleaned surface without cracks or open joints (excluding structural joints); and-~~

~~(d) are free of any slip, trip, or other injury hazard.~~

~~(2) through (4) remain the same.~~

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

37.115.505 SHAPE (1) The shape of any pool, spa, or other water feature must be such that the circulation of the water, for even distribution of disinfectant residual and supervision of swimmers is not impaired.

~~(a) The shape must not impair adequate supervision of bathers.~~

~~(b) The shape must not impair the circulation system's ability to maintain sufficient circulation to meet turnover requirements to ensure proper sanitation.~~

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

37.115.508 DRAINS AND SUCTION OUTLETS (1) remains the same.

~~(2) All pools, spas, and other water features constructed after March 1, 2010, shall have dual or multiple main drains.~~

~~(3) and (4) remain the same but are renumbered (2) and (3).~~

(4) Existing covers that do not have a VGB certificate, such as site-made covers, must provide a letter by licensed structural/mechanical engineer stating that the cover meets VGBPSSA.

~~(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

37.115.509 DEPTH MARKERS (1) remains the same.

(2) The water depth shall be marked at maximum and minimum points and at the points of break between the deep and the shallow areas. The markings shall be ~~paced~~ spaced at no more than 25 feet foot intervals measured peripherally.

(3) through (6) remain the same.

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

37.115.513 LIGHTING (1) 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 and drains, may be readily seen without glare.

(2) remains the same.

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

37.115.517 DECK AREAS (1) All swimming pools constructed after March 1, 2010, ~~or~~ operated by a municipality shall have a deck surrounding it that is a minimum width of six feet of unobstructed deck area as measured from the pool edge or coping.

~~(2) All privately owned public swimming pools constructed prior to March 1, 2010 must be surrounded by a deck that has a minimum width of four feet of unobstructed deck area as measured from the pool edge. Any privately owned public pool constructed after March 1, 2010, shall have a deck surrounding 100 percent of the pool perimeter that is a minimum width of four feet measured from the pool edge or coping.~~

(3) remains the same.

~~(4) Decks surrounding other water features shall be appropriate to the use intended but shall, at a minimum, provide adequate space for emergency assistance. For pools and other water features built or renovated after adoption of~~

this rule, a minimum of four-foot deck width shall be provided on the sides and behind any pool equipment such as slide ladders, diving boards, or other equipment that allows ingress into the pool.

(5) and (6) remain the same.

(7) If coping is not of same material and elevation as the deck, the deck shall be measured to the outer edge of the coping.

(8) All deck width requirements must be met and require that no deck equipment or furniture occupies the area. Additional decking area must be added for lounging use, seating, or storage of pool 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

37.115.518 DECK SURFACES (1) All deck surfaces must be impervious, slip resistant, clear of tripping or other injury hazard, and easily cleanable, and must entirely surround any swimming pool, or other water feature. Spa decks must be impervious, slip resistant, and easily cleanable and must extend around at least 50 percent of the spa perimeter.

(2) through (4) remain the same.

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

37.115.521 HOSE CONNECTIONS (1) Hose connections or plumbing equipped with backflow prevention shall be installed that enable all parts of any pool or spa area to be reached with a hose no longer than 50 feet for effective cleaning. 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) The water volume and water pressure for hose connections must be sufficient to provide effective cleaning.~~ Hose shall be properly stored when not in use to prevent a potential tripping hazard.

(3) Deck wash material and debris shall not be washed into the pool, spa, or other water feature and must be properly drained to prevent standing water.

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

37.115.522 WATER SUPPLY (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) through (7) remain the same.

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

37.115.602 BARRIERS FOR OUTDOOR POOLS AND WATER FEATURES OTHER THAN SPLASH DECKS (1) For aquatic facilities built after March 1, 2010, barriers for outdoor pools, spas, or other water features, excluding including all splash decks shall be:

(a) through (4) remain the same.

(5) Other designs may be approved in writing 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

37.115.603 BARRIERS FOR SPLASH DECKS (1) Existing splash decks and interactive play attractions built after before March 1, 2010 are not required to install must have a barrier that is at least 60 inches high around the deck. Splash decks built before March 1, 2010 must install a barrier meeting this requirement by March 1, 2010.

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

37.115.604 BARRIERS FOR INDOOR POOLS (1) remains the same.

(2) Existing or new indoor pools located in an atrium or common area with direct access by lodging or room doors or from other common areas must have a minimum four foot high, see-through barrier or fence with lockable gate which does not create a hazard.

(3) Any new or existing pool or spa located in locker rooms or separated by an unsecured door during hours of use must either utilize a self-closing mechanism and latch on a door or put in place a barrier with a minimum height of four feet and a latch for the barrier at 54 inches high, or another design approved, in writing, by the department. Existing pools or spas must meet this requirement no later than December 31, 2013.

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

37.115.605 DEADLINE FOR RETROFITTING BARRIERS IN EXISTING FACILITIES (1) Existing public pools, spas, and other water features must install barriers that meet the requirements of these rules on or before December 31, 2011 except existing splash decks.

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

37.115.701 ENTRIES AND PLACEMENT OF STEPS AND LADDERS

(1) Sloping entries used as a pool entrance shall not exceed a one-foot vertical in 12-foot horizontal ratio slope. Sloping entry surfaces shall be of slip-resistant materials.

(2) through (4) remain the same.

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

37.115.707 HANDRAILS (1) remains the same.

(2) Handrails must extend from within 18 inches from the bottom vertical face of the last step leading into the pool, spa, or other water feature over the coping to the edge of the deck.

(3) and (4) remain the same.

(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~~ exiting a pool on a ladder extends to within 12 inches of the surface of the water when the pool is being used.

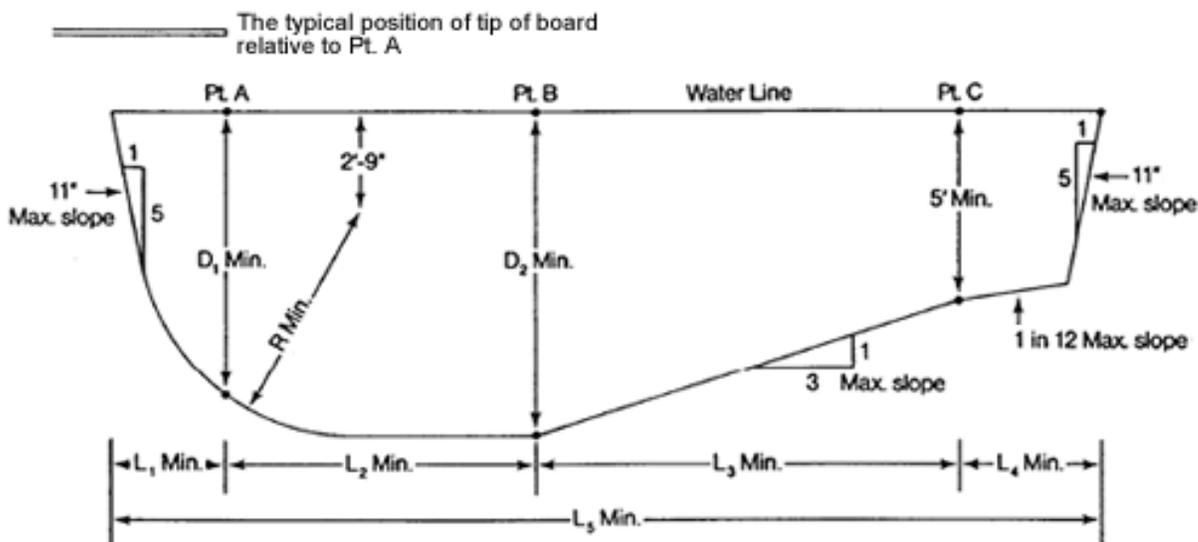
AUTH: 50-53-103, MCA

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

37.115.804 DIVING BOARDS - DIVING ENVELOPE DESIGN REQUIREMENTS (1) remains the same.

Figure 2.

(This drawing does not show the shallow portion of the pool)



NOTE: L_4 is a minimum dimension to allow sufficient length opposite the board. This may of course be lengthened to form the shallow portion of the 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

37.115.807 DIVING BOARD INSTALLATION (1) and (2) remain the same.

(3) Diving boards or platforms more than one meter high shall be protected with guardrails handrails.

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

37.115.902 DRESSING ROOMS, TOILETS, AND SHOWER AREAS

(1) The requirements set forth in this subchapter apply to all existing and newly built public pools, spas, and other water features, including privately owned public facilities where nonmembers or nonlodging guests are allowed to use the facility.

(2) With the following ~~two~~ three exceptions, existing 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 recirculation splash decks and other water features may locate showers in the public area of the pool facility, using tempered water which drain to approved sewer or septic; 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. Newly built facilities must locate the required facilities either in the area of the pool, spa, or other water feature or provide access to such facilities through an adjacent door not exceeding 50 feet from the pool, spa, or other water feature; and

(c) flow-through splash decks are not required to have changing room or showers but must have an adequate amount of toilet facilities meeting ARM

37.115.1814.

(3) through (8) remain the same.

(9) Dressing rooms, toilet, and shower areas shall be lighted so that all ~~parts~~ areas are easily visible for cleaning and maintenance.

(10) Except for flow-through splash decks, Sseparate shower facilities shall be provided in the dressing rooms, shower areas, or entry areas and shall be located so that bathers must pass from the shower ~~room~~ area directly into the pool, spa, or other water feature area for ~~year-round~~ pools, spas, or water features.

(11) and (12) remain the same.

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

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 ~~EPA-approved sanitizing wipes available to clean the changing table~~ which shall be located in an area not obstructing a hallway.

(2) If the dressing rooms or restrooms in existing facilities are too small for installation of a baby changing table, there may be a common area on the outside wall used as a diaper changing station located within 25 feet of a hand sink and include a barrier, or demarcation designed around the changing area which is approved by the department to prevent general traffic from passing through.

(3) If a restroom or bathroom does not exist for facilities built before March 1, 2010, another location shall be created near the pool side. The area must be restricted with a barrier, or demarcation designed to prevent general traffic passage. A hand washing station or covered receptacle must be provided in the diaper changing area and approved by the department.

(4) All diaper changing stations shall post a CDC or similar sign stating how to wash properly including washing of the child's bottom as well as the child's hands and post it in the diaper changing vicinity.

(5) Any nonabsorbent surface dedicated to diaper changing must be designed to prevent the infant from falling while not creating any other hazard. All surfaces must be nonabsorbent and cleanable.

(6) Any facility that allows only bathers older than diaper age may present documentation of exclusion of children on the premises, for consideration to exempt the facility from the diaper changing area requirement.

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

37.115.1001 RECIRCULATION SYSTEMS (1) and (2) remain the same.

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

37.115.1002 TURNOVER RATES (1) through (4) remain the same.

(5) When a pool, spa, or other water feature is designed with multiple sections, the most stringent turnover rate must be applied to the entire 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

37.115.1003 OPERATION OF CIRCULATION SYSTEM (1) remains the same.

(2) The recirculation system must be operated 24 hours a day. If the system is shut down for periodic maintenance and repair, no person, including any employee of the facility, may be allowed to use the swimming pool, spa, or other water feature.

(3) No more than two spa units may use one recirculation system and no spa may utilize the recirculation or disinfection system of a 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 the same.

(5) The water velocity in the recirculation system piping shall not exceed:

(a) through (c) remain the same.

(6) ~~Re~~Circulation system inlets and outlets shall be installed in a location that will produce uniform circulation of water and which will maintain even distribution of ~~sanitizer~~ disinfectant residual throughout the pool, spa, or other water feature. Inlets and outlets shall be designed and installed so that they do not constitute a hazard to the user.

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

37.115.1006 INLETS (1) through (5) remain the same.

(6) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15-foot intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to ensure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet of head loss to the most distant orifice to ensure approximately equal flow through all orifices.

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

37.115.1007 OUTLETS (1) through (3) remain the same.

~~(4) 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) and (6) remain the same but are renumbered (4) and (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

37.115.1009 SKIMMERS (1) Skimmers may be used in place of overflow gutters as a means of skimming and recirculating the water. Skimmers are permitted if at least one skimming device is provided for each 500 square feet of water surface area or fraction thereof, with a minimum of two skimmers required, except that spas or pools with less than 500 square feet of water surface and with a turnover rate that exceeds the minimum requirements under ARM Title 37, chapter 115, subchapters 1 through 22 by at least 25 percent.

(2) through (4) remain the same.

(5) The water level for skimmers must be maintained at the manufacturer's recommended level, which is normally at least one half the vertical height of the skimmer weir.

(6) Each skimmer shall be equipped with an equalizer line or other device to prevent airlock on the suction line should the water of the pool drop below the skimmer weir level, or the water level at the bottom of the skimmer. Equalizer line openings at the pool wall shall be covered with a fitting to prevent entrapment in accordance with ASME A112.19.8-2007.

(7) remains the same.

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

37.115.1011 FILTRATION EQUIPMENT (1) through (3) remain the same.

(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~~ ten pipe diameters in length. The downstream straight pipe section must be a minimum of ~~ten~~ four pipe diameters in length.

(5) through (8) remain the same.

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

37.115.1101 OPERATOR QUALIFICATIONS (1) remains the same.

(2) ~~Except for a licensee operating a spa at a tourist home which is drained and cleaned between each use, the licensee of any public pool, spa, or other water feature shall employ, or contract with~~ a Certified Pool Operator (CPO), 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 whenever it is open ~~shall be~~ or available to respond by phone or in person to the pool, spa, or other water feature 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. Failure to respond in the prescribed time shall be treated as any other violation, and a documented history may require a corrective action plan be submitted to the department or its designee.~~

(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.~~

(5) and (6) remain the same but are renumbered (4) and (5).

~~(7)~~ (6) 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

37.115.1202 CHLORINE GAS SAFETY EQUIPMENT AND TRAINING

(1) through (5) remain the same.

(6) Any improper use or storage of chlorine gas or inadequate training of facility staff or failure to provide training to emergency responders ~~that requires and~~ is cause for immediate closure of the pool, spa, or other water feature and constitutes a safety violation until it is corrected under ARM 37.115.1201.

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

37.115.1301 TEST KITS (1) Water testing shall measure the following parameters using an FAS-DPD test kit which measures concentrations with precision through the process of filtration:

(a) free chlorine (~~range 0-5 ppm~~) and/or bromine (~~0-10 ppm~~);

(b) total chlorine (~~minimum of .2 ppm~~);

(c) pH (~~range 6.8-8.2~~);

(d) remains the same.

(e) cyanuric acid (0-100 ppm turbidimetric test); and

(f) remains the same.

(2) through (5) remain the same.

(6) Electronic testers may be approved for use by the department or its designee if the accuracy of said kit meets or exceeds parameters listed 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

37.115.1302 FREQUENCY OF WATER TESTING (1) remains the same.

(2) The test taken before opening must be a manual test. If the pool, spa, or other water feature has an Oxidation Reduction Potential (ORP) meter installed, that may be used for the other ~~two~~ tests.

(3) through (10) remain the same.

(11) Multisectional pools may be required to test in additional locations and recorded on a regular basis per the department's request.

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

37.115.1307 DISINFECTANT USE (1) remains the same.

(2) All pools, spas, and other water features when open or in use must be continuously disinfected by a chemical that imparts a residual effect and must

maintain an alkaline pH. Dispersal of the disinfectant agent must occur by mechanical means.

(3) through (5) remain the same.

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

37.115.1308 WATER CHEMISTRY PARAMETERS (1) Water chemistry, temperature, and clarity measurements must fall within the parameters set forth in Table 6:

Table 6.

Parameter	Acceptable range	Ideal range	Maximum/ <u>Comments</u>
Chlorine	2-8ppm	3-5ppm	8ppm
Combined chlorine	0 to 0.5ppm	0.0	0.5ppm
Bromine	2-10ppm	2-8ppm	10ppm
Total Alkalinity	60-220ppm (varies by chemical type and pool surface)	80-100ppm for Cal Hypo, lithium hypo, and sodium hypochlorite; 100-120ppm for Sodium dichlor, trichlor, chlorine gas and bromine compounds	220ppm
Oxygen Reduction Potential (ORP or HRR, which stands for High Resolution Reduction)	650 minimum millivolts (mV)	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 <u>with proper signage</u>
Cyanuric Acid (allowed only in outdoor pools)	0- 100 <u>50</u> ppm	10-50ppm	100ppm <u>50ppm</u>
Calcium Hardness	Pools 150-	Pools 200-	Pools 1,000ppm

	1,000ppm	400ppm; Spas 150-250ppm	Spas 800ppm
Temperature	Varies	Varies	Spas 104°F <u>maximum</u> Pools 100°F <u>maximum</u> EXCEPTION: flow-through hot spring pools and spas, which may have a maximum temperature of 100°F for pools and 106°F for spas
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. <u>See ARM 37.115.1315(1)</u>	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 <u>greater than 1.0</u> <u>NTU is "poor" and the facility closed</u>

(2) remains the same.

~~(3) Whenever isocyanurates or cyanuric acid (CYA) are used in a pool, spa, or other water feature, the concentrations of CYA shall not exceed 50 ppm. Recommended levels of CYA are 25-30 ppm. After March 1, 2010, isocyanurates or cyanuric acid shall not be used in newly constructed or renovated indoor pools, indoor spas, or other indoor water features or when a chlorinator is replaced. Licenseholders of indoor pools, spas, or other water features currently using isocyanurates or cyanuric acid shall have one year from March 1, 2010 to convert to a nonstabilized type of disinfectant.~~

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

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~~ allowed parameters set in ARM 37.115.1308, Table 6;

(b) and (c) remain the same.

(d) ~~chlorine or bromine readings exceed the maximum set in ARM 37.116.1308, Table 6. pH of the water is less than 7.0 or higher than 7.8 or pH is 7.8 and the chlorine or bromine reading is at or near the minimum required levels.~~

(2) and (3) remain the same.

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

37.115.1314 SATURATION INDEX TABLE (1) remains the same.

Table 7.

Temperature (F°)	Temp Factor (TF)	Calcium Hardness as ppm	Calcium Factor (CF)	Total Alkalinity (TA)	Alkalinity Factor (AF)
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	1.7 0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1000	2.6	1000	3.0

(2) remains the same.

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

37.115.1402 GENERAL POOL SIGN REQUIREMENT (1) and (2) remain the same.

(3) Pools and other water features must post signs with the following wording or substantially similar wording:

(a) remains the same.

(b) "Please do not use the pool if you have had diarrhea or any other disease transmittable by water ~~in the past two weeks~~";

(c) "Do not bring food, drink, gum, or tobacco into the pool ~~or onto the deck area~~";

(d) "Nonswimmers and children under age 14 shall not use the pool without a responsible adult or lifeguard in attendance";

(e) through (6) remain the same.

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

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) remains the same.
 - (b) "Please do not use the spa if you have had diarrhea or any disease transmittable by water in the past two weeks";
 - (c) through (e) remain the same.
 - (f) "Staying in a spa too long may result in dizziness, fainting, and nausea";
- and
- (g) "Heat stroke warning - Users limited to 15 minutes in spa"; and
 - (h) flow-through hot springs shall post a separate sign indicating current temperature and pH if said pH is above 7.8 as well as child health warning as described in ARM 37.115.1845(1)(f).
- (2) All non-flow-through spas must have a sign in letters not less than one inch high stating: "Children age 5 and under are not allowed in the spa".
- (3) and (4) remain the same.

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

37.115.1406 SPRAY POOL/SPASH DECK 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 transmitted by water in the last two weeks may not use the spray pool"~~ "Please do not use the spray pool/splash deck if you have diarrhea or disease transmittable by water";
- (c) In two inch letters: ~~"Spray features use recirculated water. DO NOT DRINK THE WATER";~~
- (d) through (f) remain the same.

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

37.115.1501 SAFETY EQUIPMENT (1) Every pool, spa, and other water feature involving pooled water must have the following equipment readily available on-site:

- (a) either a rescue tube or, in the alternative, one or more ring buoys having a maximum of 15 to 16 inches inside diameter with one-quarter inch manila-line or nylon rope at least equal in length to the maximum width of the swimming pool attached securely to the ring buoy and kept in good repair; and
 - (b) a shepherd's crook or reaching pole (made from nonconductive material if underwater lights are used).
- (2) and (3) remain the same.

~~(4) When a lifeguard is required or provided at a pool or other water feature, an elevated seat for the lifeguard must be provided in areas where water depth is deeper than five feet. The lifeguard chair must be located within two feet of the edge of the swimming pool and must be high enough to give the lifeguard a complete and unobstructed view of the area of the pool that the lifeguard is responsible for patrolling.~~

~~(5) Lifeguards shall be equipped with a rescue tube and must be attired so that they are readily identifiable as members of the lifeguard staff.~~

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

37.115.1505 FIRST AID KIT (1) A first aid kit such as the American Red Cross 10 Person Industrial First Aid, or any such kit designed for use by lifeguards shall be readily available at all times. ~~containing at least the following items and quantities shall be readily accessible at all times:~~

- ~~(a) 1" x 3" fabric bandages, 16;~~
- ~~(b) 1" x 3" adhesive plastic bandages, 32;~~
- ~~(c) 32 sq. in. absorbent gauze compress, box;~~
- ~~(d) 3" compress bandage, off center, 2;~~
- ~~(e) triangular sling/bandage, 1;~~
- ~~(f) 3" x 3" gauze dressing pads, 4;~~
- ~~(g) antiseptic cleansing wipes (sting free), 10;~~
- ~~(h) povidone-iodine infection control wipes, 10;~~
- ~~(i) 1/2" x 2.5 yd. adhesive tape, 2;~~
- ~~(j) Exam quality gloves, 2 pr;~~
- ~~(k) burn relief packs, 6;~~
- ~~(l) 4" x 5" instant cold compress, 1;~~
- ~~(m) 2 sterile eye pads;~~
- ~~(n) 1 oz. eye wash;~~
- ~~(o) 1/2" x 5 yd. first aid tape roll; and~~
- ~~(p) 96 pg. AMA First Aid guide booklet.~~

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

37.115.1507 TELEPHONE REQUIRED (1) A telephone with an attached handset shall be affixed to the wall near the new or existing pool, spa, or other water feature for the purpose of contacting emergency medical services except for flow-through and recirculation splash decks.

(2) remains the same.

(3) Instructions regarding emergency calls shall be prominently posted next to the telephone or near an entryway of a splash deck and must include the following:

(a) through (e) remain the same.

(4) If a phone is not provided at the splash deck, then there must be a sign posted at the entry stating "No Public Phone Available".

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

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 pool, spa, or other water feature except splash decks and wading pools.

(2) ~~Lifeguards are required for all water slides and flume slides 11 feet high or higher as measured from the deck.~~ Water slides that are 11 feet or greater in height may be required to provide a lifeguard at the bottom of the slide and an attendant at the top of the slide as decided by the department or its designee.

(3) through (6) remain the same.

(7) When a lifeguard is required or provided at a pool or other water feature, an elevated seat for the lifeguard must be provided in areas where water depth is deeper than five feet. The lifeguard chair must be located within two feet of the edge of the swimming pool and must be high enough to give the lifeguard a complete and unobstructed view of the area of the pool that the lifeguard is responsible for patrolling.

(8) Lifeguards shall be equipped with a rescue tube and must be attired so that they are readily identifiable as members of the lifeguard staff.

(9) Lifeguards shall remain attentive to bathers at all times, and minimize any source of distraction.

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

37.115.1602 WHEN LIFEGUARDS ARE NOT REQUIRED (1) remains the same.

(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)(ii), but is exempt from the requirements of (1)(b).

(3) No lifeguards are required during organized competitive events or swim lessons when swimmer supervision has already been addressed.

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

37.115.1701 POOL CARE (1) All public swimming pools, spas, and other water features and related facilities shall be maintained in a safe, clean, and sanitary condition at all times.

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

37.115.1704 NO ANIMALS PERMITTED IN OR NEAR POOLS (1) remains the same.

(2) Service animals shall be permitted only on the deck area of a pool, spa, or other water feature, if needed, but may not be closer than five feet to enter the water. ~~However, no animal, whether service animal or not, may be permitted within the fence surrounding a spray pad.~~

(3) remains the same.

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

37.115.1803 WATER SLIDES GENERALLY (1) When a water slide is provided in conjunction with a pool, the slide must:

(a) through (d) remain the same.

(e) water slides that are 11 feet or greater in height ~~must~~ may be required to provide a lifeguard at the bottom of the slide and an attendant at the top of the slide; and

(f) remains the same.

(2) through (6) remain the same.

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

37.115.1809 ZERO DEPTH ENTRY TO POOL (1) remains the same.

(2) There shall be an overflow drain or weir installed across the full width of the zero depth end of the 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 the same.

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

37.115.1810 MULTISECTION RECREATIONAL POOLS (1) A multisection recreational pool shall comply with all other applicable provisions of the rules. In addition:

(a) ~~the minimum recirculation flow rate for a multisection recreational pool shall be determined by computing the recirculation flow rate for each section of the pool in accordance with other applicable sections of ARM Title 37, chapter 34, subchapters 1 through 22 and adding the flow rates together~~ each section of a multisection recreational pool shall have the demonstrated ability to ensure the proper turnover rate for each section as described in ARM 37.115.1002, Table 5, or all sections will need to meet the most stringent of the turnover rates; and

~~(b) the treated water distribution system shall be designed to return treated water to the sections of the pool in proportion to the flow rates determined in (1)(a); and~~

~~(c)~~ (b) each section of a multisection recreational pool shall be separated from the other sections by a float line ~~or~~ and marking line meeting the requirements of ARM 37.115.1503.

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

37.115.1811 SPLASH DECKS - WATER RECIRCULATION (1) and (2) remain the same.

(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 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 splash decks that recirculate water must recirculate the entire volume of water through an approved treatment system every hour or less.

(5) through (8) remain the same.

(9) At least one main drain suction outlet that supplies water to the splash deck recirculation tank filtration system shall be provided at the deepest point in the splash deck recirculation tank.

(10) through (12) remain the same.

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

37.115.1814 SPLASH DECKS - RESTROOM REQUIREMENTS

(1) General use ~~recirculating~~ 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 no further than 300 feet at from a splash deck. All facilities shall be provided with liquid soap, paper towels or electrical hand drying units, and covered waste receptacles. There must be a sign posted identifying the location of the restrooms with an arrow pointing to its direction.

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

37.115.1815 SPLASH DECKS - CLEANING REQUIREMENTS (1) Hose bibs with anti-siphonage devices shall be provided around 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 splash deck must be adequately cleaned and flushed to remove any materials or contaminants on the surface area of the splash deck. The water must be flushed to the waste water system and not discharged into the splash deck recirculation tank.

(2) The splash deck ~~recirculation~~ circulation 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 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) remains the same.

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

37.115.1817 SPAS TEMPERATURE (1) remains the same.

(2) Spas that are not a ~~hot springs~~ or flow-through hot springs spas must be operated at a water temperature not exceeding 104°F as determined by the use of an inline thermometer. A spa that is a ~~hot springs~~ or a flow-through hot springs may not operate at a temperature above 106°F.

(a) and (b) remain the same.

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

37.115.1819 SPA RECIRCULATION REQUIREMENTS (1) Spas must meet the following recirculation system requirements:

(a) through (i) remain the same.

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

37.115.1823 SPA CLEANING REQUIREMENTS (1) Spa operators must drain, thoroughly clean, and disinfect the spa:

(a) and (b) remain the same.

(c) when required as determined by using the following formula: number of spa gallons divided by three divided by the number of bathers in a 24-hour period equals the number of days before draining, cleaning, and disinfecting the spa is required.

(2) remains the same.

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

37.115.1837 WADING POOLS - BARRIER REQUIREMENTS (1) Wading pools for children shall be physically separated from swimming pools by means of at least a 4-foot high barrier. A barrier shall be provided on the outside of the deck area of all ~~outdoor~~ wading pools and shall meet the following requirements:

(a) through (f) remain the same.

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

37.115.1839 WADING POOL ATTENDANT REQUIREMENTS (1) remains the same.

(2) Each attendant must be currently certified by either the American Red Cross or the American Heart Association in methods of infant, child, and adult cardiopulmonary resuscitation (CPR) and must be certified by the American Red Cross (or equivalent) in at least standard first aid.

(3) and (4) remain the same.

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

37.115.1840 WADING POOL RESTROOM AND CHANGING TABLE REQUIREMENTS (1) remains the same.

(2) Each restroom shall provide at least one changing table station and a waste disposal facility container for used diapers.

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

~~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~~ A flow-through hot springs pool or spa, must comply with all other provisions of these rules, except for the following:

(a) the pH of pool water in a ~~hot springs or a~~ flow-through hot spring pool must be maintained at no less than 7.2 and no greater than 9.4 with proper signage;

(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 100°F in a pool used primarily for swimming; and

(c) remains the same.

~~(2) All hot springs pools and spas including flow through pools and spas, must meet the following requirements:~~

~~(a)~~ (2) Every hot springs pool or spa or flow-through hot spring pool or spa must be equipped with an accurate flow indicator to measure the turnover rate, except that the department may approve the use of an alternate method of establishing an accurate flow rate. To demonstrate that an alternative means of measurement is accurate, the applicant must submit a written application for approval to use that alternative method. The application must demonstrate that the alternative method accurately measures the water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste water discharge.

~~(b)~~ (3) Every hot springs pool or spa or flow-through hot springs pool or spa must have an inline thermometer installed to monitor the temperature of the pool. The department may allow an alternative method of monitoring pool temperature upon a showing by an applicant who demonstrates that the water temperature can be accurately measured by the alternative method and that the use of the alternative method does not have the potential to cause adverse public health effects. When an alternative method is used to monitor pool temperature, the licensee is responsible for recording the pool temperatures a minimum of twice a day or more frequently as

needed to demonstrate that the temperature is being regulated. The reading shall be recorded and maintained on forms approved by the department.

(4) A sign shall be posted that states: "For their protection, children under the age of 5 are not allowed to enter water over 100 degrees Fahrenheit. The temperature of the pool is _____, checked at (time) and the pH is _____". The letters in the posting shall be four inches tall and on a separate sign. This requirement must be posted by December 31, 2011.

(5) A thermometer must be in place, available for the patrons to check. Documentation of weekly thermometer calibration must be kept on file for three years.

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

37.115.1905 GRANDFATHER CLAUSE (1) Any licensed 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 pool, spa, or other water feature undergoes reconstruction, remodeling, or renovation;

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

(2) remains the same.

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

37.115.2101 NOTICE OF VIOLATION (1) When an inspector has determined that a violation of Title 50, chapter 53, MCA, or these rules has occurred, the inspector ~~shall~~ may provide a written notice of violation to the on-site operator of the facility which:

(a) through (5) remain the same.

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

5. The department proposes to repeal the following rules:

37.115.314 PAYMENT OF REVIEW FEES, is found on page 37-29333 of the Administrative Rules of Montana.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

37.115.904 SHOWERS, is found on page 37-29417 of the Administrative Rules of Montana.

AUTH: 53-50-103, MCA

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

37.115.1021 EQUIPMENT ROOM, is found on page 37-29447 of the Administrative Rules of Montana.

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

37.115.2102 IMMEDIATE SUSPENSION OF LICENSE; EMERGENCY CLOSURE OF POOL, SPA, OR OTHER WATER FEATURE, is found on page 37-29627 of the Administrative Rules of Montana.

AUTH: 50-53-103, MCA

IMP: 2-4-631, 50-53-201, 50-53-211, 50-53-212, MCA

6. Statement of Reasonable Necessity

The Department of Public Health and Human Services (the department) is proposing these changes to the swimming pool, spa, and other water feature rules to more accurately represent the purpose and intent of the rule. Many of the following changes are simple clarifications, grammatical errors or internal inconsistencies. There are some substantive changes that are specifically outlined below.

New Rule I

The department is proposing New Rule I to address the proper storage of chemicals and testing equipment for safety reasons. In a pool chemical room there is a high potential for chemical mixing that can create toxic gasses, cause fires, and even explosions.

New Rule II

The department is proposing New Rule II to address the location and minimum standards of the circulation equipment room.

ARM 37.115.104

The department is proposing to modify this rule to allow existing pools to continue operating without major renovation expenses. The department recognizes a minimal increased risk if other warning measures are employed (e.g., pool bottom markings, swim lines or lifeguards). The blanket requirement would prove cost prohibitive to facilities on limited budgets. When such time arises that the shell of the pool is substantially modified, said slope will need to meet current rule.

The department is proposing to remove excess wordage in (1)(f) to simplify the requirement to resemble that of other federally mandated laws (e.g., Americans with Disabilities Act) in that it is the operator's responsibility to ensure full compliance at all times.

ARM 37.115.105

The department is proposing changes to the definitions as follows:

(38) The department is proposing language to define the difference between a full facility inspection and a critical point inspection. A critical point inspection will be the follow up annual inspection performed on nonseasonal pools to address critical public health issues, and address any outstanding issues from previous inspections.

(45) The department is proposing to remove "diatomite" as the common term of diatomaceous earth has already been described in ARM 37.115.105(57)(c).

(47) The department is proposing to define "disinfection" as it is used in rule along with disinfectant, and "disinfection" is a process as opposed to a substance.

(66) The department is proposing to define "full facility inspection" as the annual inspection performed on all facilities, seasonal and nonseasonal. This inspection will include all critical violations, operations, and maintenance issues associated with the pool, spa, or other water feature.

(70) The department is proposing to clarify the definition of "hydrotherapy pool" in order to differentiate these pools as nonpublic, and not a recreational water feature.

(72) The department is proposing language to further describe "hydrotherapy pool" as a prescribed and attended pool that would not require licensure due to its nonpublic nature.

(99) The department is proposing language to better define "parts per million" as a factor of concentration as opposed to a stand alone chemical compound.

(113), (123), and (134) The department is proposing to remove "recreational water", "sand bottom pool", and "single use spa" from the definitions as they are no longer licensable facilities and bear no relevance to this rule.

(140) The department is proposing to remove part of the definition of "spa" as it precludes spas built in place, and limits spas to prefabricated units.

(141) The department is proposing to expand the definition of "splash deck" to describe an application that does not rely on a re-used water source. The source of water would be one that meets sanitation requirements and drains to waste, so therefore needs no further treatment.

ARM 37.115.301

The department is proposing language in (1)(n) to clarify the time and duration of outdoor pool closure as it relates to thunder and lightning.

The department is proposing language in (1)(g) to allow for immediate closure if the main drain is visibly not capable of avoiding entrapment hazards (e.g., broken or missing), and to remove redundant language covered in ARM 37.115.104(1)(f).

The department is proposing to add language in (1)(p) to include a pH less than 7.0, as sanitizer effectiveness is directly affected by extreme pH readings, and when pH is at lower levels there will likely be eye irritation.

ARM 37.115.302

The department is proposing language in (2) to reinforce the need for a current license through the department to operate a public bathing place, as set forth in 50-53-201, MCA.

ARM 37.115.303

The department is proposing language in (3) and (4) to allow for requiring a secondary disinfection system when there is a documented history of a threat to the public health, and is proposing to strike (5) as it is overly restrictive, and removes professional discretion.

ARM 37.115.306

The department is proposing to clarify that plans, specifications, and supporting data for design of a new pool, spa, or other water feature be submitted only to the department for review.

ARM 37.115.307

The department is proposing to remove inspection language in this chapter, as it is more appropriately addressed in ARM 37.115.317.

ARM 37.115.311

The department is proposing to remove this specific information as it is more appropriately addressed in ARM 37.115.313 and allows for flexibility in the amount charged for external engineering reviews.

ARM 37.115.312

The department is proposing language that would allow the department or its designee to be compensated for interim visits during the construction phase, and defines the pre-opening fee outlined in Table 1.

ARM 37.115.313

The department is proposing to add language in (2) to increase transparency and notification to the applicant.

ARM 37.115.316

The department is proposing to remove unnecessary language from (3). The section indicates that construction has not begun, and uninitiated construction cannot be ceased.

ARM 37.115.317(2)

The department is proposing language that shares responsibility with those counties that have a signed and approved cooperative agreement.

ARM 37.115.319(2)

The department proposes removing language already covered in ARM 37.115.311, Fee Table.

ARM 37.115.321

The department proposes clarifying responsibilities of the licensee who has the responsibility to obtain appropriate training, and not a required role of the contractor to supply said training. These rules are intended to provide guidance to licensees, and have no regulatory bearing on contractors.

ARM 37.115.504

The department is proposing to add language in (1)(d) to preclude safety hazards that may be caused by inadequate maintenance.

ARM 37.115.505

The department is proposing to simplify language to achieve the desired goal.

ARM 37.115.508

The department is proposing to remove dated language in (2), and adding criteria for drain covers made on site, as they have not been tested by an independent third party insuring compliance with Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA), as certified by a licensed structural/mechanical engineer. The

department is proposing to remove (5) as it is redundant. The requirement in the current rule to have an engineer certify the covers was impractical. When an approved cover is installed according to manufacturer's specification the engineering certification has already been done. Facility compliance with VGBPSSA is outlined in ARM 37.115.104(1)(f).

ARM 37.115.517

The department is proposing to modify language to require municipally owned pools to have a six-foot deck, while privately owned public pools would only require four feet minimum unobstructed deck width. Unobstructed deck widths are necessary for bather passage and in the event of an accident the deck is needed for emergency bather care. The reason for an increased deck width at a municipal pool is that there is a higher anticipated bather load and the potential for larger numbers of bather-accompanied observing from the deck area.

ARM 37.115.518

The department proposes removing spa language as it is already covered in all deck surfaces above.

ARM 37.115.521

The department proposes removing maximum length of hose as there is no supporting safety data in reference to the length of the hose. The department proposes adding language in (1) to clarify the use and need of hose for effective cleaning. The department is proposing to add language in (2) for the proper storage of hose while not in use, for safety reasons. The department is proposing to clarify (3) to address the required clean up after deck washing is complete.

ARM 37.115.522

The department is proposing to remove (3) from this section as (3) addresses nonpotable water.

ARM 37.115.602

The department proposes removing confusing language from the chapter title and clarifying the need for barriers for all splash decks. The intent is to keep animals from entering the area while the facility is not operating, and to minimize damage during winter months. The department proposes to add language in (5) to accommodate alternative barrier options proposed by an applicant that must be approved in writing.

ARM 37.115.604

The department is proposing to add language for the protection of unwanted access to pool areas when the pool is not in operation, or under supervision. If not secured a pool can be an attractive nuisance and attract small children and increase the chance of drowning. Language is also proposed to accommodate alternative barrier options proposed to the department and approved in writing.

ARM 37.115.605

The department proposes language to exclude existing splash decks from retro fitting barriers due to financial considerations and limited risk as there is no standing water for drowning threat.

ARM 37.115.701

The department is proposing language to further clarify how to determine slope.

ARM 37.115.707

The department proposes language to more accurately reflect the ANSI requirement in ANSI Chapter 23.4. A handrail extending to the bottom of the last step can be a hazard in such cases as lap pools.

ARM 37.115.804

The department is proposing to remove qualifying language concerning the diagram, as the diagram does show the shallow portion of the pool.

ARM 37.115.807

The department proposes more accurate language with existing definitions of handrails and guardrails.

ARM 37.115.902

The department proposes language to clarify that existing and newly built facilities are required to have toilet facilities within 50 feet of the pool, spa, or other water feature. All facilities (with the exception of flow-through splash decks, due to the fact that the system is in all practical terms, a shower) shall have changing rooms for bathers to change into and out of bathing clothes.

ARM 37.115.905

The department is proposing to add language to accommodate variables when installing a required baby changing table, and to ensure the safety of the child, and prevent the general public from coming in contact with changing areas. Pathogens are often times associated with changing diapers, and a table designed for such activity helps reduce the chance of spreading illness.

ARM 37.115.1002

The department is proposing to add language to accommodate the increasing numbers of multisection pools with varied turnover rates. Due to the fact that different types of pools have different turnover rates to help ensure proper pool sanitation, it is necessary to demonstrate how individual turnover rates will be achieved.

ARM 37.115.1006

The department is proposing language to outline the necessary placement of floor inlets to facilitate the proper circulation of water throughout the pool to ensure sanitizer distribution. Without full circulation some areas in the pool would potentially become "dead spots" that may not be able to sustain an adequate sanitizer residual.

ARM 37.115.1007

The department is proposing to remove duplicate language that is already addressed in ARM 37.115.104(1)(f).

ARM 37.115.1011

The department is proposing language to clarify the optimum location of flow meters, as previous language was reversed, and not consistent with industry standard.

ARM 37.115.1101

The department is proposing language that more accurately describes the role of the certified pool operator (CPO) and the ramification if contact is not made in the prescribed time. The requirement of facilities to have a CPO available is intended to ensure a full understanding of the mechanical operation of the pool and the importance of water chemistry as well as knowledge about how to fix deficiencies in mechanical operations or water chemistry.

ARM 37.115.1301

The department is proposing to add language in (6) to accommodate the use of other test kits that meet the basic accuracy requirements of the FAS-DPD titration test kit. The benefit of the FAS-DPD test is the degree of accuracy in relation to sanitizer residual, and has less chance of false readings due to color comparison.

The department is proposing language in (11) to expand testing to multiple locations in multisection pools due to different turnover rates for various sections.

ARM 37.115.1307

The department is proposing to add language to allow for closure of seasonal facilities.

ARM 37.115.1308

The department is proposing to change Table 6 to better define chemical parameter ranges and to identify the need for proper signage for those flow-through hot springs that are allowed to have a pH up to 9.4, and temperatures up to 106°F. The department proposes to simplify language in (3) as Table 6 already addresses Cyanuric Acid (CYA) levels, and the date for compliance has passed.

ARM 37.115.1309

The department is proposing new language to help explain the fact that as pH goes up, the effectiveness of sanitizers goes down. That said if the pH is near the upper limit, and sanitizer near the lower limit the amount of available sanitizer residual in the water may not be sufficient to kill pathogens associated with recreational water illness.

ARM 37.115.1314

The department is proposing to fix typographical errors in Table 7.

ARM 37.115.1402

The department is proposing to remove language from (3)(b) because the language is not needed.

ARM 37.115.1403

The department is proposing to add language in (1)(h) to require bather notification when pool chemistry parameters are outside the norm. While flow-through hot springs can have a pH up to 9.4, bathers need to be made aware of this as pH above 7.8 can cause eye and skin irritation.

ARM 37.115.1406

The department is proposing language to keep signage consistent between types of pools.

ARM 37.115.1501 and ARM 37.115.1601

The department is proposing language to include the use of nonconductive materials when used in conjunction with potential electric shock. The department is proposing to move language from (4) and (5) to ARM 37.115.1601 which is a more appropriate location as it deals with lifeguards.

ARM 37.115.1505

The department is proposing to remove specific language pertaining to the contents of the kit, and address the need for an appropriate first aid kit to be available at all times. Listing individual items in a first aid kit would require an inspector to "inventory" these items, and would require a large time commitment that is unnecessary.

ARM 37.115.1507

The department proposes language to include new and existing facilities with the exception of flow-through splash decks given the minimal risk posed by such a facility with no standing water, or circulation requirements (no suction entrapment hazard).

ARM 37.115.1601

The department is proposing to change the language in (2) pertaining to water slides to allow the local authority to determine if a lifeguard and attendant are required. There is no supporting information to justify a standard height requirement of 11 feet. The inspector may use professional judgment as to the location and number of staff. An example may be if the bather entering the slide cannot see if the previous bather has exited the receiving water, staff may be required to monitor traffic flow.

The department is proposing to move language from ARM 37.115.1501(4) and (5) to ARM 37.115.1601(7) and (8).

The department is proposing to add language in (9) to grant enforceability if a lifeguard is using a cell phone, texting, or other device that may distract attention (e.g., headphones, hand-held video game).

ARM 37.115.1602

The department is proposing to add language in (3) stating that lifeguards are not required during organized competitive events or swim lessons at municipal or privately owned public pools as qualified supervision is already provided.

ARM 37.115.1701

The department is proposing additional language to be inclusive of safety at facilities, and not limit language to clean and sanitary.

ARM 37.115.1704

The department is proposing language to clarify where service animals can be in relation to swimming pools and spas, and to fully preclude all animals from entering

the water. An animal within a splash pad would, in all practical terms, be entering the water.

ARM 37.115.1803

The department is proposing language to allow professional judgment to be exercised when addressing ARM 37.115.1601(2), as noted above.

ARM 37.115.1810

The department is proposing language to address turnover rates in pools with more than one turnover requirement. If a pool has multiple turnover rates and there are no separate filtration systems, the most stringent rate will be applied to the entire body of water. This is to help ensure proper sanitizer residual is present in each section of the pool to help prevent water borne illness.

ARM 37.115.1814

The department proposes new language to support the reference noted in ARM 37.115.902(c).

ARM 37.115.1817

The department proposes a clarification of conflicting information, and make requirement consistent with 37.115.1308 Table 6.

ARM 37.115.1839

The department is proposing language to allow for more flexibility in certifying organizations.

ARM 37.115.1845

The department proposes language to clarify exempted water quality parameters for flow-through hot springs, and to be consistent with language used in ARM 37.115.1308 Table 6.

ARM 37.115.1845

The department is proposing language in (1)(f) to make bathers aware that there are serious health concerns with children bathing in water greater than 100°F. These health effects include brain stem damage and reproductive organ disruption.

The department is proposing language in (2) that requires a thermometer be available so bathers can monitor the temperature of the pool at any time. Because thermometers can fail, they need to be calibrated (checked for accuracy) regularly.

ARM 37.115.1905

The department proposes removing this language as it precludes seasonal facilities due to months of nonoperation.

ARM 37.115.2101

The department is proposing a language modification for flexibility and efficiency, would require Notice of Violation (NOV) for all violations, not just those requiring closure.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 8, 2011.

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

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

10. 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.

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

/s/ Shannon McDonald
Rule Reviewer

/s/ Laurie A. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 1, 2011

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XIV and repeal of) PROPOSED ADOPTION AND
37.107.101, 37.107.103, 37.107.104,) REPEAL
37.107.107, and 37.107.109)
pertaining to the Montana marijuana)
act)

TO: All Concerned Persons

1. On August 31, 2011, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 22, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I DEFINITIONS For purposes of the Montana medical marijuana registry:

(1) "Applicant" means a person applying to become a provider, marijuana-infused products provider (MIPP), or registered cardholder.

(2) "Authorized employee" means:

(a) an employee of the department who has received written authorization from the Department of Public Health and Human Services director or the director's designee to obtain individual names and other identifying information from the marijuana registry;

(b) an employee of a state or local law enforcement agency who is authorized to obtain marijuana registry information through the Montana Criminal Justice Information Network (CJIN)/marijuana registry interface; or

(c) an employee of a state or local government agency, including a state or local law enforcement agency, who has received written authorization to obtain marijuana registry information. Written authorization, as applicable, must be provided to the department from a state agency director or director's designee, county sheriff, police chief, county attorney, or city attorney.

(3) "Cultivate" means to grow, propagate, clone, or harvest medical marijuana for use by registered cardholders.

(4) "Fee" means the mandatory fees necessary to process a medical marijuana registry card application.

(5) "Fingerprint card" means the department's FD-258 fingerprint card utilized to facilitate a Federal Bureau of Investigation (FBI) fingerprint and background check for provider or MIPP applicants.

(6) "Landlord Permission Form" means a completed, signed, and notarized form which gives a registrant who is renting or leasing the property where marijuana will be cultivated and manufactured for medical purposes, permission to do so, by the property owner. The form must be provided by the department.

(7) "Manufacture" means the act of preparing and processing usable marijuana into a marijuana-infused product. A marijuana-infused product must be labeled as to indicate that it contains medical marijuana.

(8) "Physician statement" means a written statement by a Montana licensed physician on one of three department forms certifying the registered cardholder applicant's debilitating condition. Physician statement forms include:

- (a) Physician Statement for Debilitating Condition;
- (b) Physician Statement for Chronic Pain Diagnosis; or
- (c) Physician Statement for Minors.

(9) "Proof of residency" means a readable photocopy of a current Montana driver's license or Montana state-issued identification card.

(10) "Registrant" means any provider, MIPP, or registered cardholder who has been approved for, and entered into, the department registry.

(11) "Registry" means the department's confidential medical marijuana record identifying medical marijuana cardholders, providers, and MIPPs.

(12) "Residential health care facility" means an adult day care center, an adult foster care home, an assisted living facility, or a retirement home as defined in 50-5-101, MCA.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 5, 7, 9, 23, L. 2011

NEW RULE II REGISTERED CARDHOLDER APPLICATION PROCESS

(1) All applicants must have a Montana mailing address and submit an application packet on forms provided by the department for consideration to be placed in the registry.

(2) Application forms are available from and must be submitted to the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are also available on the department's web site at www.dphhs.mt.gov/medicalmarijuana.

(3) Registered cardholder application materials that must be provided include:

(a) State of Montana Medical Marijuana Registered Cardholder Application Form. The information on this form includes:

- (i) the applicant's name, address, date of birth, and social security number;
- (ii) verification that the applicant:

(A) will cultivate and manufacture marijuana for the applicant's own use; or
(B) will obtain marijuana from a provider or marijuana-infused products provider.

(iii) verification that the applicant agrees to not divert to any other person the marijuana that the applicant cultivates, manufactures, or obtains for the applicant's debilitating medical condition; and

(iv) verification that the applicant is not in the custody of, or under the supervision of, the Montana Department of Corrections (DOC) or a youth court.

(b) proof of residency;

(c) signed, applicable Physician Statement attesting to the applicant's diagnosis of a debilitating medical condition as defined in [Section 2 of SB 423], diagnosis of chronic pain, or certification for use by a minor. The Physician Statement includes:

(i) physician's name, address, and telephone number; and

(ii) physician's Montana medical license number.

(d) applicable fees as outlined in [New Rule V]; and

(e) landlord permission form, if applicable.

(4) The department will verify with the Montana Board of Medical Examiners that the attending physician, and, if applicable, the referral physician, are licensed to practice medicine in Montana and the license is in good standing.

(5) The department must either approve or deny a registered cardholder application within 30 business days of receiving completed application materials. If approved, the department must issue a registry identification card within five business days of approving the application.

(6) Applicants who designate, on the application form, a provider or a MIPP who is not already registered with the department, will be issued a registry identification card listing no provider or MIPP.

(a) Named providers or MIPPs who are not already registered with the department will be required to submit application materials and be approved for the registry by the department, before they can be a provider or MIPP.

(b) Upon approval by the department, the registered cardholder will be issued a new card with the name of the registered provider or MIPP.

(7) The registry identification card expires one year from the date of issuance except when:

(a) the physician statement provides a written certification for a shorter period of time; or

(b) a registered cardholder changes provider or MIPP. When a change request form is received, processed, and approved by the department the registered cardholder's current card becomes void. The new card is not valid until it is received by the registered cardholder.

(8) Incomplete application packets will be handled pursuant to [NEW RULE VII].

(9) If the registered cardholder application is denied, the department will send the applicant notice of and reasons for the denial. Rejection of the application is considered a final department action, subject to judicial review.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 7, 23, L. 2011

NEW RULE III MINOR APPLICATION PROCESS (1) In addition to the requirements outlined in [Section 4 of SB 423] the minor's custodial parent or legal guardian with responsibility for health care decisions must submit to the department a Minor Registry Application Packet. A Minor Registry Application Packet can be obtained from the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are also available on the department's web site at www.dphhs.mt.gov/medicalmarijuana. A complete Minor Registry Application Packet must include:

(a) Minor Registered Cardholder Application Form that includes the following information:

(i) the applicant's name, address, date of birth, and, if issued, social security number; and

(ii) verification that the minor applicant is not in the custody of, or under the supervision of, the DOC or a youth court.

(b) MIPP Application as outlined in [NEW RULE IV];

(c) Physician Statement for Minors; and

(d) Landlord Permission Form, if applicable.

(2) Additionally, a completed minor application must include legal documentation affirming that the person completing the application is the legal guardian of the minor and has responsibility for health care decisions.

(a) If the minor has more than one legal guardian having responsibility for health care decisions, both individuals must sign the application form giving their consent for the minor to use marijuana to treat a debilitating medical condition as defined in [Section 2, SB423].

(b) It will be up to the legal guardians having health care decisions to decide which individual will serve as the minor's MIPP. Both individuals must indicate concurrence of this decision on the Minor Application Form.

(3) Incomplete application packets will be handled pursuant to [NEW RULE VII].

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 23, L. 2011

NEW RULE IV PROVIDER OR MIPP APPLICATION PROCESS

(1) Provider/MIPP applicants must be:

(a) a Montana resident; and

(b) named by a registered cardholder on the cardholder's application or change request form.

(2) Provider application materials are available from the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are available on the department's web site at www.dphhs.mt.gov/medicalmarijuana. Completed provider/MIPP application materials must include:

(a) Provider/MIPP Application form that includes:

- and
- (i) the applicant's name, address, date of birth, and social security number;
 - (ii) verification that the applicant:
 - (A) is not in the custody of, or under the supervision of, the DOC or a youth court;
 - (B) does not have a felony conviction or a conviction for any drug offense;
 - (C) has not been convicted of a violation under [Section 16, SB423];
 - (D) has not failed to pay any taxes, interest, penalties, or judgments due to a government agency;
 - (E) has not defaulted on a government-issued student loan;
 - (F) has not failed to pay child support; and
 - (G) has not failed to remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency;
 - (b) applicable fee as specified in [NEW RULE V];
 - (c) legible copy of the individual's Montana driver's license or other Montana state-issued identification card; and
 - (d) fingerprint cards as required by [NEW RULE VI].
- (3) The department must either approve or deny a provider or MIPP application within 30 business days of receipt of a completed application. If approved, the department must issue a registry identification card to the provider or MIPP applicant within five business days.
- (4) Providers/MIPPs must reapply annually. Providers/MIPPs do not need to reapply every time they are named by a registered cardholder, unless it has been one year since their last application was approved.
- (5) Provider/MIPP registration will be revoked if the provider/MIPP is no longer named by a registered cardholder.
- (6) If a former provider/MIPP, whose registration has been revoked or has expired, is named by a registered cardholder on an application or change request form, the former provider must reapply for the program.
- (a) A former provider/MIPP, who is reapplying for the registry, does not require a fingerprint background check unless it has been 12 months or more from the date their fingerprints were received by the department from the Montana Department of Justice (DOJ).
 - (b) When the former provider/MIPP is approved by the department, the \$50 provider/ MIPP application fee will be due when fingerprinting is again required pursuant to [NEW RULE VI].
- (7) Incomplete application packets will be handled pursuant to [NEW RULE VII].
- (8) If the provider/MIPP application is denied, the department will send the applicant notice of and the reasons for denial.
- (9) Rejection of any application is considered a final department action, subject to judicial review.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Section 3, 5, 23, L. 2011

NEW RULE V FEES (1) The department will assess the following fees:

- (a) registered cardholder application fee of \$25;
 - (b) provider application fee of \$50;
 - (c) MIPP application fee of \$50;
 - (d) a combined provider and MIPP application fee of \$50; and
 - (e) annual registered cardholder renewal fee of \$10.
- (2) All fees must be submitted with the application and must be paid by check or money order payable to the Department of Public Health and Human Services.
- (3) Fees are nonrefundable regardless of final application status.
- (4) Renewal applications received by the department after the expiration date will be treated as new applications and require a \$25 fee.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Section 23, L. 2011

NEW RULE VI PROVIDER AND MIPP FINGERPRINT REQUIREMENTS

- (1) Two completed and acceptable fingerprint cards must be submitted with provider/MIPP application materials. The fingerprint cards provided by the department are the only fingerprint cards to be accepted for this purpose. Photocopied duplicates are not valid.
- (2) The fingerprint card must be processed under these conditions:
- (a) fingerprints must be rolled onto each of the two provided fingerprint cards by a trained individual within a Montana law enforcement agency; and
 - (b) the individual rolling the prints must maintain control and possession of the fingerprint cards once the prints are rolled onto the cards and must place the cards into an envelope, seal it, and mail it to the department:
 - (i) The individual rolling the prints may also place the applicant's application and applicable fee into the envelope as long as the individual rolling the prints maintains control and possession of the fingerprint cards as required by this rule.
- (3) Upon completion of the fingerprint background check, the DOJ will return both fingerprint cards to the department. Upon receipt of the cards, the department will destroy the returned fingerprint cards.
- (4) If an adequate set of readable fingerprints cannot be obtained, the DOJ will notify the department that a federal name-based background check has been submitted for the named individual.
- (a) Federal name-based background checks can take up to 90 days to complete.
- (5) Fingerprint cards are considered complete when they are returned to the department by the DOJ. The 30 business day application approval time required by the department will begin on the day the fingerprint cards are returned.
- (6) The fingerprint background checks are valid for a 12-month period. Thirty days prior to the expiration date of the background check, new prints must be obtained following the same procedures outlined in this rule and returned to the department by the DOJ.
- (7) If the law enforcement agency charges a fee for fingerprinting, the applicant is responsible for the fee.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE VII INCOMPLETE APPLICATION, RENEWAL, OR CHANGE REQUESTS (1) Applications, physician statements, landlord permissions, change request forms, and other materials received by the department must be completed, signed, and accompanied by all other paperwork and fees necessary to be considered a complete application, renewal, or change request.

(2) Incomplete application, renewal, or change request materials and any accompanying check or money order will be returned to the applicant or registrant with an explanation of what is needed to complete the application, renewal, or change request.

(a) Provider/MIPP application packets requiring fingerprint cards will not be sent back to the applicant if fingerprint cards are missing.

(i) After the materials are screened by the department, fingerprint cards will be sent to this applicant with instructions on obtaining and returning fingerprint cards to the department.

(ii) To be considered submitted, these fingerprint cards must be postmarked no later than 30 days after having been sent to the applicant or all application materials held by the department will be returned to the applicant.

(3) Any complete application materials received 30 days or more before the expiration date will be processed in the order received. Cards will expire based on the date of issuance, not based on the expiration date of the previous card.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE VIII PROPERTY RESTRICTIONS (1) In addition to the application procedures outlined in [NEW RULE II], a registered cardholder, provider, or MIPP must attest in writing on forms provided by the department:

(a) whether property used for cultivating or manufacturing medical marijuana is owned, leased, or rented by the cardholder, provider, or MIPP; and

(b) if property is rented or leased, the cardholder, provider, or MIPP must have the landlord complete the Landlord Permission form, acknowledging that the property is being used for this purpose.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE IX REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS (1) If a registry identification card has been lost or stolen, the department must receive notification from registrant prior to replacing the registry identification card.

(2) Upon receipt of notification of a lost or stolen card by the registrant, the department will reissue as duplicate the registry identification card and send it to the registrant.

(3) A lost or stolen card should be reported to law enforcement by the registrant.

AUTH: Ch. 419, Section 23, L. 2011
IMP: Ch. 419, Sections 3, 23, L. 2011

NEW RULE X INVALIDATION OR REVOCATION OF REGISTRY IDENTIFICATION CARDS (1) A registry card for a registered cardholder can be revoked for the following reasons:

- (a) the registered cardholder no longer has a debilitating medical condition;
 - (b) the written recommendation has been rescinded by the physician;
 - (c) the registrant is now in the custody of, or under the supervision of, the DOC or a youth court;
 - (d) the registered cardholder fails to report to the department within ten days a change:
 - (i) in name;
 - (ii) in street, mailing, or physical address;
 - (iii) in physician;
 - (iv) in provider/MIPP; or
 - (v) concerning the debilitating medical condition.
 - (e) a landlord revokes their permission in writing and a change request form, with a new physical address, is not received within ten business days of the receipt of the revocation;
 - (f) a registered cardholder is found to be in violation of [Section 15, SB423] or [Section 16, SB423]; or
 - (g) mail sent to the registered cardholder by the department is returned, undeliverable by the United States Postal Service (USPS), and no change of address is submitted within twenty business days after the day the mail is returned to the department.
- (2) In addition to the criteria stated in [Section 5 of SB423] the department will revoke an active provider/MIPP registry identification card if the department determines that the provider/MIPP has violated the provisions of the Montana Marijuana Act in the following ways:
- (a) the provider/MIPP pleads guilty to, or is convicted of, any offense related to driving under the influence of alcohol or drugs;
 - (i) a registry card revocation under this circumstance must be for the period of suspension or revocation of the individual's driver's license as set forth in 61-5-208 and 61-8-410, MCA. If a provider/MIPP registry card is due to be renewed during a period of driver's license revocation, it may not be renewed by the department until the term of the driver's license revocation has elapsed.
 - (b) fails to report to the department a change in name or address within ten business days of the change;
 - (c) a provider/MIPP whose registry identification was issued under [Section 35 of SB 423] fails to submit fingerprints and pass a fingerprint background check by October 1, 2011;
 - (d) the results of a fingerprint background check conducted after issuance of the registry card show that the person is ineligible for the card pursuant to [Section 5 of SB423];

(e) the provider/MIPP is no longer named by any registered cardholder on their application or change request form; or

(f) mail sent to the provider/MIPP by the department is returned, undeliverable by the USPS, and no change of address is submitted within 20 business days after the day the mail is returned to the department.

(3) A registration card is not valid if the card has been altered or mutilated. A photocopy of the registry card is not valid.

(4) If a provider/MIPP registry card is revoked for any reason, the department will notify the provider/MIPP and the registered cardholder in writing and advise the registered cardholder that the provider/MIPP can no longer assist them.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 11, 23, 35, L. 2011; 45-9-203, 61-11-101, MCA

NEW RULE XI NOTIFICATION TO LOCAL LAW ENFORCEMENT

(1) Pursuant to [Section 3 of SB423] the department will release to the county sheriff the names of providers and MIPPs within the county sheriff's jurisdiction not previously released.

(2) The names of new providers and MIPPs for the reporting month will be released by the 15th of the following month. Additionally, any providers or MIPPs who have been revoked from the registry or have otherwise become ineligible will be reported at this time.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 23, L. 2011

NEW RULE XII HEALTH CARE FACILITY PROCEDURES (1) A residential health care facility must develop a policy regarding the use of medical marijuana within the facility.

(2) Should the facility choose to allow the use of medical marijuana by residents, the policy and procedures must cover, at a minimum:

- (a) compliance with the Montana Clean Air Act;
- (b) methods the facility will allow for the resident use of medical marijuana;
- (c) physical security of the medical marijuana; and
- (d) resident confidentiality.

(3) A policy addressing delivery of hospice services related to the use of medical marijuana for resident or patient use must be developed.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 11, 23, L. 2011

NEW RULE XIII COMPLAINT HOTLINE (1) The department will establish a hotline to receive complaint information concerning the Medical Marijuana Program. Complaints may also be submitted to the department utilizing the complaint form on the department's web site at www.dphhs.mt.gov/medicalmarijuana.

(2) The department will submit the complaint information to the appropriate agency or entity.

(3) Anonymous complaints will not be considered.

AUTH: Ch. 419, Section 23, L. 2011
IMP: Ch. 419, Sections 3, 21, 23, L. 2011

NEW RULE XIV DISCLOSURE OF CONFIDENTIAL MARIJUANA REGISTRY INFORMATION (1) The department must disclose marijuana registry information to authorized employees of the department as necessary to perform the official duties of the department.

(2) The department must disclose marijuana registry information to authorized employees of state or local government agencies, including state or local law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card.

(3) The department must disclose marijuana registry information as otherwise required by law.

AUTH: Ch. 419, Section 23, L. 2011
IMP: Ch. 419, Sections 3, 23, L. 2011

4. The department proposes to repeal the following rules:

37.107.101 DEFINITIONS, is found on page 37-26707 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.103 REGISTRATION AND APPLICATION PROCESS, is found on page 37-26709 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.104 INVALIDATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD, is found on page 37-26711 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.107 FEES, is found on page 37-26713 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.109 REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS, is found on page 37-26715 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

The department is repealing ARM 37.107.101, 37.107.103, 37.107.104, 37.107.107, and 37.107.109 because Senate Bill 423 (SB423) repealed the department's authority to issue medical marijuana cards under Initiative I-148.

5. Statement of Reasonable Necessity.

In 2011, Montana's 62nd Legislature passed Senate Bill 423 (SB423) establishing the Montana Marijuana Act (Act) and revising laws relating to the use of marijuana; creating a registry program for the cultivation, manufacture, transportation, and transfer of marijuana by certain individuals; requiring reporting; allowing inspections and requiring legislative monitoring. Subsequently, the district court has issued an injunction on several provisions of SB423.

Emergency rules were published in Montana Administrative Register Issue No. 12, at page 1166, effective June 1, 2011. The department is proposing these new rules replace the emergency rules which expire on September 28, 2011. This rulemaking package proposes new rules to facilitate the operation of the Medical Marijuana Registry under the new legislation. These rules repeal existing rules previously promulgated under Title 50, chapter 46, parts 1 and 2, MCA, which were also repealed by SB423.

SB423 changes the requirements for individuals to register as cardholders, in addition to changing requirements for "caregivers" who are now referred to as "providers" or "marijuana-infused products providers (MIPP)". SB423 also reflects changes in the debilitating conditions for which individuals can register under and includes changes to physician certifications for severe and chronic pain diagnosis.

The proposed rules address the statutory mandates in which the department will process applications for registry identification cards for providers and marijuana-infused products providers and for persons with debilitating medical conditions and renewal of registry identification cards; acceptable forms of proof of Montana residency, and the procedures for obtaining fingerprints for the required fingerprint and background check. The proposed rules also establish fees that generate revenue sufficient to offset all expenses of implementing and administering the Montana Marijuana Act (ACT).

SB423 repealed all department authority for the operation of the Medical Marijuana Registry. Without the emergency rules and these proposed rules, the department's ability to process new registry identification cards is eliminated. The department determined the rules must accommodate individuals currently on the registry as well as future applicants.

The department considered and rejected operating the existing Medical Marijuana Registry under the same guidelines as set out in rules that are to be repealed. SB423 has additional requirements that must be addressed in rule to fully implement the legislation. The department also considered and rejected promulgating rules similar to the emergency rules, as additional requirements are necessary to fulfill the statutory requirements.

New Rule I

This rule is necessary to guide the reader in terms used within the rules that are not defined within the legislation. The definitions serve as a framework for understanding several new concepts presented in SB423 requirements for the Medical Marijuana Registry. Defining the terms provides clarification to applicants, cardholders, providers, MIPPs, physicians, the general public, and department staff.

New Rule II, New Rule III, and New Rule IV

These rules are necessary to provide guidance for those applying to be placed on the Medical Marijuana Registry. The requirements for being placed on the registry vary for cardholders, providers and MIPPs, as well as minors. These rules identify the necessary components for applying to be placed on the registry. Without these rules, the applicants will not be aware of the department requirements to administer provisions of the Act.

New Rule V

This new rule is necessary to promulgate fees to generate sufficient revenue to offset all expenses of implementing and administering the Act. The proposed fees were calculated using historic information from the Medical Marijuana Program since its inception in 2005. Application and renewal fees are proposed to remain consistent with the fees previously charged. New fees for providers and MIPPs are established by using the cost charged by the Department of Justice/Federal Bureau of Investigation (FBI) for conducting fingerprint background checks. The department considered the costs of processing these background checks in addition to modifications to the administrative and business processes necessary to add this requirement when proposing the fee at \$50 for providers and MIPPs. It is anticipated that an average of 5,000 applicants per year will be approved for the program generating \$125,000 in revenue and \$200,000 will be generated from 20,000 approved cardholder renewals. It is anticipated that 1,000 existing caregivers will apply and be approved as providers/MIPPs generating \$50,000 in revenue. However, \$28.50 of the \$50 fee will be used to pay for the cost of the FBI fingerprint check making the department's net revenue from the provider application fee \$21,500.

New Rule VI

This new rule is necessary to identify the process for obtaining the required fingerprint background check for providers and MIPPs. Without this new rule, these applicants would not be aware of the requirements and process for obtaining the fingerprint background check. Applicants must use department-issued fingerprint cards which identifies the department's originating agency identifier number in order for the FBI to process the fingerprint card on behalf of the department.

New Rule VII

This new rule is necessary to identify the processes for submitting renewals or change requests and the handling process for incomplete application materials. SB423 requires additional information be submitted to the department. Therefore, the department is providing guidance to ensure that applicants are aware of the necessary requirements to complete application processing.

New Rule VIII

This new rule is necessary to ensure registrants have landowner permission if marijuana is to be cultivated or manufactured on premises rented or leased by the registrant. The property owner is entitled to know and have the option of granting or denying permission for the cultivation or manufacture of marijuana by a renter or lessee. Requiring this permission from the property owner assures that the property owner is made aware that marijuana may be cultivated or manufactured on the property. This provision protects the owner's interest in the property.

New Rule IX

This new rule is necessary to identify the process for replacing lost or stolen registry identification cards. SB423 requires registrants to carry their registry ID and a photo ID at all times. Therefore a registrant should notify the department and law enforcement as soon as possible when the registrant loses their registry identification or it is stolen.

New Rule X

This new rule is necessary to identify the provision which invalidates or revokes a cardholder or provider/MIPP registry card. If the cardholder or provider/MIPP no longer meets the requirements of the registry, the department must have the ability to invalidate or revoke the registry card. This protects the integrity of the registry by ensuring only registrants who are eligible have a registry identification card. Without this rule, the department lacks provisions and processes to revoke or invalidate registry cards. Ineligible registrants would be allowed to remain on the registry until the card expired, which would not meet the intent of the law.

New Rule XI

This new rule is necessary to implement the provision to provide the county sheriff or other appropriately authorized law enforcement designee with the names of providers and MIPPs within their jurisdiction. The department chose to centralize this distribution in order to timely and accurately facilitate the information distribution.

New Rule XII

This new rule is necessary because adult day care, adult foster homes, assisted living facilities, and retirement homes must provide guidance in the event a registered cardholder applies for residency or is living in the facility. The proposed rule protects the cardholder, staff, and the facility by requiring a policy to be in place regarding the use and storage of medical marijuana within a residential care facility. Requiring a policy to allow or not allow medical marijuana will provide a consistent approach to the use of medical marijuana in a residential care facility. Residential care facilities have discretion regarding the use of medical marijuana and therefore must provide guidance to staff, families, and residents.

New Rule XIII

This new rule is necessary to address the provisions of the statute requiring that the department provide a complaint hotline. The department will utilize the established complaint forms available on the web site as well as a telephone hotline to allow greater access to submit complaints regarding the Medical Marijuana Program. The department will not consider anonymous complaints. The department believes the hotline and complaint process are intended to report abuses within the Medical Marijuana Program to be dealt with directly by the program or referred as needed.

New Rule XIV

This new rule is necessary to indicate the process required for an individual to be identified as an authorized department, local, or state employee. This rule will provide safeguards to ensure the confidentiality of registry information is accessed appropriately. Only individuals with written authorization may access registry information in order to conduct specific duties of their job.

Fiscal Impact

It is anticipated that an average of 5,000 applicants per year will be approved for the program generating \$125,000 in revenue and \$200,000 will be generated from 20,000 approved cardholder renewals. It is anticipated that 1,000 existing caregivers will apply and be approved as providers/MIPPs generating \$50,000 in revenue. However, \$28.50 of the \$50 fee will be used to pay for the cost of the FBI fingerprint check making the department's net revenue from the provider application fee \$21,500. The Medical Marijuana Program employs 5.5 full-time employees (FTE).

Effective Date

15-8/11/11

MAR Notice No. 37-554

The effective date of these proposed new rules will be September 29, 2011.

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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 8, 2011.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the 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 6 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 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by telephone, e-mail, and mail on July 22, 2011.

Shannon L. McDonald
Rule Reviewer

Laurie Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 1, 2011.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.10.331 pertaining to	)	AMENDMENT
limitations on receipts from political)	
committees to legislative candidates	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 24, 2011 the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on September 28, 2011, to advise us of the nature of the accommodation that you need. Please contact David B. Gallik, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Pursuant to the operation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~\$1550~~ \$1600;

(b) a candidate for the state senate may receive no more than ~~\$2500~~ \$2650.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2010~~ 2012.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, 13-37-218, MCA
IMP: 13-37-218, 15-30-101(8), MCA

Reasonable Necessity: Section 13-37-218, MCA, requires the Commissioner of Political Practices to periodically adjust the limitations established in the statute and publish the revised limitations as a rule. The Bureau of Labor Statistics supplied the following Consumer Price Index (CPI) information: June 2003 CPI = 183.7; June 2011 CPI = 225.722. The commissioner must adjust the limitations by multiplying each limit by an inflation factor, which is determined by dividing the CPI for June of

the year prior to the year in which a general election is held by the CPI for June 2003. The inflation factor for the 2012 election is 1.2287. The information is used to determine the inflation factor to be applied to the aggregate contribution limits for House and Senate candidates. This information is required by 13-37-218, MCA and appears in ARM 44.10.331. It must be revised after June of every odd numbered year.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: David B. Gallik, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov, and must be received no later than 5:00 p.m., October 21, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to David B. Gallik at the above address no later than 5:00 p.m., October 21, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 85 persons based on candidate counts from the 2008 election cycle.

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

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ David B. Gallik
David B. Gallik
Commissioner
Political Practices

Certified to the Secretary of State August 1, 2011.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.10.338 pertaining to	)	AMENDMENT
limitations on individual and political)	
party contributions	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 24, 2011 the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on September 28, 2011, to advise us of the nature of the accommodation that you need. Please contact David B. Gallik, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov.

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

44.10.338 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS (1) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from individuals to candidates are as follows:

- (a) a candidate for governor may receive no more than ~~\$600~~ \$630;
- (b) a candidate for other statewide office may receive no more than ~~\$300~~ \$310;
- (c) a candidate for all other public offices may receive no more than \$160.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

- (a) a candidate for governor may receive no more than ~~\$21,600~~ \$22,600;
- (b) a candidate for other statewide offices may receive no more than ~~\$7800~~ \$8150;
- (c) a candidate for Public Service Commission may receive no more than ~~\$3100~~ \$3260;
- (d) a candidate for senate may receive no more than ~~\$4250~~ \$1300;
- (e) a candidate for all other public offices may receive no more than \$800.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-216, MCA
IMP: 13-37-216, MCA

Reasonable Necessity: Section 13-37-216, MCA, requires the Commissioner of Political Practices to periodically adjust the limitation established in statute, and to publish the revised limitations as a rule. The Bureau of Labor Statistics supplied the following Consumer Price Index information: June 2002 CPI = 179.9; June 2011 CPI = 225.722. The commissioner must adjust the limitations by multiplying each limit by an inflation factor, which is determined by dividing the Consumer Price Index for June of the year prior to the year in which a general election is held by the Consumer Price Index for June 2002. The inflation factor for the 2012 general election is 1.2547. The information is used to determine the inflation factor to be applied to the contribution limits for candidates. This information is required by 13-37-216, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: David B. Gallik, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov, and comments must be received no later than 5:00 p.m., October 21, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to David B. Gallik at the above address no later than 5:00 p.m., October 21, 2011.

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 85 persons based on candidate counts from the 2008 election cycle.

7. The commissioner 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 19, 2011.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ David B. Gallik
David B. Gallik
Commissioner
Political Practices

Certified to the Secretary of State August 1, 2011.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.38.101, 17.38.106, 17.38.502,)	
17.38.511, and 17.38.513 pertaining to)	(PUBLIC WATER AND SEWAGE
plans for public water supply or)	SYSTEM REQUIREMENTS)
wastewater system, fees, definitions,)	
water supply, and chemical treatment of)	
water)	

TO: All Concerned Persons

1. On April 14, 2011, the Board of Environmental Review published MAR Notice No. 17-318 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 521, 2011 Montana Administrative Register, issue number 7.

2. The board has amended ARM 17.38.106 and 17.38.511 exactly as proposed and has amended ARM 17.38.101, 17.38.502, and 17.38.513 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain as proposed.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) through (e)(ii) remain as proposed.

(f) "Rural distribution system" means those portions of a water distribution system that are outside the limits of a city or town and that:

(i) have fewer than ~~one~~ four service connections per mile on average;

(ii) through (18) remain as proposed.

17.38.502 DEFINITIONS (1) remains as proposed.

(2) "Water hauler" is a ~~person~~ water supplier that is a public water supply system, as defined in 75-6-102, MCA, and that is engaged in the business of transporting water, through a non-piped conveyance, from a water source to a cistern or other reservoir to be used for human consumption in a public water supply system. As defined in 75-6-102, MCA, a public water supply system is a system that has at least 15 service connections or that regularly serves at least 25 or more persons daily for any 60 or more days in a calendar year facility.

17.38.513 CHEMICAL TREATMENT OF WATER (1) remains as proposed.

(2) Water haulers shall monitor each load of water, and shall record chlorine residual results on department-approved forms. Haulers shall retain the records of chlorine residual results for each load and shall provide the records to the department upon request. Chlorine residual records must be retained for ten years,

as required by 40 CFR, Part 141.33, which is incorporated by reference in ARM 17.38.234. By the tenth of the month following a delivery, haulers shall report the following to the department on department-approved forms:

(a) through (3) remain as proposed.

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

COMMENT NO. 1: The proposed definition of "rural distribution system" in ARM 17.38.101(3)(f)(i) is too limiting. It should allow the "rural" designation for systems that have fewer than four service connections per mile on average. Rural water systems are gaining in popularity for good reasons. The proposed requirement for fewer than one service connection per mile could discourage the creation of rural water extensions to areas that contain existing small farms or ranchettes. Department costs for review should not be greater for extensions with fewer than four service connections per mile than for extensions with fewer than one connection per mile.

RESPONSE: ARM 17.38.101(3)(f)(i) has been amended as shown above in response to the comment.

COMMENT NO. 2: The proposed amendments to the definition of "water hauler" in ARM 17.38.502 indicate that only water haulers that haul to public water systems are "water haulers" for purposes of these rules.

RESPONSE: The proposed amendments to ARM 17.38.502 were intended to conform the definition of "water hauler" to the current statutory definition of "public water supply system" in 75-6-102, MCA. As the commentor notes, the proposed amendments narrowed the rule definition to include only water haulers whose customers are themselves public systems. This was an inadvertent result, and is contrary to the statute. The statute includes any water hauler with a sufficient number of customers to meet the statutory criteria for a public water supply system, regardless of whether the customers themselves are public systems. The proposed definition has been amended to ensure that it is consistent with the statute.

COMMENT NO. 3: Does the department intend that the definition of "water hauler" in ARM 17.38.502(2) apply only to haulers that haul to cisterns or other reservoirs?

RESPONSE: Water haulers that haul to other facilities would meet the public water supply definition in 75-6-102, MCA, if they haul to 15 or more service connections or regularly serve water to at least 25 persons for any 60 or more days in a calendar year. The restriction in the existing rule definition to water hauled to cisterns and reservoirs is contrary to the statute and has been eliminated.

COMMENT NO. 4: The proposed amendments to ARM 17.38.513(2) do not indicate how long a water hauler must maintain its chlorine residual reporting records.

RESPONSE: Record retention requirements are described in ARM 17.38.234, which adopts the federal rules in 40 CFR, Part 141.33. The federal rules

require a ten-year retention period for chemical analyses. ARM 17.38.513(2) has been modified to include a reference to the ten-year retention requirement.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, August 1, 2011.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.36.922 and 17.36.924 pertaining to)	
local variances and variance appeals to)	(SUBDIVISIONS/ON-SITE
the department)	SUBSURFACE WASTEWATER
)	TREATMENT)

TO: All Concerned Persons

1. On April 14, 2011, the Board of Environmental Review published MAR Notice No. 17-319 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 528, 2011 Montana Administrative Register, issue number 7.

2. The board has amended the rules exactly as proposed.

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

COMMENT NO. 1: Two county boards of health submitted comments in support of the proposed rules.

RESPONSE: The board acknowledges the comments.

COMMENT NO. 2: One of the new variance criteria in ARM 17.36.922(2) requires the applicant to show that, without a variance, compliance with a requirement would result in undue hardship. Another criterion requires the applicant to show that no alternatives to a variance are reasonably feasible. Does the department or board intend to issue guidance about the meaning of the terms "undue hardship" and "reasonably feasible?"

RESPONSE: At this time, the board does not plan to further define the terms "undue hardship" and "reasonably feasible." These terms are intended to provide flexibility to local boards as they evaluate variance requests on a case-by-case basis.

COMMENT NO. 3: The variance criteria in ARM 17.36.922(2) should include "Special circumstances must exist that are unique to the applicant's property or situation."

RESPONSE: The term "special circumstances" is already addressed in ARM 17.36.922(2)(c), which requires the applicant to show that the variance is necessary to address "extraordinary conditions" that the applicant could not reasonably have prevented. The requirement that the circumstances be "unique to the applicant's property or situation" is too restrictive. The term "unique" implies that only one applicant could obtain a variance under a particular set of circumstances, whereas there could be more than one party in the same hardship situation.

COMMENT NO. 4: The variance criteria in ARM 17.36.922(2) should include "The need for a variance cannot be the result of an illegal action on the part of the applicant or caused by the applicant's action or inaction."

RESPONSE: ARM 17.36.922(2)(c) requires the applicant to show that the variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented. In most cases, this criterion would disallow a variance that was the result of an illegal action taken by the applicant. In general, applicants can reasonably be expected to avoid taking illegal actions. However, there may be cases where an illegal action would not in itself preclude a variance. For example, an applicant may have installed a residence in a floodplain based on advice - later found to be erroneous - from the county floodplain office. When the applicant applies for a variance to install a septic system, the illegality of the home construction might not preclude the variance if the applicant had reasonably relied on the representation of the county floodplain office. As proposed, ARM 17.36.922(2)(c) will allow counties to consider what the applicant could reasonably have done to avoid the need for a variance.

The requirement that the need for a variance not be caused by the applicant's "action or inaction" is overbroad. Every variance situation could be tied to some action or inaction of the applicant. The criterion in ARM 17.36.922(2)(c) properly focuses on whether the applicant could reasonably have prevented the need for the variance.

COMMENT NO. 5: The board should not delete the current ARM 17.36.922(3), which allows local boards of health to adopt variance criteria in addition to those set out in the state rules. Statutes governing local health boards provide that local sewage regulations must not be "less stringent" than state standards. The clear intent of the Legislature was to allow local boards of health to adopt and administer rules that go beyond state minimum standards, including variance requirements. The statutes do not give the board authority to dictate the rules that local boards must use.

RESPONSE: Other than setting minimum standards for sewage disposal as required by the Montana Water Quality Act, the Montana Board of Environmental Review (BER) generally cannot dictate to local boards how to regulate sewage. However, there is an exception for the variance criteria for the state minimum standards. Section 50-2-116(1)(k), MCA, makes a clear distinction between local sewage standards, which must be "not less stringent than state standards," and local variance criteria, which must be "identical" to state criteria. By statute, local boards may not use minimum standard variance criteria other than those promulgated by the BER. The former provision in ARM 17.36.922(3) was deleted because it was in direct conflict with 50-2-116(1)(k), MCA.

COMMENT NO. 6: As proposed, the amendments to ARM 17.36.924 allow the department to rehear the original variance request, rather than reviewing the local board decision in an appellate review based on the local record. What is the authority for this?

RESPONSE: Pursuant to 75-5-305(4), MCA, the department variance hearing process is a contested case under the Montana Administrative Procedure

Act, Title 2, chapter 4, part 6, MCA (MAPA). MAPA provides for prehearing discovery, an evidentiary hearing subject to the formal rules of evidence, testimony under oath, and findings of fact and conclusions of law by the department. These procedures are intended to provide a fact-finding hearing similar to an original proceeding in district court, not an appellate review based solely on the local board records. The department's final decision may be reviewed by a district court in an appellate proceeding. Title 2, chapter 4, part 7, MCA.

COMMENT NO. 7: The proposed new ARM 17.36.924(6) allows the department to substitute its judgment for that of the local board as to the interpretation and application of the variance criteria in ARM 17.36.922. What is the authority for this?

RESPONSE: In reviewing the local board variance decision, the department may adopt the local board's interpretation of the variance criteria. However, if the department were strictly bound by the local board's interpretation of the variance criteria, the department could not reach a conclusion different from that of the local board. The department must have the ability to independently apply the variance criteria in order to implement the statute requiring the department to "grant, conditionally grant, or deny" the requested variance. Section 75-5-305(4), MCA.

COMMENT NO. 8: When the department hears a variance appeal, the proposed new ARM 17.36.924(6) would allow the department to overturn the local board's interpretation of the variance criteria. But the same rule says that the department will be bound by the local board's interpretation of other local rules. Does that create a conflict?

RESPONSE: There should not be any conflict between these provisions. Section 75-5-305, MCA, requires the department to hold a hearing on the applicant's variance request and to apply the state variance criteria. In order to implement that statute, the department must be able to independently interpret the variance criteria and apply them to the circumstances of the applicant's case. On the other hand, the variance appeal statutes do not give the department authority to overturn a county's interpretation of its substantive rules. The department must accept the county's determination as to which local substantive rules apply, and how they apply, to the applicant's project. The department then will apply the variance criteria to determine whether a variance from the substantive rules is appropriate. If the department decision is appealed to district court, the court would have authority to review the local board's interpretation and application of local substantive rules.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, August 1, 2011.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.433 and 32.3.434 pertaining)
to designated surveillance area and)
animal identification within the DSA)

TO: All Concerned Persons

1. On June 23, 2011, the Department of Livestock published MAR Notice No. 32-11-219 regarding the proposed amendment of the above-stated rules at page 1053 of the 2011 Montana Administrative Register, issue number 12.

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

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

COMMENT 1: Who will pay for the tags for animals from the DSA?

RESPONSE 1: Montana livestock producers and veterinarians have several options of USDA-APHIS approved official identification tags. Approved tags include metal clip silver "Brite" tags, orange metal vaccination tags and some RFID tags. All 800 series RFID tags are accepted. Age and source 900 series tags are also allowed at this time; however, these tags will be phased out following publication of federal identification regulations. Currently, producers can order the silver, USDA-APHIS metal "Brite" tags from the Montana Department of Livestock (MDOL) or USDA-APHIS at no charge. These tags are assigned to an individual producer and can only be used in the assigned producer's cattle. OCV tags (metal or RFID) are applied, by your veterinarian, to heifer calves at the time of vaccination.

COMMENT 2: What happens when an RFID tag falls out after an animal has crossed state lines and they don't honor a brand as identification?

RESPONSE 2: Official identification tags have a high degree of retention when properly placed. Periodically however, even a properly placed tag may not stay in the animal's ear for the entirety of its life. If an animal with a reportable disease is found in another state, all available identification, sale, and movement data will be used to trace the animal to the likely source of infection. States that do not utilize brands may have difficulty determining the state of origin if the only identification on the animal is a brand. It is important for the state of Montana and our producers that the origin of disease is found rapidly to prevent further spread within the source herd, statewide and nationally.

COMMENT 3: Why is the identification requirement suddenly changing when the only change in circumstances is bison leaving the park?

RESPONSE 3: The DSA identification requirement has been proposed in response to three states, Nebraska, Colorado, and South Dakota, which have adopted identification requirements. Each state requires that all sexually intact cattle and bison that have been within the DSA at any time, regardless of age are officially individually identified. Although the three states listed above have similar requirements, they vary enough to cause some confusion and difficulty for Montana producers.

With a uniform DSA identification requirement, it is less likely that additional states will impose their own somewhat varying regulations.

Additionally, the proposed identification requirement is consistent with Federal Identification regulations that are scheduled for publication in 2012.

While Yellowstone National Park bison management is related to the brucellosis issue in Montana, it does not have a bearing on the proposed identification rule change.

COMMENT 4: Cattle that have been brucellosis tested have official identification. Therefore, the impact of the identification requirement should be low.

RESPONSE 4: MDOL agrees with this comment. Brucellosis tested animals must have official individual identification. Previous regulation already required certain classes of cattle and domestic bison, such as tested animals, brucellosis vaccinated animals, and all animals 12 months of age and older within the DSA, to be identified. The animals affected by this proposed regulation are sexually intact cattle and domestic bison less than 12 months of age that have not been vaccinated and are not test eligible; typically feeder heifers.

COMMENT 5: Carbon County should be included in the DSA because that's where the first positive case in cattle occurred.

RESPONSE 5: The epidemiologic investigation of the 2007 brucellosis affected herd concluded that the most likely source of exposure for the index animal was in Park County, Montana where the animal was raised after weaning and bred before returning to Carbon County.

A recent DNA "fingerprint" analysis has given us some additional insight into the 2007 affected cattle herd. This analysis states that *Brucella* isolated from wildlife near Yellowstone National Park show a "rather close DNA kinship, by *Brucella* standards" to the 2007 isolate. Therefore, while not entirely eliminating the concern over more widely distributed wildlife brucellosis, this new information supports MDOL's prior conclusion that exposure took place in the Greater Yellowstone Area. Additionally, consultations with FWP suggest that there is little likelihood of brucellosis positive elk from Wyoming moving north in that section of the state. Lastly, MDOL analyzed over 14,000 samples from Carbon County since 2007 with no additional positive samples aside from those related to the affected herd.

Elk brucellosis surveillance will continue along the boundary of the DSA to gather information needed to protect Montana producers as well as the industry.

COMMENT 6: If the boundaries are changed, will the newly added DSA producers be required to test their entire herds like the current DSA producers were?

RESPONSE 6: While the rules no longer include entire herd testing, producers within or utilizing land within the proposed DSA adjustment will be subject to all current ARM, including testing prior to change of ownership and movement, brucellosis vaccination, and identification requirements. Some producers may choose to perform an entire herd test to allow for early detection of disease or to establish or maintain certified brucellosis-free herd status.

COMMENT 7: What percentage of seropositive elk found outside the current DSA will create further change in the boundaries? There needs to be some sort of standard.

RESPONSE 7: A set seroprevalence is difficult if not impossible to establish with information currently available regarding brucellosis in elk, highlighting the need for additional research and surveillance. The amount of risk that an out-of-state producer or importing state is willing to accept is generally close to zero.

COMMENT 8: If an elk is found to be seropositive for brucellosis on an initial test, but is retested at a later date and doesn't shed anymore, how will that impact FWP's role in helping producers in the DSA as well as determining how boundaries are redrawn in the future?

RESPONSE 8: Seropositive elk have been exposed to Brucella and may or may not be able to transmit the disease. At this time we are unsure of how long an exposed elk remains infective or even seropositive. Information regarding how long and when an infected elk sheds Brucella is essential and highlights the need for additional research. MDOL continues to support FWP's efforts to attempt to answer some of these questions with elk live-capture studies.

COMMENT 9: Is APHIS going to require identification on anything that moves across state lines within the next two years?

RESPONSE 9: The federal animal identification regulations will likely be published sometime in 2012. These regulations will initially require official individual identification of sexually intact cattle and domestic bison 18 months of age and older for interstate movement. Additional regulations will phase in over time to include identification of all classes and ages of cattle and domestic bison.

COMMENT 10: Old bulls should not be included in the identification requirements because tags do not stay in their ears, tattoos cannot be read after a couple of years, and they are low risk animals.

RESPONSE 10: While MDOL acknowledges that infected bulls present a low risk of brucellosis transmission, we feel that it is necessary to individually identify bulls leaving the DSA for three reasons:

1. To avoid confusion with South Dakota, Colorado, and Nebraska (three of Montana's top export states) that already require identification of all sexually intact cattle.
2. To comply with the expected federal identification rule.
3. Continued traceability and trading partner assurance. It is important for Montana to be able to trace disease to the source herd in a timely manner, even if the disease was found in a bull at slaughter.

COMMENT 11: Risk of exposure to brucellosis and timing need to be considered prior to expanding the DSA. It has been suggested that the proposed area is not as likely to have elk abortions occurring while the livestock are in the area.

RESPONSE 11: Brucella exposed and or infected elk do exist within the proposed DSA adjustment boundary and therefore it is necessary that cattle utilizing this area are included in brucellosis surveillance. Ranches within the DSA may be granted variances based on best management practices, exposure, as well as disease mitigation techniques through the development of a voluntary Brucellosis Prevention and Surveillance Herd Management Plan (Herd Plan).

COMMENT 12: I support adjusting the DSA boundary and relying on disease mitigation activities to prevent the transmission of brucellosis from wildlife to cattle.

RESPONSE 12: Brucellosis in wildlife poses a serious risk to the Montana beef industry. It is important to continue surveillance and mitigation activities in an area where the threat of transmission from wildlife to cattle exists. Protecting Montana's cattle and domestic bison producers from the negative economic impact of disease within their herd as well as potentially costly and varying import restrictions imposed by other states is important to the economic well-being of the state.

COMMENT 13: There haven't been enough elk tested outside the DSA to justify the boundaries.

RESPONSE 13: A live-capture elk study was recently performed in the Ruby Range southeast of Dillon, MT (outside the DSA boundary). One hundred elk were captured and tested for exposure to Brucella. Of the 100 elk captured and tested, 12 were determined to have been exposed. Elk found to be positive on the field test were collared to gather movement data. This study, in combination with hunter harvest elk tests confirms the presence of brucellosis in this area.

COMMENT 14: Using county roads as the boundaries for the DSA doesn't make sense because of the changing elk movement patterns due to hunter pressure and wolf predation. It would make more sense for the boundary to be I-15 from the Montana/Idaho border to Butte, then I-90 from Butte to Big Timber.

RESPONSE 14: A recognizable boundary is important for producer awareness as well as for enforcement. The location of the boundary is based on seropositive elk locations and movement patterns obtained through consultation with FWP.

COMMENT 15: We recommend caution over adding the Ruby Mountain Area into the DSA as all kinds of new restrictions, testing, and vaccination requirements come with that change.

RESPONSE 15: It has been well documented that brucellosis exposed elk exist within the boundary described by the proposed rule. Calfhood vaccination is required countywide as well as within the DSA. Entire herd testing is no longer required for DSA producers. Additionally, MDOL supports the costs of testing and adult vaccination as much as possible through veterinarian as well as producer reimbursement.

COMMENT 16: The rule change is too extreme for just finding the increased seroprevalence in one group of animals. What if additional studies don't corroborate this finding?

RESPONSE 16: Elk surveillance will continue in locations in and around the DSA. If future data proves that brucellosis exposed elk do not exist within this boundary adjustment, then the Board of Livestock would consider adjusting the boundary accordingly.

COMMENT 17: Producers and others may not understand they are going to be impacted by the rule change and suggest that a map be developed and circulated showing the changes. Further, how many producers/cattle/bison will be affected by this change in DSA area called for in ARM 32.3.233?

RESPONSE 17: MDOL made a concerted effort to inform producers in this area and gather input. A producer meeting was held in Dillon and Alder to address the recent elk study and to speak with producers that would be affected by a DSA boundary adjustment due to the results. A map of the proposed boundary was made available to those in attendance. Additionally, a description of boundary was mailed to all DSA producers as well as many in the proposed adjustment area.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 1, 2011.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.1505 pertaining to blood)
testing with salmonella antigens)

TO: All Concerned Persons

1. On June 23, 2011, the Department of Livestock published MAR Notice No. 32-11-220 regarding the proposed amendment of the above-stated rule at page 1056 of the 2011 Montana Administrative Register, issue number 12.

2. The Department of Livestock has amended the above-stated rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 1, 2011.

BEFORE THE BOARD OF REVIEW
DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.8.102 and 42.8.104 relating to)
one-stop business licensing)

TO: All Concerned Persons

1. On June 9, 2011, the board published MAR Notice No. 42-2-862 regarding the proposed amendment of the above-stated rules at page 1023 of the 2011 Montana Administrative Register, issue no. 11.

2. No comments were received regarding the above-stated rules.

3. Therefore, the board amends ARM 42.8.102 and 42.8.104 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Chairman

Certified to Secretary of State August 1, 2011

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to access to)
documents and fees for copies of)
public records)

TO: All Concerned Persons

1. On June 9, 2011, the Secretary of State published MAR Notice No. 44-2-169 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1026 of the 2011 Montana Administrative Register, Issue Number 11.

2. The Secretary of State has adopted the above-stated rule as proposed: New Rule I (44.2.204).

3. No comments or testimony were received.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 1st day of August, 2011.

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 March 31, 2011. This table includes those rules adopted during the period April 1, 2011, through June 30, 2011, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2011, 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 2011 Montana Administrative Register.

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