

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of ARM) AMENDED NOTICE ON PROPOSED
New Rule I relating to the Eurasian) ADOPTION AND EXTENSION OF
Watermilfoil Management Area) COMMENT PERIOD

TO: All Concerned Persons

1. On April 26, 2012, the Department of Agriculture published MAR Notice No. 4-14-208 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 802 of the 2012 Montana Administrative Register, Issue Number 8.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on, May 28, 2012 to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. Roosevelt County was inadvertently left off the original notice.

4. The New Rule is being amended as follows, new matter underlined, deleted matter interlined:

NEW RULE I EURASIAN WATERMILFOIL MANAGEMENT AREAS (1) The Upper Missouri River Eurasian Watermilfoil Management Area is created covering Beaverhead, Madison, Jefferson, Lewis & Clark, Broadwater, and Gallatin Counties. The Lower Missouri River Eurasian Watermilfoil Management Area is created covering Valley, Phillips, McCone, Richland, Garfield, Roosevelt, and Petroleum Counties.

REASON: The purpose of the management area is to prevent the spread of Eurasian watermilfoil. Eurasian watermilfoil is a state listed noxious weed. The plant is an extremely aggressive, non-native aquatic weed that poses a serious threat to Montana's rivers, lakes, and irrigation infrastructure. Eurasian watermilfoil's environmental effects include the reduction of water quality, displacement of native plant communities, decreased sport fish populations through lower predation success and reduced spawning, and increased habitat for undesirable species, such as mosquitoes, that may spread diseases to humans and parasites that cause swimmer's itch. The economic impacts include reduced recreational value through the loss of angling, boating, swimming, water skiing and near shore recreation, reduced profitability of agricultural production by clogging ditches, canals, farm ponds, and irrigation equipment, decreased property values and increased costs for electrical generation and municipal water supplies.

The limited number of infested acres permits feasible and cost effective containment. The primary means by which Eurasian watermilfoil can be spread is through plant fragments entrained on watercraft and boat trailers. The high recreational use and movement of watercraft from these water bodies to the rest of Montana combined with the significant impacts of this noxious weed creates a significant risk to Montana. The management areas will help prevent the spread of Eurasian watermilfoil through the education of boaters and inspection of watercraft and trailers leaving the infested water bodies.

5. Concerned persons may submit their written data, views, or arguments to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on May 31, 2012.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State May 14, 2012.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.6.2204 and 12.6.2208) PROPOSED AMENDMENT
regarding adding Tilapia as a)
controlled species)

TO: All Concerned Persons

1. On June 14, 2012, at 6:30 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The commission 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 by June 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail cfurthmyre@mt.gov.

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

12.6.2204 SPECIFIC REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE (1) through (3) remain the same.

(4) Tilapia, *Oreochromis spp.*, may only be held for commercial activities and with an approved operation plan.

(a) Tilapia must be raised in a facility that:

(i) is indoors and locked with access restricted solely to individuals involved in the operation and maintenance of the facility;

(ii) is not within the 100-year flood plain;

(iii) is at least 200 feet from any surface of water;

(iv) does not receive diverted surface water;

(v) does not have an effluent or discharge of waste or water within 200 feet of surface water including perennial, intermittent, or ephemeral streams or rivers; and

(vi) complies with all other local, state, and federal regulations and permits.

(b) Only fry or eggs may leave the facility.

(c) Any significant mortality in the facility that occurs as a result of an infectious disease must be reported to the department within 30 days.

(d) Carcasses must either be disposed in a state-regulated landfill or in another manner that would not impact state waters or be accessible to wildlife or other animals that might carry carcasses to water.

(e) Plans to suspend operations must be reported to the department prior to ceasing activities.

(f) Annual reporting of imports to the facility and exports is required to the department.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2208 LIST OF CONTROLLED SPECIES (1) remains the same.

(2) The following fish are classified as controlled species:

(a) coho salmon - *Onocorhynchus kisutch*;

(b) goldfish - *Carassius auratus* (for use in outdoor ponds); and

(c) koi - *Cyprinus carpio* (for use in outdoor ponds); and

(d) tilapia - *Oreochromis spp.*

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

4. Reasonable Necessity: The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of Tilapia, a species of exotic wildlife to the list of controlled species because the potential impacts should be reduced to an acceptable level by the specified control measures outlined in the Administrative Rule. The primary concerns associated with Tilapia are for their potential to be released and/or escape from confinement, and the potential for competition with native and recreationally important fish species. This addition made revisions to ARM 12.6.2204 and 12.6.2208 necessary. After evaluating this species, the committee found that they pose a minimal threat to Montana's native wildlife or plant species, livestock, horticultural, forestry, agricultural production, or human health and safety.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: FWP Exotics, Fisheries, Helena, MT 59620-0701, fax (406) 444-4952;

or e-mail them to fwpexotics@mt.gov. Any comments must be received no later than June 22, 2012.

6. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies the subject or subjects about which the person wishes to receive notice. 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 Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, 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.

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State May 14, 2012.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to deer licenses separated from nonresident big game combination licenses) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION))

TO: All Concerned Persons

1. On June 22, 2012 at 6:00 p.m., the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The commission 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 no later than June 8, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail cfurthmyre@mt.gov.

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

NEW RULE I NONRESIDENT DEER LICENSES SEPARATED FROM BIG GAME COMBINATION LICENSES (1) When a B-10 elk combination license is issued, the remaining deer portion becomes a separate B-11 deer combination license.

(2) When deer populations are significantly below long-term averages or objectives across large portions of the state, the commission will determine the number of B-11 licenses to be issued.

AUTH: 87-1-301, 87-2-512, MCA
IMP: 87-1-301, 87-2-512, MCA

Reasonable Necessity: State law allows the commission to separate the Class B-7 license from the Class B-10 license and sell the separated license as a Class B-11 license. Historically the commission has adopted annual rules regarding the procedure to issue these licenses year after year without any changes or controversy. The commission is proposing adopting the language contained in the annual rule as administrative rules rather than addressing the rules annually.

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 Hank Worsech, P.O. Box 200701, Helena, Montana 59620-0701; or e-mail hworsech@mt.gov, and must be received no later than June 29, 2012.

5. Hank Warsech or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about whom the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State May 14, 2012

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through III pertaining to license) PROPOSED ADOPTION
auctions and lotteries)

TO: All Concerned Persons

1. On June 21, 2012 at 6:00 p.m., the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The commission 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 no later than June 8, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail cfurthmyre@mt.gov.

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

NEW RULE I PROPOSALS FOR LICENSES SOLD BY AUCTION OR LOTTERY (1) The commission may authorize:

- (a) the department to conduct the auction or lottery; or
 - (b) a wildlife conservation organization to conduct the auction or lottery.
- (2) Organizations that demonstrate a commitment to the conservation of the species may submit a proposal for a license to be sold by auction or lottery.
- (3) A proposal must include:
- (a) a statement of the organization's purpose;
 - (b) copies of bylaws or articles of incorporation;
 - (c) details of the organization's previous involvement in the conservation of the species hunted under the license;
 - (d) details of the organization's previous experience in auctions or lotteries;
 - (e) information on how the auction or lottery would be conducted and an estimate of the potential revenue that will be generated; and
 - (f) a statement indicating whether the organization plans to retain up to 10% of the proceeds to cover reasonable auction expenses and that the organization will submit expenses associated with the auction of the license.
- (4) The commission reserves the right to reject all bids and proposals.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA
IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

NEW RULE II PROCEDURE FOR SUBMITTING PROPOSALS AND

AWARDING AN AUCTION OR LOTTERY LICENSE (1) The department will advertise the opportunity for organizations to submit auction or lottery license proposals through media announcements and letters to organizations showing interest in previous years.

(2) Proposals for auctions or lottery licenses must be mailed or hand delivered to Montana Department of Fish, Wildlife and Parks, License Bureau, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701 and must be postmarked or hand delivered on or before July 15. If July 15 is a Saturday or Sunday the next business day is when proposals will be due.

(3) The commission may select a conservation organization proposal to receive the auction or lottery license and conduct the auction or lottery. The license will be valid for the following license year.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

NEW RULE III ISSUANCE AND USE OF A LICENSE SOLD BY AUCTION OR LOTTERY (1) A license obtained through an auction or lottery may not be sold. A license transferred by sale will be voided with no refund.

(2) The highest bidder or lottery winner may designate one person to receive the license before issuance of the license by:

(a) submitting a completed and signed affidavit provided by the department; and

(b) sending the affidavit certified mail to the department.

(3) The department shall issue the appropriate hunting license to the highest bidder, lottery winner, or a designee:

(a) after receipt of completed application; and

(b) after verification that the applicant is legally able to be licensed under current statutes and administrative rules.

(4) A hunting license sold by auction or lottery is valid for take of one animal of the species for which it is issued.

(5) A hunting license sold by auction or lottery may be used in legally described hunting districts during legal hunting seasons for the species for which the license is issued.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

Reasonable Necessity: State law allows the commission to issue one mountain sheep, Shiras moose, mountain goat, mule deer, and elk license to species-specific conservation groups to use to conduct an auction or lottery. Historically the commission has adopted annual rules regarding the procedure to issue these licenses year after year without any changes or controversy. The commission is proposing adopting the language contained in the annual rule as administrative rules rather than addressing the rules annually.

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 Hank Worsch, P.O. Box 200701, Helena, Montana 59620-0701; or e-mail hworsch@mt.gov and must be received no later than June 29, 2012.

5. Hank Worsch or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about whom the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on May 9, 2012 by phone message. Copies of the rule notice were electronically sent by e-mail and hard copies mailed on May 9, 2012.

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State May 14, 2012

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.24.902 and 17.24.903 pertaining to)	AMENDMENT AND ADOPTION
general performance standards and)	
adoption of New Rule I pertaining to)	(RECLAMATION)
rules not applicable to in situ coal)	
operations)	(NO PUBLIC HEARING
)	CONTEMPLATED)

TO: All Concerned Persons

1. On June 25, 2012, the Board of Environmental Review proposes to amend and adopt the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., June 11, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.24.902 APPLICATION REQUIREMENTS FOR IN SITU COAL PROCESSING OPERATIONS (1) Except as provided in [NEW RULE I], An application for a permit for in situ coal processing operations must be made according to all requirements of ARM 17.24.901. In addition, the mining and reclamation operations plan for operations involving in situ processing operations must contain information establishing how those operations will be conducted in compliance with the requirements of ARM 17.24.907, including:

(a) through (2) remain the same.

AUTH: 82-4-204, 82-4-205, 82-4-207, MCA

IMP: 82-4-222, MCA

17.24.903 GENERAL PERFORMANCE STANDARDS (1) In addition to all appropriate requirements of subchapters 4 through 8, and 10 through 13, except ARM 17.24.519 and as provided in [NEW RULE I], the following requirements apply to underground mining operations:

(a) through (2) remain the same.

AUTH: 82-4-204, 82-4-207, MCA

IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-243, 82-4-253, MCA

4. The proposed new rule provides as follows:

NEW RULE I RULES NOT APPLICABLE TO IN SITU COAL OPERATIONS

(1) The following rules are not applicable to in situ coal gasification:

- (a) ARM 17.24.311 (Air Pollution Control Plan);
 - (b) ARM 17.24.320 (Plans for Disposal of Excess Spoil);
 - (c) ARM 17.24.519 (Monitoring for Settlement); and
 - (d) ARM 17.24.831 through 17.24.837 (auger mining and remining rules).
- (2) All other rules may apply on a mine-specific basis.

AUTH: 82-4-207, MCA

IMP: 82-4-221, 82-4-222, 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-237, 82-4-238, 82-4-240, 82-4-243, MCA

REASON: Chapter 398, Laws of 2011, (SB 292) requires the board to adopt rules necessary to regulate underground mining using in situ coal gasification by October 1, 2012. That requirement is codified in 82-4-207, MCA. That statute also provides that those rules may not be more stringent than the comparable federal regulations or guidelines. Prior to the passage of 82-4-207, MCA, the board adopted two rules specifically regulating in situ coal gasification. ARM 17.24.902 provides permit application requirements and ARM 17.24.903 provides performance standards for in situ coal gasification. Both of those rules provide that appropriate provisions of subchapters 3 through 8 and 10 through 13 are applicable to in situ coal permit applications and operations. ARM 17.24.902 and 17.24.903 are substantially similar to the comparable federal regulations, which are contained in 30 CFR 785.22 and 30 CFR Part 828. Following passage of 82-4-207, MCA, the Department of Environmental Quality reviewed subchapter 3 through 8 and 10 through 13 to identify which rules within those subchapters apply to in situ operations. The department determined that most rules would apply to those operations. Rather than adopting rules that duplicate existing rules, the board is proposing to adopt a rule that lists those rules that would never apply to in situ operations. By adoption of New Rule I, the board would identify those rules that do not apply to in situ coal mining operations and thereby also identify the rules that do apply.

5. 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 June 21, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments 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 June 21, 2012.

7. 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 1 based on the fewer than 20 regulated mines in Montana.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The sponsor was notified by letter sent by U.S. mail dated January 4, 2012.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

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

Certified to the Secretary of State, May 14, 2012.

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

In the matter of the adoption of New)
Rule I and amendment of 37.34.114)
pertaining to certification of persons)
assisting in the administration of)
medication)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On June 13, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment 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 June 6, 2012, 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 rule as proposed to be adopted provides as follows:

NEW RULE I CERTIFICATION OF PERSONS ASSISTING IN THE ADMINISTRATION OF MEDICATION: ADOPTION OF THE MEDICATION ADMINISTRATION MANUAL (1) For the purpose of certification of persons who supervise or assist in the administration of medication to persons through the state-sponsored developmental disabilities services, the department has developed and published an instructional and reference aid entitled Health and Medication Administration Manual for Individuals with Developmental Disabilities: A Self-Paced Study Guide and Reference Manual, published and effective October 1, 2009. The department adopts and incorporates by reference this manual. Copies may be obtained from the Department of Public Health and Human Services, Developmental Disabilities Program, P.O. Box 4210, Helena, MT 59604.

AUTH: 53-20-204, MCA
IMP: 53-20-204, MCA

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

37.34.114 CERTIFICATION OF PERSONS ASSISTING IN THE ADMINISTRATION OF MEDICATION (1) This rule establishes criteria and procedures under which an employee or an agent of a ~~contractor~~ provider of developmental disabilities services responsible for the delivery of direct care may receive certification to assist and supervise an individual a person in state-sponsored developmental disabilities services in taking prescribed medication.

(2) Assistance and supervision may only be given where a medication which is normally self-administered has been prescribed for ~~an individual~~ the person and where the ~~physician~~ medical professional who prescribed the medication also prescribed assistance or supervision in the administration of the medication.

~~(2)~~ (3) For the purposes of this rule, the following definitions apply:

(a) "Assistance" means providing any degree of support or aid to ~~an individual~~ a person who independently performs at least one component of medication-taking behavior; ~~and.~~

(b) "Supervision" means critically observing and directing ~~an individual~~ a person engaged in medication-taking behavior.

~~(3)~~ (4) An ~~agent or employee or an agent~~ of a ~~contractor~~ provider, in order to assist or supervise in the administration of prescribed medication to ~~individuals~~ persons, must be certified by the department as herein provided unless the ~~agent or employee or the agent~~ is otherwise authorized by law to provide such assistance or supervision.

~~(4)~~ (5) To be certified, an employee or agent of a ~~contractor~~ provider must demonstrate knowledge of health issues relating to persons with developmental disabilities including general health, health emergencies, aspiration pneumonia, seizure disorders, and knowledge of the use and side effects of medications by achieving a score of at least ~~90%~~ 85% on a comprehensive test administered by the department.

~~(5)~~ (6) Application for certification to provide supervision and assistance in the administration of medication is made by ~~providing notification~~ submitting a request to be certified to the Department of Public Health and Human Services, Developmental Disabilities Program, P. O. Box 4210, Helena, MT 59604.

~~(6)~~ (7) Any ~~contractor~~ provider may receive, free of charge, an instructional and reference aid entitled ~~Seizure Disorders and Medications, a self-paced instructional manual~~ Health and Medication Administration Manual for Individuals with Developmental Disabilities: A Self-Paced Study Guide and Reference Manual as adopted by the department in [New Rule I].

~~(7)~~ (8) The department, or an agency determined by the department, administers the comprehensive test to a qualified applicant within 30 days of receipt of the ~~notification of application~~ request for certification.

~~(8)~~ (9) Notice of certification or noncertification is mailed by the department within ~~40~~ ten days of the date of testing. ~~The~~ A notice of certification designates an effective date and an expiration date for the certification. ~~Certification is approved for~~ The certification period may be for no more than a maximum of 2 two years.

~~(9)~~ (10) A person may receive consecutive certification by retaking the test as provided in ~~(4)~~ (5) through ~~(7)~~ (8).

~~(10)~~ (11) ~~Every contractor~~ Each provider shall maintain a current list of ~~contractor~~ employees and agents certified to supervise and assist in the administration of medication.

~~(11)~~ (12) If ~~an individual~~ a person has been receiving developmental disabilities services for 30 days and supervision and assistance is to be administered for more than ~~40~~ ten consecutive days, this activity must be included as an objective in the written ~~individual~~ plan of care. To address the objective, an individual program plan must be prepared which describes a program to train the ~~individual~~ person to self-administer the medication and must specify at least:

- (a) the target medication-taking behavior;
- (b) the conditions under which such behavior should occur;
- (c) the conditions under which such behavior will be trained;
- (d) the criterion for completion of the individual program plan in accordance with ~~(13)~~ (14) herein;
- (e) the written strategies for training the target behavior;
- (f) a data recording system which accounts for each prescribed medication dosage; and
- (g) a daily data recording system which specifies progress or lack of progress toward the target behavior.

~~(12)~~ (13) Every instance of assistance or supervision provided under this rule must be recorded and must include at least the name of the person who receives medication, the name of the person who assists or supervises the taking of medication, the date and time the medication was taken, and the type of medication taken.

~~(13)~~ (14) ~~An individual~~ A person is considered to be capable of self-administering medication when it has been documented that the ~~individual~~ person has self-administered all (100%) of prescribed medication dosages for a consecutive 30-day period.

~~(14)~~ (15) There are two conditions under which an individual program plan to teach self-administration of medication is no longer necessary. They are:

- (a) the ~~individual~~ person has met the criterion specified in ~~(13)~~ (14); or
- (b) the ~~IP~~ planning team has reviewed the ongoing implementation of the individual program plan and found that the ~~individual~~ person has reached the maximum level of independence in the self-administration of medication of which the individual is currently capable. In making this decision, the team must evaluate whether:

- (i) the ~~individual~~ person has made any progress;
- (ii) the program has been consistently implemented;
- (iii) a variety of teaching strategies has been employed;
- (iv) the decision to discontinue the program will interfere with the ~~individual's~~ person's ability to be served in a less restrictive environment; and
- (v) the program has been in place long enough to make a decision concerning its effectiveness.

~~(15)~~ (16) If the ~~IP~~ planning team decides that an individual program plan to teach self-administration of medication is no longer necessary, the requirements concerning the need for certified personnel and recording instances of assistance and supervision must be met.

~~(16)~~ (17) The feasibility of re-instituting a program to teach self-administration of medication must be examined at subsequent IP meetings by the planning team. If the individual's person's situation changes such that there is a possibility of further acquisition of the skill, a program is must be initiated.

~~(17)~~ (18) The department may revoke or suspend a certification.

(a) The department may revoke certification by notifying the certified person of the reason for revocation in writing at least ~~40~~ ten days prior to the effective date of revocation. The certified person may request, in writing, within the ~~40~~ ten days prior to revocation, a review ~~by the division administrator~~ of the decision. A decision is issued within 30 days from the date the request for review is received. When a request for a review is made, the revocation is not effective until the ~~division administrator's decision is made~~ review is completed and a final decision issued.

(b) The department may suspend a ~~certified person's right to assist or supervise in the administration of medication~~ certification for a period no longer than 15 days, after which the suspension must be removed or notice of revocation issued. If notice of revocation is issued, suspension may continue until the effective date of revocation or until the ~~division administrator's decision is made~~.

AUTH: 53-20-204, MCA

IMP: 53-20-204, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rule I and amend ARM 37.34.114 to update the certification of persons who supervise or assist in the administration of medication to persons through the state-sponsored developmental disabilities services.

New Rule I

The department proposes to adopt and incorporate the manual entitled "Health and Medication Administration Manual for Individuals with Developmental Disabilities: A Self-Paced Study Guide and Reference Manual," published and effective October 1, 2009. The department received requests prior to October 1, 2009 to revise and update the manual referenced in ARM 37.34.114. The revised manual was not incorporated by reference into rule at that time. The department decided to complete a pilot period of the manual and the required comprehensive testing of direct-support staff. The pilot period is complete and the manual is now being incorporated by reference.

Manual Changes

The prior edition of the manual focused primarily on seizure disorders and the medications associated with those disorders. The changes incorporated into the revised manual for certification of employees or agents of a provider are necessary to broaden the focus beyond seizures and to accurately reflect on the skills needed by direct-support staff assisting persons with developmental disabilities.

The direct-care staff who are employed by developmental disabilities services providers are generally required to be able to supervise or assist daily in the administration of medications prescribed for a range of additional health care needs. In addition, the department received requests for a revised manual which would serve to effectively and more fully inform a person with a high school education. Therefore, the department worked with provider staff, medical professionals, and others to develop the revised edition of the manual. The revised manual includes, in addition to information on seizure disorders, information on general health care issues, emergencies, aspiration pneumonia, and other conditions.

The department began its pilot of the revised training manual and the comprehensive test in 2009. Throughout the pilot period the department monitored the results. In addition to the monitoring, the provider agencies gave feedback to the department regarding test results. One consistent concern was the difficulty that direct-support staff encountered in reaching the 90% criterion score to pass the test. The department extended the pilot period because it assumed that the difficulty was that the agency staff were unfamiliar with the expanded material covered in the revised manual. However, after the pilot period it appears clear to the department that it is the wider scope of the training that is the cause of the difficulty. The department's analysis of the test scores shows that obtaining a score of 85% fulfills the intent of the manual, which is to provide staff with an expanded knowledge base regarding medications and health issues that they encounter. The department has decided to amend the criterion to 85%.

Dr. Justad, a physician contracted by the Developmental Disabilities Program (DDP), authored the revised edition of the manual. During the research and writing of the manual, Dr. Justad consulted with: (1) Dr William Docktor, PharmD, the author of the previous manual; (2) Becky Hornby, LPN, and LaDonna Todd Fabian, training specialist, with a developmental disabilities provider, Spring Meadows Resources; (3) Janie Lewis, the nursing supervisor at the state of Montana's ICF/MR facility, Montana Developmental Center; (4) Michelle Matson, RN, and Leslie Robertson, day services manager, with a developmental disabilities provider, AWARE, Inc.; and (5) Mike Peterson, a Quality Improvement Specialist for the Developmental Disabilities Program. Further information was obtained from Karen McGowan, a consultant in medication practices, Ruth Givens, of the Developmental Disabilities Program in Tennessee, and the Quality Counsel, an advisory council for the DDP composed of family members, provider staff, advocates, and program staff.

In addition, the department consulted with the Montana Board of Nursing in the matter of the publishing of the manual. At the request of the Montana Board of Nursing the revised manual includes the following components in medication management training:

1. the list of "rights of medication administration;"
2. the purposes of medications;

3. the classes of medications;
4. the allowable routes of administration of medications;
5. the care, storage, and regulation of controlled substances and medications;
6. the adverse reactions, side effects, and allergies to medications;
7. the medication log; and
8. medication error reporting.

The department considered other approaches before substantially revising the manual. The department determined that retention of the current manual, with only the revision of the certification tests to test for broader knowledge, was not feasible. The manual serves to instruct direct-care staffs who are required to be apprised of current medication knowledge and practices for assisting. The previous edition of the manual, in addition to being outdated and lacking necessary breadth, was difficult to comprehend. The revised manual contains updated information with respect to medication practices for persons with developmental disabilities. One option the department considered was the wholesale adoption of a training curriculum manual, such as the manual in use by the State of Tennessee produced by McGowan Consultants. This and other similar consultant manuals can be expensive, costing \$50 or more per manual. The use of these manuals would require more extensive professional-based training than is necessary for the more limited assistance authorized in Montana.

Revisions to the Health and Medication Administration Manual

A summary of the topics in the revised Health and Medication Administration Manual are as follows:

1. general introductory material that explains the purpose of the manual, how to use it, and where to obtain additional information;
2. the role of care givers in medication therapy;
3. medication use which includes sections on the purpose of medications, explanations of generic vs. brand name medications, over-the-counter vs. prescription medications, and controlled substances;
4. medication storage and how to destroy unused medications;
5. dosage forms of medications;
6. swallowing problems, special circumstances, topical dosage, and parenteral medications;

7. monitoring of medications, new prescriptions, home medications, and PRN medications;
8. pharmacy labels, general guidelines in assisting with medications which cover the seven rights of medication administration, universal precautions, safety issues, abbreviations, and documentation of assisting with medication administration including filling out medication administration records;
9. rules and laws regarding medication assistance and teaching self-medication skills;
10. categories of medications covering basic knowledge of analgesics, anti-infectives, psychiatric medications, and heart and respiratory medications;
11. seizure disorders including causes, types, documentation, influencing factors, and treatment;
12. recognizing strokes or transient ischemic attacks;
13. general information regarding diabetes mellitus types 1 and 2, glucose testing, health complications of diabetes, and hypoglycemia;
14. gastroesophageal reflux, choking, and constipation;
15. aspiration pneumonia; and
16. allergies and anaphylaxis.

The revised manual also covers general information that direct-care staff must learn such as Universal Precautions, PRN guidelines, home medications, safety topics, and teaching self-medication skills. The appendices cover specific routes of administration so that staff will know how to assist a client, as well as the glossary, a dietary fiber table, and a drug classification table for staff to look up commonly prescribed medications and find information on their use and possible side effects.

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., June 21, 2012.

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, do not apply.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State May 14, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.57.412 and 10.58.527)
relating to areas of specialized)
competency)

TO: All Concerned Persons

1. On February 9, 2012, the Board of Public Education published MAR Notice No. 10-57-259 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 241 of the 2012 Montana Administrative Register, Issue Number 3.
2. The board has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State May 14, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.57.217, 10.57.601 through)
10.57.609, and 10.57.611 relating to)
educator/specialist discipline)

TO: All Concerned Persons

1. On February 9, 2012, the Board of Public Education published MAR Notice No. 10-57-260 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 244 of the 2012 Montana Administrative Register, Issue Number 3.

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

3. No comments or testimony were received.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State May 14, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.11.462 and repeal of ARM) REPEAL
24.11.460, pertaining to)
unemployment insurance)

TO: All Concerned Persons

1. On March 8, 2012, the Department of Labor and Industry published MAR Notice No. 24-11-264 pertaining to the proposed amendment and repeal of the above-stated rules at page 473 of the 2012 Montana Administrative Register, Issue Number 5.

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

3. No comments or testimony were received.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State May 14, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.189.401 fee schedule,) ADOPTION
24.189.414 nonresident psychological)
services, 24.189.601 application)
procedures, 24.189.607 required)
supervised experience, 24.189.610)
work samples - examination,)
24.189.2309 professional)
responsibility, and the adoption of)
NEW RULE I temporary permit)

TO: All Concerned Persons

1. On February 23, 2012, the Board of Psychologists (board) published MAR notice no. 24-189-33 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 354 of the 2012 Montana Administrative Register, issue no. 4.

2. On March 16, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the March 23, 2012, deadline.

3. The board has amended ARM 24.189.401, 24.189.414, 24.189.601, 24.189.607, 24.189.610, and 24.189.2309 exactly as proposed.

4. The board has adopted NEW RULE I (24.189.633) exactly as proposed.

BOARD OF PSYCHOLOGISTS
GEORGE WATSON, PhD., CHAIRPERSON

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

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

Certified to the Secretary of State May 14, 2012

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

In the matter of the adoption of New) NOTICE OF ADOPTION,
Rules I through VII, amendment of) AMENDMENT, AND REPEAL
37.111.101, 37.111.106, 37.111.107,)
37.111.116, 37.111.117, 37.111.121,)
37.111.122, 37.111.124, 37.111.130,)
and repeal of 37.111.104,)
37.111.105, 37.111.115, 37.111.123,)
and 37.111.135 pertaining to public)
sleeping accommodations)

TO: All Concerned Persons

1. On February 23, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-574 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 375 of the 2012 Montana Administrative Register, Issue Number 4.

2. The department has amended ARM 37.111.124 and repealed ARM 37.111.104, 37.111.105, 37.111.115, 37.111.123, and 37.111.135 as proposed.

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

NEW RULE I (37.111.102) REVIEW OF PLANS AND SPECIFICATIONS

(1) ~~Whenever an initial license is applied for, the applicant must submit plans and specifications to the local health authority for review and approval before construction, remodeling, or conversion begins.~~ Plans and specifications must be submitted to the local health authority for review and approval before any new license is issued.

(2) Local health authority approval is required before any construction, remodeling, or conversion for a new or existing establishment begins.

(3) The local health authority must review the plans and respond to the applicant within 30 days with a written approval, disapproval, or request for additional information.

(4) If the establishment was previously licensed by the department and no structural modification will be involved, the local health authority may waive the requirement for the submission of plans and specifications.

(2) through (5) remain as proposed, but are renumbered (5) through (8).

~~(6) If the establishment was previously licensed by the department and no structural modification will be involved, the local health authority may waive the requirement for the submission of plans and specifications.~~

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE II (37.111.110) WATER SUPPLY SYSTEM GENERAL REQUIREMENTS (1) remains as proposed.

(2) A public water supply system must be approved by the Montana Department of Environmental Quality (DEQ) and meet the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5.

(3) and (4) remain as proposed.

(5) The department adopts and incorporates by reference FCS Circular 1-2012 in effect ~~April 27, 2012~~ May 11, 2012, which contains potable water construction and maintenance standards for nonpublic water supplies serving licensed establishments. A copy of FCS Circular 1-2012 may be obtained from the Department of Public Health & Human Services, Food & Consumer Safety Section, P.O. Box 202951, Helena, Montana 59620-2951. The FCS Circular 1-2012 is also available on the department's web site at www.fcscs.mt.gov.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE III (37.111.111) NONPUBLIC WATER SUPPLY SAMPLING AND TEST REPORTS (1) and (2) remain as proposed.

(3) An establishment using a nonpublic water supply system must have a water sample analyzed for total nitrate before initial licensing and at least ~~once each year~~ every three years that the establishment is licensed.

(4) remains as proposed.

(5) The establishment must ensure water test results are transmitted to the local health authority from the laboratory in a format acceptable to the local health authority within five working days, except as required in New Rule IV (37.111.112(1)(c) and (3)(d)).

(6) remains as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE IV (37.111.112) NONPUBLIC WATER SUPPLY CONTAMINATED SAMPLES (1) If coliform bacteria is detected in a nonpublic water supply routine sample, the establishment must:

(a) collect at least four more repeat samples within 24 hours of notice at the following system points:

(i) through (3)(d) remain as proposed.

(4) If an establishment fails to take the four repeat or five routine samples following the detection of coliform, or the laboratory fails to test for fecal coliform or E. coli in coliform positive samples, the establishment must follow corrective actions as specified in (3).

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE V (37.111.113) WATER SUPPLY CORRECTIVE ACTIONS

(1) An establishment must take appropriate corrective action, which may include shock disinfection, replacement, or repair of the water supply system within a period specified by the local health authority when:

(a) a water sample exceeds ~~the~~ a maximum contaminant levels as specified in ARM Title 17, chapter 38, subchapter 2;

(b) through (e) remain as proposed.

(2) When a water supply is replaced or repaired, the water supply system must be shock disinfected before the system is placed into service.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE VI (37.111.114) WATER SUPPLY RESTRICTED-USE ORDER

(1) The local health authority shall issue a restricted-use order to an establishment when:

(a) the Montana Department of Environmental Quality (DEQ) has issued a boil water order;

(b) and (c) remain as proposed.

(d) a nonpublic water supply sample exceeds ~~the~~ a maximum contaminant levels as specified in ARM Title 17, chapter 38, subchapter 2;

(e) through (3)(a) remain as proposed.

(b) water from a DEQ-approved public water supply that meets the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5, stored in a clean, sanitized, and covered potable water container or holding tank;

(c) remains as proposed.

(d) if the water is fecal or E. coli contaminated, water that has been boiled for at least one minute, and stored and served from a clean, sanitized, and covered container; or

(e) through (6) remain as proposed.

(7) An establishment subject to a restricted-use order may wash, rinse, and sanitize dishes, utensils, and equipment using the affected water system if using an approved chemical disinfectant or a commercial dish machine that reaches 180°F (82°C) in the final rinse, or as directed by the local health authority.

(8) remains as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE VII (37.111.118) ICE (1) and (2) remain as proposed.

(3) ~~Ice must be~~ When ice is not stored in an automatic dispenser if the ice is not dispensed and is available to multiple guests or groups of guests, then the ice must be served directly by the establishment staff.

(4) ~~Where open-bin ice is provided, an~~ An ice scoop must be readily available for use by the staff and protected from contamination.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

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

37.111.101 DEFINITIONS In addition to those definitions contained in 50-51-102, MCA, the following definitions apply to this subchapter:

(1) through (3) remain as proposed.

(4) "Establishment" means a facility providing sleeping accommodations to the public, such as a hotel, motel, tourist home, or rooming house, including boarding house, hostel, or vacation ~~home~~ rental. For the purpose of this subchapter, establishment does not include a "bed and breakfast," "guest ranch," or "outfitting and guide facility."

(5) and (6) remain as proposed.

~~(7) "Furnishing" means an item provided within a guest unit including, but not limited to, a cup, glass, pitcher, ice bucket, utensil, drapery, curtain, blind, light fixture, lamp and lamp shade, chair, table, desk, shelf, book, magazine, bookcase, dresser, bedstead, mattress, box springs, towel, wash cloth, soap, toilet tissue, radio, television, coffee maker, microwave oven, heating and cooling unit, picture, mirror, cabinet, closet, and refrigerator.~~

(8) and (9) remain as proposed, but are renumbered (7) and (8).

~~(40) (9) "Local health authority" means a local health officer, sanitarian, or sanitarian-in-training, or any other person authorized by the local board of health or department.~~

(11) remains as proposed, but is renumbered (10).

(11) "Sanitize" means the application of a 100 to 200 parts per million (ppm) solution of household bleach, approximately 5% by weight, for at least ten seconds.

(12) "Shock disinfection" means an application of a chemical disinfectant to a water supply in order to kill all microorganisms. The chemical disinfectant is usually chlorine at a concentration much stronger than allowed in potable water, or another method approved by the local health authority.

(13) and (14) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.106 LICENSURE, RENEWAL, AND INSPECTION (1) The local health authority must make a precicensing inspection to determine compliance with the requirements of this subchapter before a license is issued by the department or validated by the local health officer. ~~No person shall operate an establishment without a license issued by the department and validated by the local health officer.~~

~~(2) An issued license is not transferable to any other premises or licensee.~~

~~(3) A license may be issued or renewed by the department and validated by the local health officer if the establishment demonstrates compliance with this subchapter.~~

(4) through (7) remain as proposed, but are renumber (2) through (5).

~~(8) (6) A copy of the completed inspection report form Inspection findings must be given to the person in charge of the establishment at the conclusion of the inspection.~~

(7) A copy of the completed inspection form must be given to the establishment owner or designee within three business days.

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

~~(40) (9) The completed inspection report is a public document that must be made available for public review upon request, distribution to any person upon payment of copying costs, or provided to the department upon request.~~

(11) and (12) remain as proposed, but are renumbered (10) and (11).

AUTH: 50-51-103, 50-51-303, MCA

IMP: 50-51-103, 50-51-301, 50-51-303, MCA

37.111.107 PHYSICAL REQUIREMENTS (1) ~~At least one storage room sufficient in size for the storage of extra bedding and furnishings must be provided. Sufficient storage space must be provided for extra bedding and furnishings.~~

(2) Adequate and convenient janitorial facilities must be provided, including a janitor sink and storage area for equipment and chemicals ~~must be provided~~. A tourist home is not required to have a janitor sink.

(3) remains as proposed.

(4) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be smooth, durable, nonabsorbent, and easily cleanable.

(5) through (7) remains as proposed.

(8) Establishment property must be maintained to minimize the presence of insects, rodents, and other vermin which may affect public health.

(9) and (10) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.116 WASTEWATER SYSTEM (1) An adequate and safe wastewater system must be provided for conveying, treating, and disposing of all sewage from ~~permanent public sleeping accommodations and food service~~ an establishment.

(2) through (5) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.117 SOLID WASTE (1) remains as proposed.

(2) Solid waste must be removed from the premises at least weekly to a licensed solid waste disposal facility or at another frequency approved by the local health authority.

(3) remains as proposed.

(4) Solid waste containers must be rodent-proof, stable, and protected from deterioration.

(5) Solid waste containers must be sufficiently covered when not in use to prevent the entry of water or flies.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.121 LAUNDRY FACILITIES (1) and (a) remain as proposed.

(b) Laundered items must be thoroughly hot air tumble dried to at least 130°C E (54°C) for ten minutes.

(2) and (3) remain as proposed.

(4) A handsink may be used for soaking laundry if the handsink remains accessible for handwashing when needed. If the handsink is used for soaking laundry, it must be accessible for handwashing when needed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.122 GUEST ROOM CLEANING AND MAINTENANCE

~~(1) Housekeeping must be provided between the occupancy of different guests and at least daily or as requested by each guest.~~

~~(a) Clean bed sheets and pillow cases must be provided to each guest daily or as requested by a guest.~~

~~(b) Clean towels and washcloths must be provided to each guest daily or as requested by a guest.~~ Guest rooms must be cleaned and supplied with freshly laundered sheets, pillow covers, towels, and washcloths before each new guest or group of guests arrive.

(2) Clean bed sheets, pillow covers, towels, and washcloths must be provided to each guest at least weekly. They may be provided more frequently as requested by a guest or according to establishment policy.

(c) and (d) remain as proposed, but are renumbered (3) and (4).

(5) Each mattress must be covered with a machine-washable pad.

(6) Sheets must adequately cover the bed and fold over the blanket at least six inches.

(7) All bedding including quilts and comforters must be machine-washable or covered with machine-washable linen such as a duvet.

(2) remains as proposed, but is renumbered (8).

~~(3)~~ (9) A designated janitor sink must be used for washing and rinsing of mops, brooms, brushes, or and other cleaning devices. Tourist homes may use an alternative as approved by the local health authority.

~~(4) Bathtub, shower, toilet, and urinal cleaning devices must be kept separate and may not be used for any other purpose.~~

(10) Toilet and urinal cleaning devices must be kept separate from other cleaning supplies and may not be used for any other purpose. Bathtub and shower cleaning devices must be kept separate from other cleaning supplies and may not be used for any other purpose.

(5) remains as proposed, but is renumbered (11).

~~(6) Management must provide written instructions to guests when guests are responsible for cleaning, dishwashing, or laundry tasks.~~

(7) remains as proposed, but is renumbered (12).

~~(8) (13) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's label requirements and manufacturer's instructions.~~

(9) remains as proposed, but is renumbered (14).

~~(40) (15) Glasses, pitchers, ice buckets, coffee pots, and other utensils used for food or drink provided for guests must be washed, rinsed, and sanitized in approved facilities as specified in ARM 37.110.215(14) or single-service items must be used.~~

(11) remains as proposed, but is renumbered (16).

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.130 GUEST REGISTRATION (1) Each establishment must maintain a register of all overnight guests, including name and ~~home address~~ contact information of the guest and unit to which the guest was assigned.

(2) Guest registration must be kept available for at least ~~90 days~~ one year for communicable disease investigations or other public health reasons.

AUTH: 50-1-202, 50-51-103, MCA

IMP: 50-1-202, 50-2-118, 50-51-103, MCA

5. 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: Several commenters suggested grammatical corrections to the proposed rules.

RESPONSE #1: The department has made grammatical corrections to the following proposed rules: New Rule IV (37.111.112), New Rule V (37.111.113), ARM 37.111.106, 37.111.107, 37.111.116, 37.111.117, 37.111.121, and 37.111.122.

COMMENT #2: One person commented about New Rule I (37.111.102) suggesting that approval of plans and specifications remain at the local health authority. Another commenter suggested the department should have authority to review plans and act on behalf of the local health authority when it does not have the capacity to perform the necessary functions.

RESPONSE #2: The department agrees that plan review is best accomplished at the local level. The ambiguous language authorizing either the local or state department to conduct a review is now removed. No language change is needed to allow department review when the local health authority is unable to perform this task.

COMMENT #3: Several persons commented that they want New Rule I (37.111.102) to specify a health authority review deadline so that timely business plans can carry forward.

RESPONSE #3: The department agrees and a 30 day review time is now included in the proposed rule.

COMMENT #4: One commenter believes documentation of the Department of Environmental Quality (DEQ) approval is not necessary in New Rule I (37.111.102) when the establishment uses a public water supply or public wastewater system. Another commenter states this rule is confusing.

RESPONSE #4: The department does not agree that documentation of compliance is not beneficial. The new rule has been clarified to avoid confusion.

COMMENT #5: One commenter asks the department to clarify in New Rule I (37.111.102) when plan review is required.

RESPONSE #5: The department has clarified New Rule I (37.111.102) to state when plan review is required.

COMMENT #6: One commenter supports monthly bacteriological testing of nonpublic water systems in New Rule III (37.111.111).

RESPONSE #6: The department acknowledges the value of frequent water testing. However, each water sample adds to the time and cost to the business. New Rule III (37.111.111) provides for sampling when groundwater systems are at greatest risk of contamination. Additionally, the rule allows the local health authority to require more frequent sampling if justified.

COMMENT #7: Two commenters suggest nitrate sampling be done every three years instead of every year to be consistent with public water supply system requirements in New Rule III (37.111.111).

RESPONSE #7: The department agrees and New Rule III (37.111.111) now requires nitrate sampling every three years.

COMMENT #8: One commenter suggests water test results be transmitted to the local health authority within a specified time in New Rule III (37.111.111).

RESPONSE #8: The department agrees that including a time frame for reporting will help the local health authority follow up and assist in problem situations. Certified labs are able to send out a report to the operator and the local health authority at the same time, so this is not expected to be extra work for the business.

COMMENT #9: One commenter says it is not clear why the establishment and the local health authority must keep water sample results in New Rule III (37.111.111).

RESPONSE #9: Both the local health authority and establishment need to be aware of any current water supply problems and recurring contamination patterns to protect public health.

COMMENT #10: One commenter says New Rule IV (37.111.112) should specify the time frame for collecting repeat samples, as immediately or within one week.

RESPONSE #10: The department agrees. The new rule has been amended and now requires repeat samples to be taken within 24 hours of notification, to be consistent with current state and federal public water supply water quality standards.

COMMENT #11: One commenter states, "the number of repeat samples and the five routine samples following contamination seems excessive unless this is consistent with public water supply regulations." Another commenter states New Rule IV (37.111.112) is confusing.

RESPONSE #11: This sampling requirement is consistent with public water supply regulations, as established by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Environmental Quality (DEQ), which can be found in 40 CFR Parts 141 and 142. The local sanitarian and the department are available to assist the establishment with any additional sampling requirements which may be required.

COMMENT #12: One commenter says the phrase "appropriate action" is not clear in New Rule IV (37.111.112) when coliform or fecal coliform is detected in a repeat sample, and that a reference to New Rule V (37.111.113) should be added.

RESPONSE #12: The rule does not define "appropriate action" because the circumstances of the contamination will determine the best effective measures to protect the water supply. New Rule V (37.111.113) lists the circumstances when corrective action must be carried out, not specific instructions.

COMMENT #13: One commenter points out that a certified laboratory is required to perform a fecal coliform test when coliform bacteria is detected, as referenced in New Rule IV (37.111.112).

RESPONSE #13: The department agrees and the rule has been amended and now clarifies the laboratory does the testing.

COMMENT #14: One commenter says vulnerability of the water system should be based on a sanitary survey in New Rule V (37.111.113), with specific parameters, rather than on just a site visit.

RESPONSE #14: Although the department agrees the criteria set forth in a sanitary survey provides the parameters for determining vulnerability, the department does not want to specifically require a sanitary survey be entirely completed before a deficiency can be noted and remedied.

COMMENT #15: One commenter wants the rule to specify that shock disinfection must occur "prior to the system being placed back into service" in New Rule V (37.111.113).

RESPONSE #15: The department agrees. This rule has been amended and this addition is added to help clarify the disinfection process.

COMMENT #16: One commenter expressed the adjective "clean" does not have adequate meaning without the addition of "sanitized and covered" in New Rule VI (37.111.114). The commenter also suggests that method of sanitization needs to be specified within the rule.

RESPONSE #16: The department agrees, and the new rule has been amended and now states containers must be clean, sanitized, and covered. A definition of "sanitized" consistent with FDA Food Code 2009 has been added to the rule, to mean 100-200 ppm chlorine for 10 seconds.

COMMENT #17: One commenter states that "clean, sanitized, and covered" should be added to water delivered by a licensed water hauler in New Rule VI (37.111.114).

RESPONSE #17: The department disagrees that the phrase "clean, sanitized, and covered" needs to be added. Water haulers are already subject to rules which go beyond the scope of this rule. The sanitization process for a water hauler may be different than for a smaller water container, as used in this subchapter.

COMMENT #18: One commenter suggests adding the option of the local health authority giving direction to the dishwashing process in New Rule VI (37.111.114), depending on the circumstances of the contamination.

RESPONSE #18: The department agrees the local health authority may be able to give alternative instruction to dishwashing procedures, depending on the nature of contamination. The new rule was amended and now contains this suggestion.

COMMENT #19: One commenter requests the new regulation for water supply system, sampling, corrective action and restricted use only apply to nonpublic water supply systems that could fail without state oversight.

RESPONSE #19: New Rules II (37.111.110), III (37.111.111), and IV (37.111.112) are only applicable to systems not under public water supply system rules. New Rules V (37.111.113) and VI (37.111.114) apply to both public and nonpublic water supplies, because DEQ boil orders do not provide specific protocol for licensed establishment operations.

COMMENT #20: One commenter states New Rule VII (37.111.118) for ice needs to include storage in a clean, sanitized, and covered container. The commenter also states the subchapter should contain all the information and requirements to provide foods, including ice.

RESPONSE #20: The department disagrees that all the information and requirements to provide foods, including ice, must be described within this subchapter. The subchapter requires compliance with the retail food service administrative rules, Title 37, chapter 110, subchapter 2. The department believes this subchapter provides for safe water and ice extensively in New Rules II (37.111.110), III (37.111.111), IV (37.111.112), V (37.111.113), VI (37.111.114) and VII (37.111.118), which supplement the retail food service rule.

COMMENT #21: One commenter asks the department to remove the requirement in New Rule VII (37.111.118) that ice in a tourist rental made by an ice maker or ice stored in a freezer must be directly served by management.

RESPONSE #21: The department agrees ice within a sleeping unit or tourist home should be available for the guests to serve themselves. The rule has been amended to make clear that ice made available to multiple guests or groups of guests must be served by staff, or stored in an automatic dispenser.

COMMENT #22: One commenter points out the current terminology for "tourist home" is "vacation rental" and not "vacation home", as used in ARM 37.111.101(4).

RESPONSE #22: The department agrees, and the rule language is updated to reflect this vernacular.

COMMENT #23: One commenter says the definition of "furnishings" in ARM 37.111.101(7) is not needed, since the common understanding of the dictionary term is reasonable.

RESPONSE #23: The department agrees and the definition is removed.

COMMENT #24: One commenter requests clarification to the definition of "local health authority" in ARM 37.111.101(9).

RESPONSE #24: The department agrees, and the rule has been amended and is now consistent with 50-51-301, MCA.

COMMENT #25: One commenter states "the chemical disinfectant is usually chlorine" should be replaced by "shocking must be done using a department approved chemical disinfectant" in ARM 37.111.101(12).

RESPONSE #25: The department agrees shock disinfection can be done by other methods approved by the department. The rule has been amended and this clarification is added to the definition.

COMMENT #26: One commenter suggests adding a definition of "approved" in ARM 37.111.101, to mean "acceptable to the department, based on its determination of conformance with this chapter and good public health practices."

RESPONSE #26: The department believes the use of the "approved" within this subchapter is already clear.

COMMENT #27: One commenter states requiring a license in ARM 37.111.106(1) before opening is incredibly slow and a hindrance to doing business. The commenter would like to see equal effort put into licensing properties and making routine inspections in remote areas.

RESPONSE #27: The department agrees the process should be appropriate, and New Rule I (37.111.102) includes a time frame for plan review completion. State law requires a license to be issued and validated before opening to the public, regardless of location, as stated in 50-51-201(1), MCA. The rule has been amended and language requiring a preopening inspection, unintentionally removed, is reinstated.

COMMENT #28: One commenter says the need to apply for a new license at the sale of an existing property found in ARM 37.111.106(2) is restrictive and burdensome.

RESPONSE #28: State law does not allow licenses to be transferred to another person (Ref 50-51-206, MCA). The rule does allow for a waiver from plan review if no significant structural modifications are made.

COMMENT #29: One commenter objects to ARM 37.111.106(5) and (6) requiring the inspector give a copy of the report immediately to the establishment after the inspection.

RESPONSE #29: The department believes it is important to public health for rule violations to be disclosed to the person in charge as soon as possible for immediate correction. However, the department agrees a reasonable time period can be given to the inspector to complete the report form, and deliver it to the owner or designee. The rule has been amended to reflect these changes.

COMMENT #30: One commenter questions the necessity of ARM 37.111.106, because much of this section repeats the statute requirements for licensing and inspection.

RESPONSE #30: The department agrees that parts of ARM 37.111.106 repeat the same content within 50-51-201(1), (3), (4), 50-51-214, 50-51-206, 50-51-215, and 50-51-301, MCA. The rule has been amended and these redundant rules are removed. The pre-opening inspection requirement is reinstated.

COMMENT #31: One commenter believes low risk establishments inspected only upon licensing and complaint should post a notice near the door stating the facility is inspected at a reduced frequency and any sanitation complaint should be reported to the state or local agency. Other details about the notice are suggested for ARM 37.111.106.

RESPONSE #31: Inspection frequency is based on a number of factors, including risk level, type of establishment, compliance, etc. The department believes it is not practical to alert the public of inspection frequency and posting the term "reduced frequency" could be misunderstood.

COMMENT #32: One commenter states "utility sink" in ARM 37.111.107(2) and 37.11.122(9) is more common terminology than "janitor sink", and should be used.

RESPONSE #32: The department chooses to use the term "janitor sink" because the sink referred to in rule has limited function, and can only be used for mop water and other janitorial cleaning functions.

COMMENT #33: One commenter asks the department to consider adding "durable to use" when describing floors and walls in bathrooms and other places subject to moisture in ARM 37.111.107(4). The commenter states, "this would allow the reviewing authority to require a commercial grade of surface as deemed necessary."

RESPONSE #33: The department agrees the term "durable" could avoid temporary cosmetic fixes which do not endure with the use of the room, and the rule has been amended to reflect this addition. However, this rule does not specifically require commercial grade floors and walls unless it is needed to remain smooth, durable, nonabsorbent, and easily cleanable.

COMMENT #34: One commenter suggests adding requirements for smoke detectors, carbon monoxide detectors, and ventilation for fossil-fueled space heaters in ARM 37.111.107.

RESPONSE #34: The department believes smoke detectors, carbon monoxide detectors, and ventilation for fossil-fueled space heater requirements, inspections, and enforcement are more appropriate under the authority of the state fire marshal and state building codes bureau.

COMMENT #35: One commenter suggests language requiring a minimum size for sleeping rooms in ARM 37.111.107.

RESPONSE #35: The department does not agree that minimum spacing requirements for public sleeping accommodations is needed to protect public health.

COMMENT #36: One commenter suggests using "establishment" instead of "permanent public sleeping accommodations and food service" in ARM 37.111.116(1).

RESPONSE #36: The department agrees using "establishment" is more simple and clear, the rule has been amended to reflect this change.

COMMENT #37: One commenter says reference to ARM 17.36.913 should be used in ARM 37.111.116(4). The commenter is concerned that contamination of a water supply must be proven before correction is made.

RESPONSE #37: The department agrees ARM 17.36.913 is applicable. This is reflected in 37.111.116(4), which describes the conditions requiring replacement or repair.

COMMENT #38: One commenter suggests using the term "wastewater treatment system" instead of "wastewater system" and "sewage" instead of "wastewater" in ARM 37.111.116.

RESPONSE #38: The department disagrees that this rule should be titled "wastewater treatment system", because wastewater treatment is a separate process from the disposal. "Wastewater system" is meant to include collection, treatment, and disposal, and is defined in ARM 37.111.101(14). The department disagrees that "sewage" should be used instead of "wastewater". The rule uses the term "wastewater" to include both sewage from toilet facilities and grey water from kitchens, laundry facilities, showers, etc.

COMMENT #39: One commenter states the requirement of weekly garbage removal in ARM 37.111.117(4) is a problem for small business in remote areas.

RESPONSE #39: The department agrees some types of establishments such as tourist homes may be able to store solid waste for longer than one week in a sanitary manner. The rule has been amended to allow alternative disposal frequencies, as approved by the local health authority.

COMMENT #40: One commenter asks the department to reinstate some or all of the solid waste requirements in ARM 37.111.117, so that specific language in the rule can be cited in problem situations.

RESPONSE #40: The rule has been amended to include language to specifically address container lids, stability, and integrity.

COMMENT #41: One commenter is concerned about monitoring dryer temperature and the lack of the Centers for Disease Control and Prevention (CDC) guidance for washing laundry in ARM 37.111.121(1) for public accommodations.

RESPONSE #41: CDC reports head lice is killed at 128°F for 5 minutes and bedbugs are killed at 120°F. The new rule eliminates a minimum washing temperature because detergents currently on the market are designed to be used in hot or cold water. The department believes standard procedures for soil removal, and the killing of head lice and bed bugs to be sufficient for the protection of public health. To monitor the dryer temperature, the department suggests the use of nonreversible sticker indicators. These products are readily available, and similar to the heat indicators many inspectors use to test dishwasher final rinse temperature on a dish.

COMMENT #42: One commenter says it may be useful to clarify the labeling of containers to differentiate between "clean" and "soiled" in ARM 37.111.121(2)(a).

RESPONSE #42: The department believes the language in 37.111.121(2) is clear enough and the department does not need to require specific words to be used on laundry containers.

COMMENT #43: Several commenters oppose requiring daily linen to be provided to guests unless specifically requested otherwise by the guest in ARM 37.111.122(1). Common practice today for the hospitality industry is to change towels, washcloths, and bed linen on a prescribed schedule to extended-stay guests, such as every 3-4 days, unless daily service is requested. The industry is interested in saving natural resources (water and electricity) and reducing costs. One commenter suggested "made available" is more applicable than "provided." One commenter adds the need for the flexibility of establishment policy to have periodic access to guest rooms for general sanitation concerns.

RESPONSE #43: The department agrees that daily linen service is something to be specifically requested by the guest. The department agrees conservation efforts should be included in the rule. ARM 37.111.122(1) and (2) have been amended and now more clearly state that a weekly change of linen is the minimum, and allows the guest to request more frequent service. Additionally, new language allows the establishment to follow their own policy, when the establishment has concerns about adequate sanitation in their facility.

COMMENT #44: Several commenters object to the requirement of management providing written instruction to guests when guests are responsible for cleaning, dishwashing, or laundry tasks in ARM 37.111.122. Two commenters express concern of leaving these tasks to the guests. Another commenter expresses concern over liability issues for the establishment.

RESPONSE #44: The department agrees and this requirement has been removed from the rule. Although benefit may be gained by making guests aware of proper sanitization of dishes, the risk to public health is minimal.

COMMENT #45: One commenter suggests air-drying mop heads daily because "between uses" is unclear in ARM 37.111.122(8). The commenter also says that the

previous language saying mop heads must be changed with some frequency was good.

RESPONSE #45: The department believes the new rule language is more clear, and takes into account all mop types, not only ones with laundered heads.

COMMENT #46: One commenter says ARM 37.111.122(12) is not clear. The commenter also says it is self-evident that management must provide whatever maintenance is needed to remain in compliance with the regulations.

RESPONSE #46: The department believes the rule is clear. Keeping the maintenance requirement will be helpful to prompt establishments to take care of issues promptly, rather than waiting for an indefinite time frame, remodeling, or change of ownership.

COMMENT #47: One commenter suggests requiring material safety data sheets (MSDS) in ARM 37.111.122(13) for all cleaning compounds and pesticides.

RESPONSE #47: The department disagrees, because federal law requires these products to have sufficient safe handling and disposal instruction on the label of the product. Requiring MSDS sheets adds a significant responsibility which was not previously in this rule.

COMMENT #48: Multiple commenters object to the disallowance of ozone air purifiers in ARM 37.111.122(14). Two commenters ask for evidence to support this exclusion. One commenter points out alternatives to ozone air purifiers are not given by the department.

RESPONSE #48: The subchapter now prohibits the use of ozone air purifiers because EPA concludes ozone can be harmful to health. Instead of relying on ozone air purifiers, EPA suggests 1) eliminating the pollution source, 2) ventilation, and 3) air cleaning with a filter, ionizer, or gas absorbing material.

COMMENT #49: One commenter says coffee pots should be specifically mentioned in ARM 37.111.122(15) as needing washing, rinsing, and sanitizing.

RESPONSE #49: The department agrees and the rule has been amended so coffee pots are listed with glasses, pitchers, and ice buckets.

COMMENT #50: Two commenters object to referencing retail food service requirements in ARM 37.111.122(15) for the washing, rinsing, and sanitizing of food and beverage dishes and utensils provided to guests. The concern is that local jurisdictions may require commercial dishwashing machines when they have not been required in the past.

RESPONSE #50: The department agrees that commercial dishwashing machines are not always necessary to accomplish adequate washing, rinsing, and proper

sanitization for small loads of utensils and dishes. The rule is reworded to require washing, rinsing, and sanitizing, without reference to the retail food service rules. The local health authority review and approval of dishwashing facilities is addressed in New Rule I (37.111.102).

COMMENT #51: One commenter says, "there appears to be no language regarding linen cleanliness." This commenter suggests providing clean linen to each guest at registration and at least weekly, bed furnishing kept clean and free of insect infestations, quilts and comforters must be machine washable, dirty laundry kept in cleanable containers, mattress pads clean and in good repair, and sheets long enough to fold back over the blanket at least 12 inches.

RESPONSE #51: The department disagrees that the subchapter does not address linen cleanliness. Laundry storage, laundry cleaning requirements, linen availability, and other sanitary conditions are within ARM 37.111.107, 37.111.121, and 37.111.122. The department agrees quilts, comforters, and other bedding must be machine washable or covered with washable linen such as a duvet, and machine washable mattress pads must be provided. The department believes a sheet folded over a blanket at least 6 inches is adequate. The rule has been amended.

COMMENT #52: Three commenters believe that bathroom cleaners must contain fungicide or germicide, to prevent the transmission of diseases such as athlete's foot and those routinely found in aerosolized human feces.

RESPONSE #52: The department supports environmentally responsible cleaning as much as possible. The department can find no significant justification for requiring a fungicidal or germicidal cleaner for bathroom floors, toilets, and other nonfood contact surfaces. Athlete's foot, caused by *tinea pedis* and other dermatophytes, are normal inhabitants of human skin. Dermatophytes and pathogenic bacteria from human feces are easily removed and killed with adequate cleaning and drying of the bathroom surfaces.

COMMENT #53: One commenter suggests adding a requirement to leave refrigerators on at all times in guest rooms.

RESPONSE #53: The department disagrees that refrigerators need to be left on when the guest room is empty or not used. This wastes electricity and adds cost to the establishment.

COMMENT #54: One commenter suggests language in ARM 37.111.122 to exclude persons with a communicable disease from working in the establishment.

RESPONSE #54: Although working in a public accommodation is not considered a "sensitive occupation," the authority is already in statute and rule to restrict a contagious person from work, if the health officer or department determines there is a risk to public health.

COMMENT #55: One commenter says no limitations on what foods are allowed to be served in ARM 37.111.124 and not requiring licensing creates a potentially hazardous situation.

RESPONSE #55: The rule clearly states a sleeping accommodation must meet the requirements for retail food service establishments, ARM 37.110.201 through 37.110.259. The administrative rules for retail food service adequately address facility requirements and safe handling practices based on types of food, preparation, and other relative risk factors. Montana statute does not allow the department to require licensing under 50-50-101(7)(a)(iv), MCA.

COMMENT #56: One commenter asks if the guest registration requirement in 37.111.130(1) is archaic and no longer relevant to public health. Another commenter proposes this rule be clarified as applying to overnight guests, as opposed to day-time customers of other services. Another commenter expresses concern about listing the guest home address, and says phone or e-mail information is more useful.

RESPONSE #56: The department considered removing this requirement, but concerns such as identifying missing persons in a natural disaster, tracking food or water borne illness, and other communicable disease investigations are important. The rule clarifies this applies to overnight guests. The department agrees contact information does not need to include a home address, and the rule has been amended to allow other contact information to be listed.

COMMENT #57: Two commenters suggest records of registered guests in ARM 37.111.130(2) should be kept for one year to be consistent with ARM 37.111.310(3).

RESPONSE: #57: The department agrees that a record retention of one year may make compliance with the rule easier to remember, and the rule has been amended to reflect this time frame.

COMMENT #58: One commenter requests local health authority determination to be added to the definition of mixing zone in Circular FCS 1-2012 (2.6).

RESPONSE #58: The department agrees the local health authority can determine a mixing zone and the language has been changed to clarify that the "permit" is a "local health authority permit."

COMMENT #59: One commenter would like to see the most current Circular DEQ4 referenced in Circular FCS1-2012 (3.2.3), not the 2009 edition.

RESPONSE #59: The department cannot reference a draft document. The department will make efforts to update the FCS Circular FCS1-2012 in a timely manner.

COMMENT #60: One commenter asks which rule applies if a business consists of both a bed & breakfast (B&B) and a tourist home.

RESPONSE #60: Each establishment facility must meet the requirements which are applicable. A house used as a B&B must meet ARM Title 37, chapter 111, subchapter 3 and a house or condo used as a tourist home must meet ARM Title 37, chapter 111, subchapter 1.

COMMENT #61: One commenter suggests vacation rentals (tourist homes) be regulated under their own subchapter.

RESPONSE #61: The new rule now addresses unique concerns for tourist homes, such as allowing housekeeping to be done before a new group arrives, weekly, or at a frequency set by the establishment. The rule now refers to adequate storage space, and not a separate room for extra bedding and cleaning supplies. In some cases a small closet or cupboard will be sufficient. The new rule exempts tourist homes from the mop sink requirement, and allows alternatives with approval from the local health authority.

/s/ Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State May 14, 2012

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.107.117 pertaining to)
Montana marijuana program)

TO: All Concerned Persons

1. On March 22, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-576 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 595 of the 2012 Montana Administrative Register, Issue Number 6.

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

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

COMMENT #1: Several comments were received regarding new legal restrictions found in the Montana Marijuana Act as a result of Senate Bill 423 (SB423) passed in 2011 by Montana's 62nd Legislature.

RESPONSE #1: The comments do not pertain to the current rule change and will not be addressed in this response.

COMMENT #2: A comment was received stating the new rule is discriminatory against the poor and disabled and it is illogical to charge registered cardholders a higher application fee and not raise fees on providers. The commenter also suggested the department lay off program staff, rather than raise fees.

RESPONSE #2: The department disagrees the proposed rule is discriminatory. The department considered many options in order to generate the revenue necessary to maintain the Montana Marijuana Program. There were 421 registered providers in March 2012 compared with 11,933 registered cardholders. Provider fees would have to be raised exorbitantly in order to cover the lost revenues due to the dwindling registry numbers.

The department disagrees with the commenter's suggestion to lay off staff before raising fees. As outlined in the "Statement of Reasonable Necessity," found in the proposed notice for this rulemaking, reducing full-time equivalent (FTE) staff was also considered. The registry staff has already been reduced by 2 FTE which will remain vacant. However, due to the additional verifications, administrative requirements, and the processing time that applications require as a result of SB423,

further reducing FTE would result in much longer wait times for application processing and would not be an acceptable solution.

/s/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State May 14, 2012.

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 December 31, 2011. This table includes those rules adopted during the period January 1, 2012, through March 31, 2012, 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 December 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 2011/2012 Montana Administrative Register.

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

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- 44.3.101 and other rules - Elections, p. 52, 760
- 44.3.1716 and other rules - Elections, p. 1662, 2428
- 44.5.201 and other rule - Filing for Certification Authorities Statement, p. 2505, 133
- 44.6.201 Search Criteria for Uniform Commercial Code Certified Searches, p. 2508, 134

- (Commissioner of Political Practices)
- 44.10.331 Limitations on Receipts From Political Committees to Legislative Candidates, p. 1539, 2544
- 44.10.338 Limitations on Individual and Political Party Contributions, p. 1542, 2545
- 44.10.401 Statements - Filing Reports, p. 2016, 634

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2012 appear. Vacancies scheduled to appear from June 1, 2012, through August 31, 2012, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Adjutant General & Director of the Department of Military Affairs (Military Affairs)			
Adjutant General Matthew T. Quinn Helena	Governor	Cusker	4/11/2012 0/0/0
Qualifications (if required): none specified			
Board of Chiropractors (Labor & Industry)			
Dr. Lee Hudson Great Falls	Governor	Sando	4/4/2012 1/1/2015
Qualifications (if required): practicing chiropractor with at least one year experience			
Ms. Alice Whiteman Missoula	Governor	reappointed	4/4/2012 1/1/2015
Qualifications (if required): public representative			
Board of Dentistry (Labor & Industry)			
Mr. Cliff Christenot Libby	Governor	reappointed	4/30/2012 3/29/2017
Qualifications (if required): denturist			
Dr. David Johnson Great Falls	Governor	reappointed	4/30/2012 3/29/2017
Qualifications (if required): dentist			
Rep. James Madison Jefferson City	Governor	reappointed	4/30/2012 3/29/2017
Qualifications (if required): public representative over 55 years of age			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Dentistry (Labor & Industry) cont.			
Ms. Lorraine Merrick Helena	Governor	Price	4/30/2012 3/29/2017
Qualifications (if required): dental hygienist			
Board of Landscape Architects (Labor & Industry)			
Mr. Dale Nelson Ronan	Governor	reappointed	4/4/2012 3/27/2015
Qualifications (if required): registered architect with three years continuous practice			
Board of Optometry (Labor & Industry)			
Mr. Randall Hoch Lewistown	Governor	reappointed	4/10/2012 4/3/2016
Qualifications (if required): registered optometrist			
Building Codes Council (Labor & Industry)			
Mr. Hubert Abrams Wibaux	Governor	Kane	4/11/2012 10/1/2014
Qualifications (if required): licensed architect			
Mr. Ron Bartsch Montana City	Governor	reappointed	4/11/2012 10/1/2014
Qualifications (if required): home building industry representative			
Mr. David Broquist Great Falls	Governor	reappointed	4/11/2012 10/1/2014
Qualifications (if required): professional engineer			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Building Codes Council (Labor & Industry) cont. Mr. Cody Drew Circle Qualifications (if required): public member	Governor	Galik	4/11/2012 10/1/2014
Mr. Rodney N. Driver Bigfork Qualifications (if required): elevator mechanic	Governor	reappointed	4/11/2012 10/1/2014
Mr. Allen Lorenz Helena Qualifications (if required): state fire marshal	Governor	reappointed	4/11/2012 10/1/2014
Mr. Bill Qualls East Helena Qualifications (if required): representative of the Board of Electricians	Governor	reappointed	4/11/2012 10/1/2014
Mr. Mike Seaman Kalispell Qualifications (if required): manufactured housing industry representative	Governor	reappointed	4/11/2012 10/1/2014
Mr. Olaf Stimac Great Falls Qualifications (if required): representative of the Board of Plumbers	Governor	Lemert	4/11/2012 10/1/2014
Ms. Rhonda Whiting No city listed Qualifications (if required): Department of Public Health & Human Services Director	Governor	reappointed	4/11/2012 10/1/2014

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Building Codes Council (Labor & Industry) cont. Mr. Mick Wonnacott Butte Qualifications (if required): building contractor industry representative	Governor	reappointed	4/11/2012 10/1/2014
Children's Trust Fund (Public Health & Human Services) Ms. Deborah Hansen Helena Qualifications (if required): agency representative	Governor	Wikle	4/4/2012 1/1/2013
Ms. Roberta Kipp Browning Qualifications (if required): public representative	Governor	reappointed	4/4/2012 1/1/2015
Ms. Lisa Stroh Chinook Qualifications (if required): public representative	Governor	Fox	4/4/2012 1/1/2015
Clinical Laboratory Science Practitioners (Labor & Industry) Mr. Troy Krieger Billings Qualifications (if required): clinical laboratory science practitioner	Governor	Palmer	4/30/2012 4/16/2016
Montana Arts Council (Montana Arts Council) Ms. Cynthia Andrus Bozeman Qualifications (if required): public representative	Governor	reappointed	4/10/2012 2/1/2017

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Arts Council (Montana Arts Council) cont.			
Mr. J.P. Gabriel Bozeman Qualifications (if required): public representative	Governor	Newby	4/10/2012 2/1/2017
Rabbi Allen Secher Whitefish Qualifications (if required): public representative	Governor	reappointed	4/10/2012 2/1/2017
Dr. Jerry Speer Great Falls Qualifications (if required): public representative	Governor	reappointed	4/10/2012 2/1/2017
Ms. Jane Waggoner Deschner Billings Qualifications (if required): public representative	Governor	reappointed	4/10/2012 2/1/2017
Public Employees Retirement Board (Administration)			
Mr. Wilbert Lee Smith Jr. Great Falls Qualifications (if required): public employee/active in retirement system	Governor	Nielsen	4/1/2012 3/19/2014
Traumatic Brain Injury Advisory Council (Public Health & Human Services)			
Ms. Julia Hammerquist Kalispell Qualifications (if required): a survivor	Governor	reappointed	4/4/2012 1/1/2015

BOARD AND COUNCIL APPOINTEES FROM APRIL 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Traumatic Brain Injury Advisory Council (Public Health & Human Services) cont.			
Ms. Cindi Laukes	Governor	reappointed	4/4/2012
Missoula			1/1/2015
Qualifications (if required): injury control or prevention program representative			

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Aging Advisory Council (Public Health and Human Services) Ms. Gladys Considine, Missoula Qualifications (if required): public representative</p>	Governor	7/9/2012
<p>Ms. Mary Lou Miller, Wolf Point Qualifications (if required): public representative</p>	Governor	7/18/2012
<p>Ms. JoLynn Yenne, Bigfork Qualifications (if required): public representative</p>	Governor	7/18/2012
<p>Board of Banking (Administration) Rep. Mark E. Noennig, Billings Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer, large size bank</p>	Governor	7/1/2012
<p>Board of Funeral Service (Labor and Industry) Mr. Ronald E. Brothers, Hamilton Qualifications (if required): mortician</p>	Governor	7/1/2012
<p>Mr. Bart Thompson, Helena Qualifications (if required): cemetarian</p>	Governor	7/1/2012
<p>Mr. John Tarr, Helena Qualifications (if required): public representative</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Brian Bolenbaugh, Missoula Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2012
<p>Ms. Rebecca Wisnoskie, Helena Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2012
<p>Board of Nursing (Labor and Industry) Ms. Kathy Hayden, Missoula Qualifications (if required): licensed practical nurse</p>	Governor	7/1/2012
<p>Ms. Heather Onstad, Helena Qualifications (if required): registered nurse/educator</p>	Governor	7/1/2012
<p>Board of Pharmacy (Labor and Industry) Ms. Susan Hagen, Glasgow Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Board of Physical Therapy Examiners (Labor and Industry) Ms. Kim Miller, Virginia City Qualifications (if required): public member</p>	Governor	7/1/2012
<p>Ms. Patti Jo Lane, Great Falls Qualifications (if required): physical therapy</p>	Governor	7/1/2012
<p>Mr. Christian Appel, Bozeman Qualifications (if required): physical therapist</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Private Security (Labor and Industry) Sheriff Leo C. Dutton, Helena Qualifications (if required): county sheriff's office representative</p>	Governor	8/1/2012
<p>Mr. Daniel Taylor, Glasgow Qualifications (if required): contract security company representative</p>	Governor	8/1/2012
<p>Mr. Scott Swingley, Helena Qualifications (if required): licensed private investigator</p>	Governor	8/1/2012
<p>Mr. Ronald C. Young, Joliet Qualifications (if required): city police department representative</p>	Governor	8/1/2012
<p>Captain George Skuletich, Butte Qualifications (if required): city police department representative</p>	Governor	8/1/2012
<p>Board of Public Accountants (Labor and Industry) Ms. Beatrice Rosenleaf, Anaconda Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Mr. Jack Meyer, Missoula Qualifications (if required): Certified Public Accountant</p>	Governor	7/1/2012
<p>Board of Radiologic Technologists (Labor and Industry) Ms. Kelli Bush, Butte Qualifications (if required): radiologic technician</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Radiologic Technologists (Labor and Industry) cont. Ms. Sharlett Dale, Harlowton Qualifications (if required): radiologic technician	Governor	7/1/2012
Board of Regents (Higher Education) Mr. Joseph Thiel, Bozeman Qualifications (if required): full-time student in the Montana State	Governor	6/30/2012
Board of Sanitarians (Labor and Industry) Mr. Rodney Fink, Columbus Qualifications (if required): sanitarian	Governor	7/1/2012
Board of Veterans' Affairs (Military Affairs) Mr. Bruce W. Knutson, Helena Qualifications (if required): representative of Senator Jon Tester	Governor	8/1/2012
Mr. Donald Kettner, Glendive Qualifications (if required): veteran and resident of Region 5	Governor	8/1/2012
Mr. Mike Waite, Helena Qualifications (if required): representative of Congressman Dennis Rehberg	Governor	8/1/2012
Mr. Don Slavens, Billings Qualifications (if required): representative of Senator Max Baucus	Governor	8/1/2012
Mr. Matthew McCombs, Helena Qualifications (if required): representative of Senator Jon Tester	Governor	8/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterinary Medicine (Labor and Industry) Ms. Barbara Calm, Kila Qualifications (if required): veterinarian	Governor	7/31/2012
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor	Governor	7/1/2012
Mr. Laurence Siroky, Helena Qualifications (if required): none specified	Director	7/1/2012
Burial Preservation Board (Administration) Mr. Conrad Fisher, Busby Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2012
Mr. William Big Day, Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2012
Mr. Morris Belgard, Hays Qualifications (if required): representative of the Fort Belknap Indian Community	Governor	8/22/2012
Mr. Videll Stump Sr., Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe	Governor	8/22/2012
Dr. Ruthann Knudson, Great Falls Qualifications (if required): representative of the archaeological association	Governor	8/22/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Burial Preservation Board (Administration) cont. Mr. Terry Bullis, Hardin Qualifications (if required): representative of the coroner's association</p>	Governor	8/22/2012
<p>Mr. Henry Anderson, Helena Qualifications (if required): representative of the Little Shell Tribe</p>	Governor	8/22/2012
<p>Commission on Practice of the Supreme Court (Supreme Court) Ms. Jean Faure, Great Falls Qualifications (if required): none specified</p>	elected	6/9/2012
<p>Community Service Commission (Labor and Industry) Ms. Nancy Matheson, Helena Qualifications (if required): agency representative</p>	Governor	7/1/2012
<p>Ms. Karin Olsen Billings, Helena Qualifications (if required): agency representative</p>	Governor	7/1/2012
<p>Mr. John Ilgenfritz, Helena Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Col. Scott Smith, Fort Harrison Qualifications (if required): agency representative</p>	Governor	7/1/2012
<p>Mr. Robert Nystuen, Lakeside Qualifications (if required): representative of business</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Council (Supreme Court) Ms. Lori Maloney, Butte Qualifications (if required): none specified	District Court	6/30/2012
Judge Gregory R. Todd, Billings Qualifications (if required): none specified	District Court	6/30/2012
Economic Development Advisory Council (Commerce) Mr. Jim Atchison, Colstrip Qualifications (if required): public representative	Governor	7/23/2012
Ms. Elizabeth Marchi, Polson Qualifications (if required): public representative	Governor	7/23/2012
Mr. Joe Menicucci, Belgrade Qualifications (if required): public representative	Governor	7/23/2012
Mr. Richard Sangrey, Box Elder Qualifications (if required): public representative	Governor	7/23/2012
Mr. Wade Sikorski, Baker Qualifications (if required): public representative	Governor	7/23/2012
Electrical Board (Labor and Industry) Ms. Marlene Egan, Helena Qualifications (if required): public representative	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Electrical Board (Labor and Industry) cont. Mr. Keith Simendinger, Helena Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Family Education Savings Oversight Committee (Commissioner of Higher Education) Mr. Gene Jarussi, Billings Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Horse Racing Business Advisory Council (Governor) Director Dore Schwinden, Helena Qualifications (if required): representative of the Department of Commerce</p>	Governor	6/30/2012
<p>Mr. Christian Mackay, Helena Qualifications (if required): representative of the Department of Livestock</p>	Governor	6/30/2012
<p>Sen. Cliff Larsen, Missoula Qualifications (if required): public representative</p>	Governor	6/30/2012
<p>Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p>Ms. Patty Stevens, Ronan Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p>Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): having experience with emotionally disturbed children</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Disabilities Board of Visitors (Governor) cont.		
Mr. Graydon Davies Moll, Ronan Qualifications (if required): having experience with developmentally disabled adults	Governor	7/1/2012
Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals	Governor	7/1/2012
Mint Committee (Agriculture)		
Mr. Clyde Fisher, Columbia Falls Qualifications (if required): representative of the mint industry research council	Governor	7/1/2012
Mr. Kirk Passmore, Kalispell Qualifications (if required): mint grower	Governor	7/1/2012
Montana Historical Society Board of Trustees (Historical Society)		
Mr. Steve Lozar, Polson Qualifications (if required): public member	Governor	7/1/2012
Ms. Katherine Lee, Glendive Qualifications (if required): public member	Governor	7/1/2012
Mr. Steve Carney, Scobey Qualifications (if required): public member	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Historical Society Board of Trustees (Historical Society) cont. Mr. Kent Kleinkopf, Missoula Qualifications (if required): public member</p>	Governor	7/1/2012
<p>Montana Noxious Weed Management Advisory Council (Agriculture) Ms. Jennifer Anderson, Livingston Qualifications (if required): representative of the Sportsman/Wildlife Group</p>	Director	6/30/2012
<p>Mr. Cantalupo Nico, Baker Qualifications (if required): At-Large representative</p>	Director	6/30/2012
<p>Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Kenneth W. Smith, Kalispell Qualifications (if required): representing the livestock/agriculture industry</p>	Director	6/30/2012
<p>Montana Wheat and Barley Committee (Agriculture) Mr. Buzz Mattelin, Culbertson Qualifications (if required): wheat and/or barley producer in District 1</p>	Governor	8/20/2012
<p>Mr. Melvin Goffena, Wilsall Qualifications (if required): wheat and/or barley producer in District 6</p>	Governor	8/20/2012
<p>Mr. Bruce Myllymaki, Stanford Qualifications (if required): wheat and/or barley producer in District 5</p>	Governor	8/20/2012
<p>Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roy Morris, Butte Qualifications (if required): service station dealer</p>	Governor	6/30/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Petroleum Tank Release Compensation Board (Environmental Quality) cont. Mr. Daniel Annala, Geysers Qualifications (if required): public member</p>	Governor	6/30/2012
<p>Postsecondary Scholarship Advisory Council (Office of Higher Education) Mr. LeRoy Schramm, Helena Qualifications (if required): having experience in postsecondary education</p>	Governor	6/20/2012
<p>Public Defender Commission (Administration) Ms. Majel Russell, Billings Qualifications (if required): member of organization advocating on behalf of racial minorities</p>	Governor	7/1/2012
<p>Mr. Charles Petaja, Helena Qualifications (if required): an attorney nominated by the State Bar</p>	Governor	7/1/2012
<p>Mr. Terry Jessee, Billings Qualifications (if required): public representative nominated by the President of the Senate</p>	Governor	7/1/2012
<p>Research and Commercialization Technology Board (Commerce) Mr. Major Robinson, Billings Qualifications (if required): Native American representative</p>	Governor	7/1/2012
<p>Mr. Tom Tanner, Arlee Qualifications (if required): Native American representative</p>	Governor	7/1/2012
<p>State-Tribal Economic Development Commission (Commerce) Mr. Loren Stiffarm, Harlem Qualifications (if required): representative of the Fort Belknap Community</p>	Governor	6/30/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Commerce) cont. Mr. Shawn Real Bird, Garryowen Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2012
Mr. Russell Boham, Great Falls Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012
Ms. Delina Cuts The Rope, Harlem Qualifications (if required): representative of the Fort Belknap Community	Governor	6/30/2012
Mr. Randy Randolph, Havre Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012
Ms. Yolanda Old Dwarf, Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2012
Mr. Gerald Gray, Billings Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012
Mr. Clarence Sivertsen, Belt Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012
Teachers' Retirement Board (Administration) Ms. Kari Peiffer, Kalispell Qualifications (if required): teacher/member	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2012 THROUGH AUGUST 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Telecommunications Access Services for Person with Disabilities (Public Health and Human Services)		
Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission	Governor	7/1/2012
Mr. Robert A. Ellesch, Great Falls Qualifications (if required): disabilities community representative	Governor	7/1/2012
Ms. Christy Keto, Havre Qualifications (if required): interLATA interexchange carrier	Governor	7/1/2012
Ms. Julia Saylor, Helena Qualifications (if required): disabilities community representative	Governor	7/1/2012
Ms. Pat McGlenn, Helena Qualifications (if required): largest local exchange company	Governor	7/1/2012
Tourism Advisory Council (Commerce)		
Ms. Cynthia Andrus, Bozeman Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2012
Ms. Kim Holzer, Stanford Qualifications (if required): resident of Russell Country	Governor	7/1/2012
Ms. Beverly Harbaugh, Jordan Qualifications (if required): resident of Missouri River Country	Governor	7/1/2012
Ms. Jackie Yellowtail, Crow Agency Qualifications (if required): tribal representative and representative of Custer Country	Governor	7/1/2012