

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ENVIRONMENTAL QUALITY, Department of, Title 17

17-334 (Board of Environmental Review) (Air Quality) Notice of Public Hearing on Proposed Amendment - Definitions - Review of Major Stationary Sources and Major Modifications--Source Applicability - Exemptions. 1098-1102

17-335 (Board of Environmental Review and the Department) (Reclamation) (Water Quality) (Subdivisions) (CECRA) (Underground Storage Tanks) Notice of Public Hearing on Proposed Amendment and Repeal - Department Circular DEQ-7 - Definitions - Incorporations by Reference - C-3 Classification Standards - General Treatment Standards - General Prohibitions - Water-Use Classification - Descriptions for Ponds and Reservoirs Constructed for Disposal of Coal Bed Methane Water - G-1 Classification Standards. 1103-1121

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-587 Notice of Proposed Amendment - Low Income Weatherization Assistance Program (LIWAP). No Public Hearing Contemplated. 1122-1125

37-588 Notice of Public Hearing on Proposed Amendment - Children's Special Health Services. 1126-1139

RULE ADOPTION SECTION

STATE AUDITOR, Office of, Title 6

6-199 (Commissioner of Securities and Insurance) Notice of Adoption - Securities Restitution Fund. 1140

ENVIRONMENTAL EQUALITY, Department of, Title 17

17-331 (Board of Environmental Review) (Public Water and Sewage System Requirements) Notice of Amendment - Treatment Requirements - Control Tests - Testing and Sampling Records - Reporting Requirements - Definitions - Incorporation by Reference - Cross-Connections: Regulatory Requirements - Voluntary Cross-Connection Control Programs: Application Requirements - Standards and Requirements for Cross-Connection Control. 1141-1146

17-332 (CECRA) Notice of Amendment - Incorporation by Reference. 1147

LABOR AND INDUSTRY, Department of, Title 24

24-101-262 Corrected Notice of Adoption - Reporting Certificate Changes. 1148

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-578 Notice of Adoption - Montana Tobacco Settlement Fund. 1149

REVENUE, Department of, Title 42

42-2-880 Notice of Amendment - Alcohol Server Training Compliance. 1150

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1151-1152

How to Use ARM and MAR. 1153

Accumulative Table. 1154-1165

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.801 and 17.8.818, pertaining to)
definitions and review of major stationary)
sources and major modifications--source)
applicability and exemptions)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 12, 2012, at 11:00 a.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 18, 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:

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (19) remain the same.

(20) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(a) Any net emissions increase that is significant for volatile organic compounds or NO_x will be considered significant for ozone.

(b) through (21)(d) remain the same.

(22) The following apply to the definition of the term "major stationary source":

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

(b) A major source that is major for volatile organic compounds or NO_x will be considered major for ozone.

(c) through (24)(g) remain the same.

(25) "Nitrogen Oxides" or "NO_x" means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point.

(25) and (26) remain the same, but are renumbered (26) and (27).

~~(27)~~ (28) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides (NO_x): 40 tpy

Sulfur dioxide (SO_2): 40 tpy

Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions

PM-2.5: 10 tpy of direct PM-2.5 emissions, 40 tpy of sulfur dioxide (SO_2) emissions, or 40 tpy of ~~nitrogen dioxide (NO_2)~~ nitrogen oxides (NO_x) emissions unless demonstrated not to be a PM-2.5 precursor

Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2S): 10 tpy

Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tpy)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)

Municipal waste combustor acid gases (measured as sulfur dioxide (SO_2) and hydrogen chloride): 36 megagrams per year (40 tpy)

(b) "significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the FCAA, that ~~(27)~~ (28)(a) does not list any emissions rate. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(c) Notwithstanding ~~(27)~~ (28)(a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than one $\mu\text{g}/\text{m}^3$ (24-hour average).

(28) and (29) remain the same, but are renumbered (29) and (30).

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) through (v) remain the same.

(vi) ozone: no de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to this subchapter requires an ambient impact analysis, including the gathering of ambient air quality data;

(vii) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The board is proposing amendments to Montana's prevention of significant deterioration (PSD) rules to conform the rules to amendments to federal regulations by the federal Environmental Protection Agency (EPA) in 2005. The federal Clean Air Act, 42 USC 7401 through 7671q (CAA), directs each state to assure that air quality in that state meets minimum standards applicable across the nation. The CAA directs the EPA to establish National Ambient Air Quality Standards (NAAQS) for air pollutants that meet certain criteria regarding effects on public health and welfare. Pursuant to the CAA, EPA has authorized the state of Montana to regulate major sources in the state. For Montana to retain this authority, the board is required to adopt the minimum standards applicable to major source emissions of a NAAQS pollutant whenever a NAAQS is established or revised 40 USC 7410(C).

On November 29, 2005, EPA published regulations regarding the implementation of the 1997 ozone NAAQS (70 CFR 71612). Those regulations required revisions to state programs for major source permitting. One of the requirements in the EPA regulations was to address ozone formation by regulating precursor pollutants. "Precursor pollutants" are pollutants that combine to form another pollutant. The federal regulations include nitrogen oxides (NO_x) that react with volatile organic compounds to form ozone. In a decision published on May 19, 2011, in the Federal Register at 76 FR 28934, EPA found Montana's PSD rules for ozone inadequate because the rules do not address NO_x as a precursor pollutant for ozone. The proposed amendments in this notice would address EPA's concerns and make Montana's rules for PSD permits adequate to implementing the 1997 8-hour ozone NAAQS.

Generally, the proposed amendments to the rules would add NO_x as a precursor pollutant that contributes to the formation of ozone. The department and applicants for permits to construct or modify major sources would be required to analyze the applicability of PSD requirements based on NO_x as a precursor to ozone. The following are brief descriptions of the proposed amendments:

ARM 17.8.801(20)(a) would be amended by modifying the definition of "major modification," adding NO_x as a precursor pollutant for ozone when NO_x emissions exceed a significance threshold.

ARM 17.8.801(22)(b) would be amended to add NO_x as a precursor to ozone,

triggering consideration of a source as "major" for ozone when the source emits or has the potential to emit 100 tons per year of NO_x.

ARM 17.8.801(25) would be amended by adding a definition of the term nitrogen oxides or NO_x, defining it as the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point.

ARM 17.8.801(27)(a) would be amended to add a significance level of 40 tons or more per year of NO_x because NO_x is a precursor pollutant that, in combination with VOCs, creates ozone. Ozone is not a source emission, but an increase in NO_x emissions, which is a source emission, is a good surrogate for the formation of ozone. A significant increase in ozone will be assumed based on a 40 tpy or more net increase in the potential to emit of NO_x.

ARM 17.8.818(7)(a)(vi) would be amended to add that a net increase of 100 tons or more per year of NO_x, as a precursor to ozone formation, triggers an ambient impact analysis.

The board is also proposing the following amendment concerning particulate matter smaller than 2.5 microns, referred to as PM-2.5:

ARM 17.8.801(27)(a), would be amended by substituting "nitrogen oxides" for "nitrogen dioxide (NO₂)" as a precursor to PM-2.5 formation. In that subsection, a net emissions increase or potential to emit of 40 tons per year of NO_x would cause a source to be considered major for PM-2.5 for the purpose of triggering PSD review. The use of "nitrogen dioxide (NO₂)" was a mistake when the rule was adopted in September 2011. The board intended to use "nitrogen oxides," which include the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point because they are precursors to the formation of PM-2.5, and the board is proposing to correct that mistake.

The board is also proposing to amend portions of rules listed above for consistency of language when referring to sulfur dioxide (SO₂) and nitrogen oxides (NO_x). The proposed amendments would match the comparable language provided in the Code of Federal Regulations (CFR). These proposed amendments are not intended to change the substance of these rules.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 12, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board 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.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, May 29, 2012.

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

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.24.645, 17.24.646, 17.30.502,)	PROPOSED AMENDMENT AND
17.30.602, 17.30.619, 17.30.629,)	REPEAL
17.30.635, 17.30.637, 17.30.702,)	
17.30.1001, 17.36.345, 17.55.109,)	(RECLAMATION)
17.56.507, and 17.56.608 pertaining to)	(WATER QUALITY)
Department Circular DEQ-7, definitions,)	(SUBDIVISIONS)
incorporations by reference, C-3)	(CECRA)
classification standards, general)	(UNDERGROUND STORAGE
treatment standards, and general)	TANKS)
prohibitions, and the repeal of ARM)	
17.30.616 and 17.30.658 pertaining to)	
water-use classification and descriptions)	
for ponds and reservoirs constructed for)	
the disposal of coal bed methane water)	
and G-1 classification standards)	

TO: All Concerned Persons

1. On July 12, 2012, at 1:30 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in the Conference Room, Agency Legal Services Bureau, Department of Justice, 1712 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., June 18, 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:

17.24.645 GROUND WATER MONITORING (1) through (5)(c) remain the same.

(6) Methods of sample collection, preservation, and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2003) and the department's document titled "Department Circular WQB DEQ-7, Montana Numeric Water Quality Standards," ~~January 2004~~ August 2012 edition. Copies of Department Circular

WQB DEQ-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) and (8) remain the same.

AUTH: 82-4-204, MCA

IMP: 82-4-231, 82-4-232, MCA

REASON: The board is proposing to amend Montana's reclamation and water quality rules in ARM 17.24.645, 17.24.646, 17.30.502, 17.30.619, 17.30.702, and 17.30.1001, to incorporate proposed revisions to Montana's numeric water quality standards contained in Department Circular DEQ-7 (August 2010 edition). The proposed revisions to the Circular fall into ten categories:

(1) adopt new surface and ground water standards for five pesticides recently detected in Montana's ground water and revise the existing standards for 12 pesticides based on new information;

(2) adopt new and revised aquatic life standards for two parameters, in order to be consistent with the U.S. Environmental Protection Agency's (EPA's) national recommended water quality criteria, promulgated under Section 304(a) of the federal Clean Water Act;

(3) adopt new and revised human health standards for nine parameters in order to be consistent with EPA's recent promulgation of new or revised criteria under Section 304(a) of the federal Clean Water Act and the Safe Drinking Water Act;

(4) revise the categories of 12 parameters currently listed in Department Circular DEQ-7 pertaining to toxins and carcinogens;

(5) adopt new and revised Required Reporting Values (RRV) for 213 parameters currently listed in Department Circular DEQ-7 based on a recent review of minimum detection limits achieved by laboratories in Montana;

(6) adopt revisions to eight footnotes to correct errors, eliminate text, or add information, as well as add three footnotes to clarify quantitation for newly listed parameters;

(7) correct 28 errors concerning the sources of information obtained from EPA. For instance, a parameter has been attributed to the Non Priority Pollutant (NPP) list when in fact the information was obtained from the Priority Pollutant list (PP); and

(8) delete all references to the narrative water quality standard for nutrients in surface water by specifically deleting the parameters listed as "Nitrogen, total inorganic (as Nitrogen N)" and "Phosphorus, inorganic," and modifying footnote 8 as well. This change is being proposed, in part, due to the department's development of numeric nutrient standards that will be brought to the board for consideration in the upcoming year.

(9) eliminate manganese entirely from DEQ-7 as no numeric aquatic life or human health standards have been adopted for this parameter.

(10) generally revise the introduction to DEQ-7 for clarity and consistency of commonly used terms.

In this rulemaking, the department is proposing to amend ARM 17.36.345 regarding subdivisions, ARM 17.55.109, implementing the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), and ARM 17.56.507 and 17.56.608, implementing the underground storage tank program, in order to incorporate the board's revisions to Department Circular DEQ-7. These amendments are necessary to ensure that the department's programs for the regulation of water quality affected by remediation sites, underground storage tanks, and subdivisions will use the most current version of Montana's numeric water quality standards adopted by the board.

The revisions to Department Circular DEQ-7, and the reasons for them, are summarized below. Copies of Department Circular DEQ-7 with the proposed revisions may be obtained by contacting Rod McNeil at Water Quality Planning Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, by phone at (406) 444-5361, or by e-mail at rmcneil@mt.gov, or may be obtained online at <http://www.deq.mt.gov/wqinfo/Standards>.

(1) Interim Standards for Pesticides

The board is proposing to adopt numeric water quality standards for five pesticides that were recently detected in ground water by the Montana Department of Agriculture. These pesticides and metabolites are agricultural chemicals that have no federally promulgated standards adopted by EPA for the protection of water quality. In addition, the department has developed revised interim pesticide standards for twelve parameters adopted into Department Circular DEQ-7 during the period from 1998 to 2000. The water quality standards for these twelve parameters were initially developed using data from federal sources available on the internet as of June 1998. Given that new scientific information has become available since the adoption of those standards, the board is proposing to revise the interim water quality standards for ten pesticides described below to reflect current scientific information. The same process of EPA review, also described below, was used to derive both the new and revised interim standards for each pesticide indicated below.

Pursuant to 80-15-201(3), MCA, the board is required to adopt an "interim numerical standard" for ground water when there is no federally promulgated or published standard for an agricultural chemical that has been detected in Montana's ground water. The board is also required to review the interim standard whenever EPA promulgates a standard for the agricultural chemical at issue. 80-15-201(3), MCA.

The department, in conjunction with EPA, has developed interim standards for the following five pesticides detected in Montana's ground water in 2010-2011: Fluroxypyr, Dichlorprop(2,4DP), Fipronil, Myclobutanil and Pyroxsulam. In addition, the department, in conjunction with EPA, has developed revised interim standards for 12 pesticides based on new scientific health-based information. The 12 pesticides are the following: Chlorothalonil, Clopyralid, MCPP, Metalaxyl, Methamidophos, Metsulfuron Methyl, Mirex, Nicosulfuron, Oxydemeton methyl, Primisulfuron Methyl, Tribenuron Methyl, and Triclopyr. The new and revised interim standards were developed using the process recommended by the Region VIII EPA

toxicologist.

The levels set in the interim standards are determined in a two-stage process. First, the department reviews the available scientific literature and does preliminary calculations to determine a level that is protective of human health. The department then determines whether a compound is toxic or carcinogenic by using the Chemical Index List at www.toxnet.nlm.nih.gov or by using EPA's Integrated Risk Information System (IRIS). Depending on the identification of the pesticide as either toxic or carcinogenic, an interim standard is calculated using a chronic reference dose (RfD) for toxins or the oral cancer slope factor for carcinogens. If an RfD is used in the calculation, a Relative Source Contribution (RSC) is also used. The purpose of the RSC is to take into account all environmental sources of input, such as drinking water, food, and air. In the second step, the scientific references selected for these calculations are submitted to EPA for further review by the agency's toxicologist. If a pesticide is defined as carcinogenic, the appropriate cancer slope index is used along with a risk factor of 1×10^{-5} (1 in 100,000) to produce a final interim standard. The EPA has reviewed the proposed interim standards and has determined that they are protective of public health. Supporting documentation used to establish the standards is available from the department.

The board finds that modifying Department Circular DEQ-7 to adopt interim standards for the above-listed pesticides is necessary in order to fulfill its statutory obligation to establish ground water standards for agricultural chemicals that have been detected in Montana's ground water. The board also finds that it is necessary and reasonable to adopt interim standards for surface waters for the protection of human health that address these same pesticides and metabolites. The board could choose to adopt only ground water standards and meet the requirements of state law, but rejects that alternative as inconsistent with the policy of the state to "protect and maintain" all state waters, both surface and ground water. By adopting standards for surface waters as well as ground waters, Montana's surface waters will receive the same protection as ground water whenever state law mandates a ground water standard for an agricultural chemical.

(2) Aquatic Life Standards

(a) New standard: In 2010, the board adopted an acute aquatic life standard for acrolein in response to EPA's publication of a national recommended acute criterion for that parameter. In this rulemaking, the board is now proposing to adopt a chronic aquatic life standard for acrolein in response to EPA's recent promulgation of a chronic criterion for that same parameter.

The board finds it is reasonable and necessary to adopt a chronic aquatic life standard for this pollutant based upon EPA's recommended criteria, because the board does not have the resources necessary to develop aquatic life standards for Montana. In order to ensure that aquatic life in Montana's surface waters is protected from the toxic effects of this chemical, the board finds it necessary to use EPA's recommended criteria as the scientific basis for adopting a standard that ensures the protection of aquatic life from chronic adverse affects.

(b) Revised standards: The board is proposing to revise the acute aquatic life standard for Endrin currently in Department Circular DEQ-7 to correct a previous

error.

In 2010, the board revised the acute aquatic life standards for six parameters to reflect the change in exceedance frequency adopted by the board during the same rulemaking. The revised standards were calculated by dividing the existing acute standards for the six parameters by a factor of two in order to derive an acute standard that was consistent with EPA's 1985 method. The acute aquatic life standard for Endrin was one of the six acute aquatic life standards that were revised by this method. This particular revision, however, was in error, because EPA's guidance indicates that dividing the acute standard for Endrin applies only to saltwater criteria. The revision to the aquatic life standard for Endrin proposed in this rulemaking corrects that error. The board finds it necessary to adopt this revision to make the acute aquatic life standard for Endrin consistent with EPA's 1985 method.

(3) Human Health Standards

The board is proposing to adopt five new human health standards: Sulfone, Bromate, Chlorite, Haloacetic acids, and Dichloroethylene, 1,1-, based upon maximum contaminant levels (MCLs) recently published by EPA under the federal Safe Drinking Water Act.

In addition, the board is proposing to revise the human health standard for two parameters, due to EPA's recent promulgation of an MCL for each of these parameters. This proposed revision will result in changing the existing water quality standard for alpha emitters from 1.5 pico-curies/liter (based on a former Health Advisory analysis) to a standard of 15 pico-curies/liter (based on EPA's promulgation of an MCL for this parameter). The proposed revision will also result in changing the existing water quality standard for metolachlor from 100 µg/liter (based on a former Health Advisory analysis) to 700 µg/liter (based on EPA's promulgation of an MCL for this parameter).

The board is proposing to revise the human health standard for Aldicarb Sulfone in order to correct an error in listing the existing standard.

Finally, the board is proposing to adopt a new human health standard for Hexachlorocyclohexane, based upon EPA's recent promulgation of a human health-based criterion for this NPP under section 304(a) of the Clean Water Act.

The board finds it reasonable and necessary to adopt these new or revised human health standards based upon EPA's recommendation, because the board does not have the resources necessary to develop human health standards using state-sponsored research. In order to ensure that the quality of state waters protects public health, the board finds it necessary to use EPA's recommended criteria as the scientific basis for adopting standards that ensure the protection of human health from adverse effects. For the parameters listed above that are carcinogens, the board is using EPA's recommended criteria to establish human health standards based on a risk level of 1×10^{-5} as required by 75-5-301(2)(b)(i), MCA.

(4) Revisions to the Categories of 12 Parameters

The board is revising the categories of 12 parameters currently listed in Department Circular DEQ-7 as toxic or carcinogenic, based upon EPA's revisions to the manner in which it classifies carcinogens in the IRIS system. Based upon EPA's revisions to IRIS, the board is proposing the following revisions to the existing categories of certain parameters in Department Circular DEQ-7 as described below.

First, the board is proposing to change the category of the following parameters from carcinogenic to toxic: Alachlor, Atrazine, Butylate, Dichlorobenzene,1,4-, Dichloropropane,1,2-, Gamma-hexachlorocyclohexane, and Propane,1,2,Dibromo-3-chloro-. The board is proposing these changes based on new scientific evidence proving that these parameters have no discernable human carcinogenic potential. As such, the board finds it reasonable and necessary to revise the Department Circular DEQ-7 category for these parameters.

Second, the board is proposing to change the category of the following parameters from toxic to carcinogenic: Butyl Benzyl Phthalate, Cadmium, and Nitrobenzene. The board is proposing these changes based on new scientific evidence proving that these parameters have a measurable human carcinogenic potential. As such, the board finds it reasonable and necessary to revise the category for these parameters in Department Circular DEQ-7.

Third, the board is proposing to change the category of the following parameters from harmful to toxic: Phenol and Trichlorophenol,2,4,5-. The board is proposing these changes due to recent scientific information which has led to the development of chronic reference dose information for these parameters indicating toxicity. As such, the board finds it reasonable and necessary to revise the Department Circular DEQ-7 category for these parameters from harmful to toxic.

(5) Required Reporting Values

The board is proposing to adopt new or revised required reporting values (RRVs) for 213 parameters currently listed in Department Circular DEQ-7.

These proposed changes are due, in part, to significant advances in detection limits that have developed over the past ten years and also in response to EPA guidance. These detection limits, using new EPA-approved procedures promulgated under 40 CFR Part 136, allow the quantification of many pollutants to levels well below the current water quality standards in Department Circular DEQ-7. In contrast, some of the existing RRVs in Department Circular DEQ-7 specify reporting values for many parameters at levels that exceed the water quality standard for the parameter. These reporting values make compliance determinations by the department difficult, if not impossible, to achieve. Consequently, the board is proposing to adopt new or revised RRVs using the procedures summarized below and is also modifying the description of RRVs in Department Circular DEQ-7 for clarity and accuracy. As explained in the revised description, the RRVs proposed for adoption represent the board's "best selection of an appropriate laboratory reporting limit that is sufficiently sensitive to meet the most stringent numeric water quality standard."

The department's RRV calculation primarily uses method detection limits (MDLs) provided by analytical laboratories. MDLs and minimum reporting levels (MRLs) were collected from seven state and commercial labs using methods listed

in 40 CFR Part 136 and the Safe Drinking Water Act, as well as for select methods approved by EPA's Office of Pesticides. The department then calculated RRVs for the parameters in Department Circular DEQ-7 for each method using the 75th percentile of the MDLs obtained from the labs and multiplied the resulting value by 3.18. This method of calculating RRVs is based upon the method set forth in EPA 821-B-04-005 (Revised Assessment of Detection and Quantitation Approaches), as modified to account for MDLs from multiple laboratories.

From the RRVs calculated for each analytical procedure described above, the department selected the RRV for each pollutant closest to 10 percent of the most restrictive standard. In situations where all calculated RRVs for a pollutant were larger than the most restrictive standard or less than 10 percent of the most restrictive standard, the department reviewed the laboratory-provided MRLs, and, if one of the MRLs was closer to 10 percent of the standard, that MRL became the default RRV. Based on this selection procedure, the board is proposing new and revised RRVs for 213 parameters in Department Circular DEQ-7.

The board finds it reasonable and necessary to adopt new and revised RRVs for 213 parameters using the selection method described above, in order to establish RRVs that are sufficient for determining compliance with all applicable water quality standards. If the RRVs are not updated using this selection method, many RRVs would not meet Department Circular DEQ-7 numeric water quality standards, making compliance determination by the department unfeasible, while other RRVs would be too restrictive, making implementation by the laboratories impractical. A copy of Department Circular DEQ-7, with all new or revised RRVs indicated by interlining and underlining, is available for review.

(6) Revisions to the Footnotes of Department Circular DEQ-7

The board is modifying the following footnotes, for the reasons given below:

Footnote (1) is being modified to correct an error. As currently written, the footnote indicates that the categories for toxic, carcinogenic, and harmful parameters are all derived from EPA references. The category for harmful parameters, however, is a state-adopted category and the footnote is being revised to reflect this fact.

Footnote (2) is being modified to add categories from EPA's new scale used in IRIS to identify parameters that are carcinogenic. Since the older 1986 scale and the newer 2005 scale are in simultaneous use to identify parameters as carcinogens, both scales are identified in the footnote as the basis for classifying a particular parameter as carcinogenic.

Footnote (7) is being revised to correct an error. The revised footnote eliminates reference to ammonia concentrations as being related to flow, since they are not. This correction is necessary to clarify the basis for the ammonia standard in Department Circular DEQ-7.

Footnote (8) is being modified to indicate that numeric nutrient criteria for aquatic life will be listed in Department Circular DEQ-12, which will be proposed for adoption in a future rulemaking. Footnote 8 is also being removed as a reference for the aquatic life standards for ammonia, because the existing numeric aquatic life

standards for ammonia will remain within Department Circular DEQ-7 and will not be included in proposed Department Circular DEQ-12.

Footnote (17) is being revised to eliminate I and the Secondary Maximum Contaminant Level (SMCL) as a source for human health standards in Department Circular DEQ-7. Since the board's proposed revisions to the human health standards in this rulemaking eliminate these sources as a basis for these standards, the revision to the footnote is also necessary.

Footnote (19) is being revised to more clearly explain the derivation of RRV values proposed in this rulemaking.

Footnote (23) is being modified to eliminate the current text within that footnote for the reasons given in paragraph (9).

Footnote (24) is being modified to eliminate the current text within that footnote for the reasons given in paragraph (9).

Footnote (37) is being added to explain that the sum of Aldicarb with any of its degradates cannot exceed 7 µg/L, because all of the degradates and their parent compound have a similar mode of action.

Footnote (38) is being added to explain that the measured concentration of Haloacetic acids must include all five of the listed compounds found in the listing.

Footnote (39) is being added to make clear that the cis and trans isomers of Endosulfan (Endosulfan I and Endosulfan II) are to be quantitatively added together with the parent compound (Endosulfan) in determining the total concentration for this parameter.

(7) Correcting Information Sources for 28 Parameters

The board is revising Department Circular DEQ-7 to correct errors and update the sources of information obtained from EPA that were used in the development of the water quality standards for the following parameters, as indicated below:

Parameter	Old Source	New Source
Alpha emitters	HA	MCL
Alpha-chlordane	PP	HA
Beta emitters	HA	MCL
Butylate	HA	MCL
Clopyralid	I	HA
Dichloroethylene,1,1-	PP	MCL
Gamma chlordane	PP	HA
Gamma-hexachlorocyclohexane	HA	MCL
Imazamethabenz-methyl ester	I	HA
Imazapyr	I	HA
Lead	PP	MCL
MCPP	I	HA
Metalaxyl	I	HA
Methamidaphos	I	HA
Metsulfuron methyl	I	HA
Mirex	I	NPP

Nicosulfuron	I	HA
Nitrate	MCL	NPP
N-nitrosopyrrolidine	PP	NPP
Oxydemeton methyl	I	HA
P-chloro-m-cresol	PP	OL
Phenol	PP	OL
Primisulfuron, methyl	I	HA
Radon 222	HA	MCL
Thifensulfuron, methyl	I	HA
Triasulfuron	I	HA
Tribenuron, methyl	I	HA
Triclopyr	I	HA

HA = Health Advisory

I = data obtained from federal data sources available on the internet from 1998 to 2000.

MCL = Maximum Contaminant Level

NPP = Non Priority Pollutant Criteria

OL = Organoleptic Pollutant Criteria

PP = Priority Pollutant Criteria

(8) Repealing References to the Narrative Water Quality Standard for Nutrients in Surface Waters

The board is proposing to modify footnote 8 in Department Circular DEQ-7, which references a narrative standard in ARM 17.30.637(1)(e) that prohibits undesirable aquatic growth in surface waters. Currently, Footnote 8 indicates that various nutrient parameters in Department Circular DEQ-7 are subject to this narrative standard, because none of the nutrient parameters have a numeric water quality standard for the protection of aquatic life. Since the narrative standard in ARM 17.30.637(1)(e) may be applied to nutrients without the need of referencing it in Department Circular DEQ-7, the board is proposing to delete the existing text of footnote 8 since it serves no purpose other than inform the public that nutrients have no numeric standards.

The board is aware, however, that the department has been in the process of developing numeric standards for nutrients that, if adopted by the board, will protect aquatic life by controlling eutrophication in surface waters. Consequently, leaving the narrative standard in Department Circular DEQ-7 may result in two separate and potentially conflicting aquatic life standards for nutrients in the event numeric standards are adopted. Given that the numeric standards for nutrients, if adopted, will be contained in a new Department Circular DEQ-12, the board is proposing to replace the existing text of Footnote 8 with a reference to the numeric nutrient standards that will be contained in proposed Department Circular DEQ-12.

The board is also proposing to remove from Department Circular DEQ-7 two nutrient parameters that have no numeric water quality standards for either aquatic life or human health. The specific nutrient parameters proposed for removal are "Nitrogen, total inorganic (as Nitrogen in [N])" and "Phosphorus, inorganic." Since

there are no numeric standards for these parameters, removing them from Department Circular DEQ-7 is reasonable given that the narrative aquatic life standard in ARM 17.30.637(1)(e) may be applied independently from its inclusion in Department Circular DEQ-7 and no human health standard for these two nutrients exists. Other nutrient parameters in Department Circular DEQ-7, for which a numeric human health-based standard has been adopted, will remain unchanged.

(9) Removing Manganese and Eliminating References to Secondary Maximum Contaminant Levels (SMCLs)

The board is proposing to remove manganese and Footnote 24 from Department Circular DEQ-7, because no water quality standards for manganese have been adopted by the board. Despite the lack of numeric standards for manganese, manganese is currently listed in Department Circular DEQ-7 with Footnote 24 indicating a standard to protect human health is contained within the footnote. The text of Footnote 24, however, does not establish human health standards. Instead, the footnote simply refers to administrative rules containing narrative water quality standards that are used by the department when developing site-specific standards to protect the beneficial uses of surface and ground water. The footnote further indicates that the SMCL for manganese (i.e., 50 micrograms per liter) may be used by the department when interpreting a level of harm to beneficial uses caused by manganese. The board is proposing to remove manganese and the text of Footnote 24 for two reasons. First, referencing the narrative standards is not necessary because the narrative standards contained in ARM 17.30.637 and 17.30.1006 provide the department with an independent source of authority to develop site-specific standards when no numeric standards exist. Second, the reference to the SMCL within the footnote may be misconstrued as binding rather than mere guidance. In order to eliminate any confusion between the narrative standards developed by the department using site-specific information and the statewide numeric standards contained in Department Circular DEQ-7, the board is proposing to eliminate the parameter manganese and the entire text of Footnote 24.

For the same reasons given above, the board is also proposing to eliminate the text of Footnote 23, which references the SMCL for iron to be used as guidance when developing human health standards under existing rules. Although the board is proposing to eliminate the text of the footnote, the board is not proposing to entirely remove iron from Department Circular DEQ-7. Since the circular currently includes an aquatic life standard for iron, the board will retain iron and its aquatic life standard in the revised Department Circular DEQ-7.

(10) General Revisions to the Introduction

The board is proposing to generally revise the Introduction to Department Circular DEQ-7 in order to provide consistency among commonly used terms, to clarify the meaning of acronyms, and to more clearly and accurately specify the sources of information used to develop water quality standards. These revisions are necessary to assist the public's understanding of an inherently complex and technical document.

17.24.646 SURFACE WATER MONITORING (1) through (5) remain the same.

(6) Methods of sample collection, preservation and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2003) and Part 434 titled "Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards" (January 2002), and the ~~January 2004 version~~ August 2012 edition of the department's document titled "Department Circular WQB DEQ-7, Montana Numeric Water Quality Standards." Copies of 40 CFR Part 136, 40 CFR 434, and Department Circular WQB DEQ-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) remains the same.

AUTH: 82-4-204, MCA

IMP: 82-4-231, 82-4-232, MCA

REASON: The board is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

(1) through (13) remain the same.

(14) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The board is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

~~(1) "Acutely toxic conditions" means conditions lethal to aquatic organisms passing through the mixing zone. Lethality is a function of the magnitude of pollutant concentrations and the duration of organism exposure to those concentrations.~~

(2) through (4) remain the same, but are renumbered (1) through (3).

~~(5) "Chronic toxicity" means that death or functional impairment occurs or can be expected to occur to organisms exposed for periods of time exceeding 96 hours.~~

(6) through (15) remain the same, but are renumbered (4) through (13).

~~(16) (14) "Mixing zone" means the area of a water body contiguous to an effluent with characteristics qualitatively or quantitatively different from those of the receiving water. The mixing zone is a place where effluent and receiving water mix and not a place where effluents are treated. Certain water quality standards may not apply in the mixing zone for those parameters regulated by a MPDES or NPDES permit. An effluent, in its mixing zone, may not block passage of aquatic organisms nor may it cause acutely toxic conditions, except that ammonia, chlorine, and dissolved oxygen may be present at concentrations so as to cause potentially toxic conditions in no more than 10% of the mixing zone provided that there is no lethality to aquatic organisms passing through the mixing zone. The area in which these exceedences may be allowed shall be as small as practicable. Provisions for specific mixing zones will be determined on a case-by-case basis by application of the department's surface water mixing zone rules in ARM 17.30.501 through 17.30.518 is defined in 75-5-103, MCA, and also means a limited area of a surface water body or a portion of an aquifer, where initial dilution of a discharge takes place and where water quality changes may occur and where certain water quality standards may be exceeded.~~

(17) through (23) remain the same, but are renumbered (15) through (21).

~~(24) (22) "Pollutants" means sewage, industrial wastes and other wastes as those terms are defined in 75-5-103(12), (19), (26), MCA.~~

(25) through (41) remain the same, but are renumbered (23) through (39).

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

IMP: 75-5-301, MCA

REASON: The board is proposing the amendments to the definitions in ARM 17.30.602 for the reasons given below:

First, the board is proposing to repeal the definition of "acutely toxic conditions," because that term will no longer be used in the surface water quality standards rules due to the proposed amendment to the definition of "mixing zone" described below. The board is also proposing to repeal the definition of "chronic toxicity" in the surface water quality standards rules, because that term is not used within ARM Title 17, chapter 30, subchapter 6.

Second, the board is proposing to amend the definition of "mixing zone" in the surface water quality standards rules in order to ensure that the definition is consistent with the statutory definition of "mixing zone" in Title 75, chapter 5, MCA, and with the definitions in ARM 17.30.502 (mixing zone rules) and in ARM 17.30.702 (nondegradation rules). The board is proposing this amendment because the definition in ARM 17.30.602 includes provisions that may conflict with the board's rules governing the granting of mixing zones. The board finds that the proposed amendment is necessary to ensure consistency with existing statutory and regulatory provisions defining "mixing zones" and to eliminate any inconsistency

between the definition and the requirements for granting mixing zones established in ARM 17.30.501 through 17.30.518.

Finally, the board is proposing to amend the definition of "pollutant" in order to eliminate incorrect citations to the statutory definitions of "sewage," "industrial wastes," and "other wastes." Since the statutory definitions in 75-5-103, MCA, are renumbered from time to time by legislative additions to the definitions, the board is proposing to simply eliminate specific references to the statutory numbering system.

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

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) remains the same.

~~(c) 40 CFR Part 133 (July 1, 1991), which establishes requirements for the level of effluent quality through the application of secondary treatment or its equivalent;~~

~~(d) 40 CFR Chapter I, Subchapter N (July 1, 1991), which establishes effluent guidelines and standards for point source discharges;~~

~~(e) (c) 40 CFR Part 136 (July 1, 2007 2011), which establishes guidelines and procedures for the analysis of pollutants; and~~

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

(2) remains the same.

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

IMP: 75-5-301, MCA

REASON: The board is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

Also, the board is proposing to repeal the federal regulations incorporated by reference in ARM 17.30.619(1)(c) and (d) because the board is also proposing to eliminate the treatment requirements that are based on these federal regulations set forth in ARM 17.30.635. Since the treatment requirements currently in ARM 17.30.635 will no longer be a component of the surface water quality standards rules, incorporating the federal regulations upon which they are based is no longer necessary. The board is proposing these amendments in order to eliminate duplication between rules establishing surface water quality standards and rules establishing effluent limitations and treatment standards for MPDES permits set forth in ARM Title 17, chapter 30, subchapter 12.

The board is also proposing to update the incorporation by reference of 40 CFR Part 136 in order to adopt the U.S. Environmental Protection Agency's (EPA) recent revisions to those methods. According to EPA, the recent revisions to 40 CFR Part 136 will provide greater flexibility to the regulated community in terms of providing more methods that satisfy EPA's requirements for the sampling and

analysis of pollutants.

17.30.629 C-3 CLASSIFICATION STANDARDS (1) Waters classified C-3 are to be maintained suitable for bathing, swimming, and recreation, and growth and propagation of nonsalmonid fishes and associated aquatic life, waterfowl, and furbearers. The quality of these waters is naturally marginal for drinking, culinary, and food processing purposes, agriculture, and industrial water supply. ~~Degradation which will impact established beneficial uses will not be allowed.~~

(2) through (2)(k) remain the same.

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

IMP: 75-5-301, MCA

REASON: The board is proposing to amend the C-3 classification in the surface water quality standards rules in order to eliminate language implying that degradation occurs only when a beneficial use is impacted. This amendment is necessary, because allowing degradation to the point that uses may be impacted without requiring the activity to undergo nondegradation review pursuant to 75-5-303, MCA, conflicts with Montana's statutory and regulatory nondegradation requirements.

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

~~(2) Sewage must receive a minimum of secondary treatment as defined by EPA in accordance with requirements set forth in the Federal Water Pollution Control Act, 33 USC Sections 1251 through 1387 and 40 CFR Part 133 (July 1, 1991). Copies of 40 CFR Part 133 may be obtained from the department.~~

~~(3) Industrial waste must receive, as a minimum, treatment equivalent to the best practicable control technology currently available (BPCTCA) as defined in 40 CFR Chapter I, Subchapter N (July 1, 1991). Copies of 40 CFR Subchapter N may be obtained from the department.~~

(4) and (5) remain the same, but are renumbered (2) and (3).

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

IMP: 75-5-301, MCA

REASON: The board is proposing to remove the treatment requirements currently found in (2) and (3) of ARM 17.30.635 in order to eliminate duplication and inconsistencies between these requirements and the rules establishing technology-based treatment requirements for point source discharges in ARM Title 17, chapter 30, subchapter 12.

17.30.637 GENERAL PROHIBITIONS (1) through (2) remain the same.

~~(3) Leaching pads, tailing ponds, or water, waste, or product holding facilities must be located, constructed, operated, and maintained in such a manner and of such materials so as to prevent the discharge, seepage, drainage, infiltration, or flow which may result in the pollution of surface waters. The department may require that~~

a monitoring system be installed and operated if the department determines that pollutants are likely to reach surface waters or present a substantial risk to public health.

~~(a) Complete plans and specifications for proposed leaching pads, tailing ponds, or water, waste, or product holding facilities utilized in the processing of ore must be submitted to the department no less than 180 days prior to the day on which it is desired to commence their operation.~~

~~(b) Leaching pads, tailing ponds, or water, waste, or product holding facilities operating as of the effective date of this rule must be operated and maintained in such a manner so as to prevent the discharge, seepage, drainage, infiltration, or flow which may result in the pollution of surface waters.~~

~~(4) Dumping of snow from municipal and/or parking lot snow removal activities directly into surface waters or placing snow in a location where it is likely to cause pollution of surface waters is prohibited unless authorized in writing by the department.~~

~~(5) (3) Until such time as minimum stream flows are established for dewatered streams, the minimum treatment requirements for discharges to dewatered receiving streams must be no less than the minimum treatment requirements set forth in ARM 17.30.635(2) and (3) 17.30.1203.~~

~~(6) (4) Treatment requirements for discharges to ephemeral streams must be no less than the minimum treatment requirements set forth in ARM 17.30.635(2) and (3) 17.30.1203. Ephemeral streams are subject to ARM 17.30.635 through 17.30.637, 17.30.640, 17.30.641, 17.30.645, and 17.30.646 but not to the specific water quality standards of ARM 17.30.620 through 17.30.629.~~

~~(7) through (9) remain the same, but are renumbered (5) through (7).~~

AUTH: 75-5-201, 75-5-301, 75-6-112, MCA

IMP: 75-5-301, MCA

REASON: The board is proposing to delete the requirements in (3) and (4) of ARM 17.30.637, because these activities are addressed under other regulatory programs administered by the department.

In ARM 17.30.637(3), the board is proposing to eliminate the provision that requires mining facilities and wastes be operated in a manner that prevents pollution of surface waters, because that provision is no longer necessary. Mining activities that result in a discharge to surface waters are subject to the Montana Pollutant Discharge Elimination System (MPDES) permit requirements in ARM Title 17, chapter 30, subchapters 12 and 13. In addition, the location and construction of leach pads, tailing facilities, and related structures associated with mining activities are subject to regulation under the Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA, or the metal mine reclamation laws in Title 82, chapter 4, part 3, MCA. Since the department has adequate authority under these other laws to protect state waters from pollution associated with mining activities, the board is removing the requirements in (3) to eliminate duplication and potential conflicts with other regulatory requirements.

In ARM 17.30.637(4), the board is proposing to eliminate the prohibition against dumping snow from parking lots into state surface waters. The removal of

snow is not a significant threat to water quality and is adequately addressed by the board's rules establishing requirements for municipal separate storm sewer systems (MS4).

The board is also amending ARM 17.30.637(5) and (6) to delete the citation to ARM 17.30.635 as the authority to impose minimum treatment. The board is proposing these amendments because the proposed amendments to ARM 17.30.635 in this rulemaking will remove all treatment requirements from that rule. Since minimum treatment is now defined and authorized only under ARM 17.30.1203, the board is replacing the citation to ARM 17.30.635 with ARM 17.30.1203.

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

(1) through (25) remain the same.

(26) The board adopts and incorporates by reference:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (d) remain the same.

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

IMP: 75-5-303, MCA

REASON: The board is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

(1) remains the same.

(2) "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (15) remain the same.

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

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

REASON: The board is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for

amending ARM 17.24.645.

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

(a) through (d) remain the same.

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012 edition);

(f) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The department is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

(a) Department Circular DEQ-7, Montana Numeric Water Quality Standards (~~February 2008~~ August 2012);

(b) through (5) remain the same.

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

IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: The department is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012);

(b) through (3) remain the same.

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

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

REASON: The department is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

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

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August 2010~~ August 2012);

(b) through (3) remain the same.

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

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

REASON: The department is proposing to amend the incorporation by reference of Department Circular DEQ-7 in this rule for the reasons given by the board for amending ARM 17.24.645.

4. The rules proposed for repeal are as follows:

17.30.616 WATER-USE CLASSIFICATION AND DESCRIPTIONS FOR PONDS AND RESERVOIRS CONSTRUCTED FOR THE DISPOSAL OF COAL BED METHANE WATER (AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA), located at page 17-2709, Administrative Rules of Montana. The board is proposing to repeal the G-1 water-use classification because the Ninth Circuit has held that ground water produced during coal bed methane development is a "pollutant." Since coal bed methane produced water is a pollutant, ponds and reservoirs constructed for the purpose of impounding those pollutants are not defined as "state waters" in 75-5-103, MCA. Consequently, the board is repealing the G-1 classification because it is not appropriate to classify coal bed methane ponds or reservoirs that are used to impound pollutants as state waters.

17.30.658 G-1 CLASSIFICATION STANDARDS (AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA), located at pages 17-2756 and 17-2757, Administrative Rules of Montana. The board is proposing to repeal the water quality standards that are applicable to waters classified as G-1, because the board is also proposing to repeal the entire G-1 classification in ARM 17.30.616. The board is proposing that both ARM 17.30.616 and 17.30.658 be removed from the surface water quality standards rules, because the Ninth Circuit has held that ground water produced during coal bed methane development is a "pollutant." Since coal bed methane produced water is a pollutant, ponds and reservoirs constructed for the purpose of impounding those pollutants are not defined as "state waters" in 75-5-103, MCA. Consequently, the board is repealing the G-1 classification and associated water quality standards since it is not appropriate to apply water quality standards to ponds or reservoirs that are not state waters.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing regarding the proposed rule amendments and changes to Department Circular DEQ-7, at the hearing. Written data, views, or arguments regarding the rule amendments and changes to Department Circular DEQ-7 also may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 12, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency

Legal Services Bureau, has been designated to preside over and conduct the hearing.

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

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

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Richard H. Oppen
RICHARD H. OPPEN, Director

Certified to the Secretary of State, May 29, 2012.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.71.404 pertaining to low) AMENDMENT
income weatherization assistance)
program (LIWAP)) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 7, 2012, the Department of Public Health and Human Services proposes to amend the above-stated rule.

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 27, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.71.404 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, ELIGIBILITY (1) ~~Persons eligible for the Low Income Energy Assistance Program (LIEAP) and who meet the requirements of ARM 37.71.601 are eligible for the Low Income Weatherization Program.~~ A household is eligible for the Low Income Weatherization Assistance Program (LIWAP) if:

(a) the household satisfies the financial requirements of (2)(a) or (b) of this rule; and

(b) the household's dwelling satisfies the nonfinancial requirements of ARM 37.71.601.

(2) A household is financially eligible for LIWAP if:

(a) the household is eligible for Low Income Energy Assistance Program (LIEAP) for the current heating season; or

(b) the household is not eligible for LIEAP for the current heating season because the household's countable income exceeds 150% of the FPL, but:

(i) the household's countable income does not exceed 200% of the federal poverty level (FPL); and

(ii) the household is otherwise eligible for LIEAP.

(3) If a household has not applied for LIEAP for the current heating season but wishes to receive weatherization services through LIWAP, the household must

complete an application for LIEAP and comply with all requirements of ARM 37.70.305 and 37.70.311. The household is not required to accept LIEAP benefits in order to receive weatherization services.

(4) In determining whether a household's countable income is at or below 200% of the FPL, the provisions of ARM 37.70.401, 37.70.406, and 37.70.407 will be applied.

(5) In determining whether a household is otherwise eligible for LIEAP the provisions of ARM 37.70.110, 37.70.401, and 37.70.408 will be applied.

AUTH: 53-2-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.71.404 pertaining to the Low Income Weatherization Assistance Program (LIWAP). LIWAP is a federally funded program to help low income families reduce their energy burdens by reducing the costs of heating their homes by performing measures to weatherize their homes. The department proposes to make changes to its administrative rules governing LIWAP as follows:

ARM 37.71.404

Because LIWAP is a needs-based assistance program, only households with income below specified limits are eligible to receive weatherization services. ARM 37.71.404 currently provides that households that are eligible for the Low Income Energy Assistance Program (LIEAP) and that meet the requirements of ARM 37.71.601 are eligible for LIWAP. The department proposes to amend ARM 37.71.404 to provide that a household that is not eligible for LIEAP because its countable income exceeds 150% of the federal poverty level (FPL) may nevertheless be eligible for LIWAP if the household's countable income does not exceed 200% of the FPL. While the Department of Energy (DOE) has not changed the income limits for LIWAP, i.e., they remain at or below 200% of the FPL, the income limits for LIEAP have changed. LIEAP previously provided that households whose income was at or below 200% of the FPL were income eligible for LIEAP, but in 2011 the LIEAP rules were amended to limit eligibility to households with income at or below 150% of FPL. The amendment of ARM 37.71.404 is therefore necessary to specify that households with income that is above 150% of the FPL, but not in excess of 200% of the FPL, may be eligible for LIWAP and to specify the criteria and procedures for determining eligibility for LIWAP for households that are not eligible for LIEAP.

The department proposes to determine financial eligibility for LIWAP using the LIEAP rules for calculating income and resources because LIEAP and LIWAP are very closely related programs that serve similar populations despite the fact that households with slightly higher incomes may qualify for LIWAP. The department also proposes to include a provision that a household that has not applied for LIEAP

for the current heating season must complete a LIEAP application and comply with the LIEAP rules governing the application process. This provision is necessary so that the local contractor that provides weatherization services will have sufficient information to determine whether the household is financially eligible for LIWAP. The amended rule will provide that a household is not required to accept LIEAP benefits in order to receive weatherization services because it is possible, although perhaps unlikely, that a household did not file a LIEAP application because it made a deliberate choice not to receive LIEAP benefits.

Fiscal Impact

The change to ARM 37.71.404 will have no fiscal impact because households whose income falls within the 150% to 200% of the FPL have previously been qualified for LIWAP. This change merely attempts to clarify the language of ARM 37.71.404.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 5, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., July 5, 2012.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 36 persons based on the number of LIEAP cases from the previous heating season whose income level was greater than 150% of the FPL.

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

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

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

/s/ Barbara B. Hoffmann
Rule Reviewer

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

Certified to the Secretary of State May 29, 2012.

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

In the matter of the amendment of)
ARM 37.57.102, 37.57.105,)
37.57.106, 37.57.109, 37.57.110,)
37.57.111, 37.57.117, and 37.57.118)
pertaining to children's special health)
services)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 27, 2012, at 2:00 p.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 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 20, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

~~(1) "Advisory committee" means a committee that is composed of health care service providers, public health providers, consumers, and children's special health service (CSHS) program staff and that advises the department about CSHS program operation.~~

~~(2)~~ (1) "Applicant" means a child or youth with special health care needs (CYSHCN) who has applied or whose parent or guardian has applied on the child's behalf to receive CSHS benefits children's special health service (CSHS) financial assistance from the department.

~~(3) "Benefits" means payment by the department for CSHS-authorized medical care for a child or youth eligible for the CSHS program.~~

~~(4) "Child or youth" means an individual under 22 years of age.~~

~~(5) "CHIP" means the Montana children's health insurance plan administered by the department.~~

(2) "Child or Youth with Special Health Care Needs" (CYSHCN) means a child or youth, under the age of 22, who has or is at increased risk for chronic physical, development, behavioral, or emotional condition and who also requires health and related services of a type or amount beyond that required by children generally.

~~(6)~~ (3) "Client" means a child or youth CYSHCN who is eligible to receive CSHS benefits financial assistance as determined by the department under this subchapter.

~~(7) "Clinic" means a place where a team of health care providers with specialties appropriate to treating children come together to evaluate and develop a comprehensive plan of care for children with specific disabilities.~~

(8) remains the same, but is renumbered (4).

~~(9) "CSHCN" means children with special health care needs, the population served by CSHS.~~

(10) through (12) remain the same, but are renumbered (5) through (7).

~~(13)~~ (8) "Eligibility year" means the federal fiscal year in which a child or youth CYSHCN receives CSHS benefits, beginning with the date the application for those benefits is received by the department and ending 12 months later direct payment financial assistance.

~~(14) "Evaluation" means the medical examination and testing needed to determine the cause and possible treatment for a suspected or known disability.~~

(15) and (16) remain the same, but are renumbered (9) and (10).

(11) "Financial Assistance" means payment by the department for CSHS-authorized medical care for a CYSHCN eligible for the CSHS program.

(12) "HMK" means Healthy Montana Kids insurance plan administered by the department.

(13) "HMK Plus" means Healthy Montana Kids Plus plan administered by the department.

~~(17) "ICD-9-CM" means the World Health Organization's International Classification of Diseases, Clinical Modification, 9th Revision.~~

~~(18)~~ (14) "Initial diagnosis and evaluation" means taking a medical history and performing a physical examination, medical procedures, laboratory tests, hearing and other diagnostic tests, or other procedures necessary for the diagnosis of a condition for the purpose of establishing CSHS eligibility and possible treatment for a suspected or known disability.

(15) "Interdisciplinary Team" means a group of allied health professionals and a patient, family, or both a patient and family who work together to address the shared health goals.

~~(19)~~ (16) "Medical advisor" means a Montana licensed physician, who serves as an advisor to the department, with expertise in treating children and youth with special health care needs and licensed by the state of Montana who serves as an advisor to the department.

~~(20)~~ (17) "Poverty income guidelines" means the poverty income guidelines published in ~~2003~~ 2012 in the Federal Register by the U.S. Department of Health and Human Services. The department ~~hereby~~ adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services

and that are published in the February 7, ~~2003~~ 2012, Federal Register. A copy of the ~~2003~~ 2012 poverty guidelines may be obtained from the Department of Public Health and Human Services, ~~Child and Adult Health Resources~~ Public Health and Safety Division, Children's Special Health Services Program, ~~4218 East Sixth~~ 1400 Broadway Rm A-116, Helena, MT 59620, telephone (406) 444-3617.

~~(24)~~ (18) "Program" means the department's children's special health services program for ~~children~~ a CYSHCN with special health care needs, authorized by 50-1-202, MCA.

~~(22)~~ (19) "Provider" means a supplier of medical care or services, interventions, medical appliances, prescribed medications, ~~or formula or foods~~, and consultations.

~~(23)~~ (20) "Services" means assistance other than ~~benefits~~ financial assistance provided to ~~CSHCN~~ a CYSHCN, such as resource and referral information, transition information, specialty clinic services, and care coordination.

(21) "Special Health Care Need" means a chronic condition that requires health and related services of a type or amount beyond that generally required by children.

~~(24)~~ (22) "Third-party payer" means a public or private agency entity that is or may be liable to pay all or part of the medical costs for a client, ~~including, but not limited to, private insurance, tri-care, Medicaid, Medicare, CHIP, the caring program for children, and the early intervention program, part C, of the department's disabilities services division~~.

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

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.105 GENERAL REQUIREMENTS FOR CSHS FINANCIAL ASSISTANCE (1) In order to receive CSHS financial assistance for a particular benefit:

(a) ~~child or youth~~ a CYSHCN must meet the eligibility requirements of ARM 37.57.106; and

(b) a CYSHCN must have an eligible condition that is listed in ARM 37.57.110;

~~(c)~~ (2) ~~†~~The benefit in question must be one of the covered benefits cited in ARM 37.57.110, and the provider must meet the standards of ARM 37.57.117.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.106 ELIGIBILITY FOR BENEFITS CSHS FINANCIAL ASSISTANCE (1) ~~With the exception noted in (6), a child or youth, to be eligible for CSHS benefits, must be:~~ Eligibility criteria for CSHS financial assistance are:

(a) a ~~child or youth~~ CYSHCN with either a disabling physical condition that can be substantially improved or corrected with surgery, or a condition or disease that can be cured, improved, or stabilized with medical treatment, or ~~a child or youth~~

is suspected of having a disabling physical condition or a medical condition or disease;

(b) a CYSHCN is under 19 years of age or ~~under~~ up to 22 years of age if the child or youth and has a disability qualifying condition for which a final cleft surgery or dental work is necessary long-term care is needed and approved by the interdisciplinary team or the program's medical advisor;

(c) a resident of the state of Montana and either a U.S. citizen or a qualified alien as defined under federal statute;

(2) Family income must be verified to determine eligibility. The department will request documentation of income from the applicant.

(a) Family income may include one or more of the following:

(i) the income of both parents if the child resides with both parents;

(ii) the income of the parent with whom the child resides the majority of the year, including any child support received for the child, if the child resides with one parent in a single parent household;

(iii) if the parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the parent with whom the child resides the majority of the year;

(iv) the income of individuals under the age of 19 who live in the home but do not attend school is imputed to the parent with whom the child resides the majority of the year.

(b) Family income does not include:

(i) money received from assets drawn down such as withdrawals from a savings account, an annuity, or for the sale of a house or car;

(ii) gifts, loans, one-time insurance payments, or lump sum compensation for an injury;

(iii) the first \$2,000 of an enrolled tribal member's per capita payment;

(iv) the first \$2,000 of an enrolled tribal member's tribal land income;

(v) the interest earned on (4)(a), (4)(b), or (4)(c);

(vi) dependent care expenses which are deducted from income under the HMK Plus coverage group;

(vii) foster care income for any children unless the only children in the family are foster care; or

(viii) income of any individual with whom a child resides who has no legal obligation to support the child.

(c) Income information will be used by the department to project the family's income.

(d) A member of a family whose income, less any out-of-pocket expenses for health insurance premium, care expenses for children, disabled or elderly adults while adults are working, and earned income disregards is at or less than 200% 250% of the federal poverty income guidelines; and

(e) one of the following:

(i) ineligible for Medicaid HMK Plus or HMK;

(ii) eligible for Medicaid HMK Plus or HMK, but in need of services or benefits financial assistance that are not covered by Medicaid HMK Plus or HMK, or determined nonaccessible but are covered by CSHS; or

(iii) potentially eligible for ~~medicaid~~ HMK Plus or HMK from information provided on the application, the family will be referred to the county office of public assistance for ~~medicaid~~ HMK Plus or HMK eligibility determination.

~~(2)~~ (3) Eligibility for program ~~benefits~~ financial assistance will be determined within 30 days of receipt of the application by the department.

~~(3)~~ (4) Eligibility ~~continues for 12 months from~~ begins on the date an application is received by CSHS and continues for the duration of the federal fiscal year in which the application is received unless the ~~child's or youth's age of the~~ CYSHCN precludes them from participation or the ~~child or youth moves from~~ CYSHCN no longer resides in Montana.

~~(4)~~ (5) A new or renewal application for a subsequent year must be submitted to the department in order for the department to determine if eligibility is to continue and must be completed and approved before any CSHS ~~benefits~~ financial assistance in a subsequent year may be provided.

~~(5)~~ (6) CSHS financial eligibility will be determined in accordance with the financial eligibility guidelines contained in ~~CHIP's~~ HMK's ARM 37.79.201, with the following exceptions:

~~(a) children who are eligible to receive state employee health coverage may be eligible for CSHS benefits;~~

~~(b)~~ (a) children may have health insurance coverage and the out-of-pocket expenses for health insurance premiums are deducted from household income; and

~~(c)~~ (b) CSHS financial eligibility is at or below ~~200%~~ 250% of the federal poverty income guidelines.

~~(6)~~ (7) ~~The above financial eligibility limits do not apply to a child or youth who has or is suspected of having a condition covered by CSHS and wishes to attend a clinic specifically for that condition~~ A CYSHCN attending an interdisciplinary team pediatric specialty clinic does not need to apply for financial assistance.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.109 APPLICATION PROCEDURE FOR CSHS FINANCIAL ASSISTANCE

~~(1)~~ (1) A person who desires CSHS ~~benefits~~ financial assistance for a ~~child or youth~~ CYSHCN must submit a completed application, along with supporting documents required by the department, to the department on a form it prescribes.

~~(2)~~ (2) If the department notifies the applicant that the application is incomplete and is not provided with the requested information within six weeks after the date the applicant was notified of the deficiency, the requested missing information must be received by CSHS within six weeks from the date of notification; otherwise the application will be considered inactive. If the requested information is subsequently received and the ~~child or youth~~ CYSHCN is found to be eligible, the eligibility year will begin on the date the additional requested information is received.

~~(3)~~ (3) If the ~~child or youth~~ CYSHCN is found determined not ineligible, the department will send the applicant a written notice stating the reasons for ineligibility and explaining how an informal reconsideration of its determination may be obtained pursuant to ARM 37.57.112.

(4) If When the applicant CYSHCN is determined eligible, the department will send the applicant a written notice of that fact specifying which conditions services are eligible for CSHS financial assistance and the term of eligibility.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.110 CONDITIONS, BENEFITS AND SERVICES FOR CSHS FINANCIAL ASSISTANCE (1) To the extent department funding allows, and up to a maximum of ~~\$12,000~~ \$2,000 per eligibility federal fiscal year, the department will provide ~~benefits~~ financial assistance as cited in (3) for the eligible conditions listed in (2), subject to the exceptions to ~~benefits~~ financial assistance and conditions in (4) and (5).

(2) Eligible conditions are:

(a) ~~genitourinary disorders~~ endocrine, nutritional and metabolic diseases, and immunity disorders;

(b) ~~gastrointestinal disorders~~ diseases of the blood and blood-forming organs;

(c) ~~metabolic disorders~~ diagnosis only for mental disorders;

(d) ~~neurological disorders~~ diseases of the nervous system and sense organs;

(e) ~~orthopedic disorders~~ diseases of the circulatory system;

(f) ~~craniofacial anomalies, including cleft lip and cleft palate~~ diseases of the respiratory system;

(g) ~~ophthalmic conditions~~ diseases of the digestive system;

(h) ~~pulmonary disorders~~ diseases of the genitourinary system;

(i) ~~endocrine disorders~~ diseases of the skin and subcutaneous tissue;

(j) ~~juvenile rheumatoid arthritis, or similar arthritic disorders~~ diseases of the musculoskeletal system and connective tissue;

(k) ~~cardiovascular disorders~~ congenital anomalies;

(l) ~~chronic infectious disease;~~ certain conditions originating in the perinatal period; and

(m) ~~hematologic disorders;~~ and initial diagnosis evaluation for certain symptoms, signs, and ill-defined conditions.

(n) ~~dermatologic disorders.~~

(3) The following are covered ~~benefits~~ services that may be provided, per eligibility year, to a CSHS-eligible child or youth CYSHCN:

(a) through (c) remain the same.

(d) medical foods for the treatment of a metabolic disorder, including prescriptive supplements for a ~~child~~ CYSHCN with inborn errors of metabolism;

(e) ~~prosthetic devices, such as orthotics for a covered orthopedic condition;~~

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

(h) (g) hearing aids, up to a maximum of ~~\$1,500 per ear per year;~~

(i) through (k) remain the same, but are renumbered (h) through (j).

(k) (k) eyeglasses corrective lenses for a ~~child~~ CYSHCN with a medical disorder-related condition, limited to a single pair of frames per eligibility year up to a maximum of \$175 for frames, lenses and evaluation, plus an additional prescription lens change in six months as needed;

~~(m)~~ (l) disposable and durable medical equipment for covered conditions;
~~(n)~~ (m) apnea monitor purchase or rental for a covered condition (up to one year);

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

(4) No ~~benefits are~~ financial assistance is available for the following:

(a) remains the same.

~~(b) insulin pumps;~~

(c) through (g) remain the same, but are renumbered (b) through (f).

~~(h) wheelchairs;~~

~~(i) (g) transplants, including follow up care;~~

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

~~(k) growth hormone therapy, except for medically established hypothalamic/pituitary insufficiency;~~

~~(l) (i) services provided outside of Montana, unless the required service is not available in-state or, due to the vast distances within Montana, the requirement to obtain in-state services places an undue hardship on a family or has been approved by the program's medical advisor;~~

~~(m) appliances, with the exception of orthopedic braces, prosthetic devices and appliances required for the correction of an orthodontic condition that affects an otherwise CSHS covered condition, such as that caused by the presence of a cleft palate or another syndrome-caused craniofacial anomaly;~~

(n) remains the same, but is renumbered (j).

~~(o) (k) treatment for cleft/craniofacial conditions that are not planned and recommended by a multi-disciplinary cleft/ craniofacial team that meets American cleft palate-craniofacial association parameters. cleft palate team recognized by the American Cleft Palate Association (ACPA) Commission on Approval of Cleft Palate and Craniofacial Teams (CAT); and~~

(l) clinical trial services and medications.

(5) remains the same.

~~(6) Standards for services that may be provided by CSHS are the following:~~

~~(a) to the extent CSHS funding allows and up to a maximum of \$5,000 per person per federal fiscal year, the following services may be provided by the department to persons diagnosed with a CSHS-covered condition:~~

~~(i) resource and referral information;~~

~~(ii) transition information; and~~

~~(iii) nutritional counseling and management, medical formula or foods, and/or prescriptive medications not funded by other sources for a person identified with an inborn error of metabolism.~~

~~(b) services provided may not be covered by another payment source; and~~

~~(c) a person receiving services must:~~

~~(i) be a Montana resident; and~~

~~(ii) live in a household that meets CSHS income standards for benefit eligibility.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS (1) The department will provide ~~benefits financial assistance~~ for a CSHS-eligible ~~child or youth~~ CYSHCN with a covered condition:

(a) and (b) remain the same.

(c) up to a maximum of ~~\$12,000~~ \$2,000 per eligibility year;

(d) up to a ~~the~~ maximum of ~~\$1,500 each~~ \$2,000 for speech, physical, nutritional, occupational, or respiratory therapy related to a covered condition. For ~~children a~~ CYSHCN under age three, CSHS will pay after the early intervention program, part C, of the disabilities services division; and

(e) after all third parties, if any, have paid the provider, in which case the department pays any balance remaining for services ~~not covered by another payment source, within CSHS limits~~ to the lower of the insurance allowed amount or the CSHS allowed amount for the services in question.

(2) The department will pay providers directly for CSHS-eligible ~~care~~ services and will not reimburse clients.

(3) The department will pay eligible providers after the department receives a signed authorization, claim form, and requested documentation that the care has been provided.

(4) ~~A provider, family, or~~ Any individual who erroneously or improperly ~~is paid by~~ receives payment from the department must promptly refund that payment to the department.

(5) A provider who accepts the CSHS level of payment for covered ~~benefits~~ services may not seek additional payment from a CSHS client or their family.

(6) The department will pay up to the following limits for orthodontia care:

(a) Payment for orthodontia for CSHS clients who have cleft or craniofacial conditions requiring orthodontia due to a medical condition with orthodontic implications will be subject to the maximum allowable ~~charge published in the department's orthodontic coverage and reimbursement guidelines updated through July, 2004~~ payment as set forth in CSHS rule.

(b) Payment will be based on a treatment plan submitted by the provider that meets the requirements of the department's orthodontic coverage and reimbursement guidelines and that includes, at a minimum, a description of the plan of treatment, the provider's estimated usual and customary charge, and a time line for treatment. The maximum payable amount for any one phase of treatment is 85%. The department will reimburse 40% of the CSHS allowed amount upon initial billing for each phase of treatment, the remainder being paid in monthly installments as determined by the time line established in the provider's treatment plan for completing orthodontic care. Payment is also subject to any insurance coverage a client may have.

~~(c) A client is limited to:~~

~~(i) an overall lifetime cap of \$7,000 for all orthodontia phases; and~~

~~(ii) the maximum for each phase cited in the department's orthodontic coverage and reimbursement guidelines updated through December 1999.~~

~~(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's orthodontic coverage and reimbursement guidelines. The department hereby adopts and incorporates by~~

~~reference the department's orthodontic coverage and reimbursement guidelines updated through July, 2001. The guidelines, issued by the department to all providers of orthodontic services, inform providers of the requirements applicable to the delivery of services under the medicaid program. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, Child and Adult Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(7) For services to a CSHS client, with the exception of multiple surgeries, a provider will be paid 85% of the actual submitted charge, for If the CSHS client has third-party coverage, the department will pay the remaining balance for services to the lower of the insurance allowed amount or the CSHS allowed amount of the approved services.~~

~~(8) For multiple surgeries, the department will pay at the following rates:~~

~~(a) 85% of the actual charge for multiple surgeries performed during the same admission, but on different days.~~

~~(b) for multiple surgeries performed on the same day, under the same anesthesia:~~

~~(i) involving a single surgical field or single surgical incision, regardless of how many organ systems are involved, performed by one or two surgeons:~~

~~(A) 85% of the actual charge for the first procedure; and~~

~~(B) 75% of the actual charge for the second procedure;~~

~~(ii) involving two surgical fields or two surgical incisions performed by one surgeon, whether the surgery involves separate organ systems, different anatomical locations, or bilateral surgical procedures:~~

~~(A) 85% of the actual charge for the first procedure; and~~

~~(B) 75% of the actual charge for the second and each subsequent procedure.~~

~~(iii) involving two surgical fields or two surgical incisions performed by two surgeons, whether the surgery involves separate organ systems, different anatomical locations, or bilateral surgical procedures, 85% of the actual charge for the first and second procedures.~~

~~(iv) involving bilateral surgical procedures (e.g. bilateral Colles' fracture):~~

~~(A) 85% for the first procedure; and~~

~~(B) 75% for the second procedure.~~

~~(9) (8) Hospitals and surgicenters will be paid 85% of the actual submitted charge, on or after all third-party payers, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the insurance allowed amount or the CSHS allowed amount for the services in question for the date of occurrence for inpatient and outpatient services.~~

~~(10) (9) Dentists will be paid 85% of billed charges, or after all third-party payers, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the insurance allowed amount or the CSHS allowed amount for an annual dental exam and dental extractions related to active or anticipated orthodontia orthodontic treatment.~~

~~(11) (10) In addition to the above, the department will pay:~~

~~(a) the lesser of either the actual charge for drugs and other prescribed supplies, or the wholesale price cited in the 2002 Drug Topics Redbook Pharmacy's~~

Fundamental Reference, less 15%, plus a \$4.70 dispensing fee and any minor adjustments deemed reasonable by the department to reflect market changes on the Medicaid point-of-sale system;

(b) ~~85% of the cost of orthotics and prosthetic devices (orthopedic only) durable medical equipment to the appropriate amount when allowing financial assistance, or to the maximum amount set by the program for the federal fiscal year;~~

(c) ~~400%~~ 85% of the cost of specialized formula and foods and prescriptive or nonprescriptive medications prescribed by a physician for inborn errors of metabolism; and

(d) ~~400%~~ 85% of the cost of syringes and disposable medical equipment for the treatment of covered conditions; and

~~(e) rental or purchase of durable medical equipment authorized by CSHS professional staff.~~

~~(12) (11) Clinic services provided at a clinic funded or supported by the department are provided free of charge, regardless of the client's household income. A CYSHCN who attends interdisciplinary pediatric specialty clinics, supported by CSHS, is not responsible for copays, deductibles, or coinsurance, nor will they be balance-billed.~~

~~(13) The department hereby adopts and incorporates by reference the 2002 Drug Topics Redbook Pharmacy's Fundamental Reference, which suggests prices for drugs. Anyone wishing to examine any of the above references may do so by contacting the department's CSHS program at Department of Public Health and Human Services, Child and Adult Health Resources Division, Children's Special Health Services Program, 1218 East Sixth Avenue, Helena, MT 59601, phone: 444-3617.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.117 CSHS PROVIDERS RECEIVING CSHS FUNDS:

REQUIREMENTS (1) In order to be a CSHS provider for a CSHS client, a provider must meet the following requirements:

(a) A physician or surgeon must:

(i) be currently licensed by the state of Montana pursuant to Title 37, chapter 3, MCA, ~~to practice medicine as defined by state law if a Montana resident,~~ or currently licensed to practice medicine in the state in which they reside;

(ii) through (b) remain the same.

(c) A pediatric dentist may treat a ~~child or youth~~ CYSHCN under the age of ~~40~~ ten for orthodontia and must:

(i) through (2) remain the same.

(3) A provider must accept CSHS level of payment for services and may not seek additional payment from a CSHS client or family.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.118 PROGRAM RECORDS (1) The department shall ~~shall~~ will retain specialty clinic participants records of CSHS services provided for a client for a period of five years after the child reaches the age of 18 as set forth in the Montana Secretary of State records management form #1, record series profile, program code 6901073, records series title "Specialty Clinic Participant Case Files."

(2) Prior to destroying specialty clinic participant records, the department shall ~~shall~~ will advertise that the records may be obtained by those to whom they pertain by publishing a notice in Montana's major newspapers once per week for three consecutive weeks.

(3) remains the same.

(4) The department will retain financial assistance client records for five years from the last contact date, as set forth in the Montana Secretary of State records "Financial Assistance Case Files."

(5) The financial assistance records will be destroyed after the program receives approval from the state records committee required under 2-6-212, MCA.

(6) The department will retain all electronic data permanently as set forth in the Montana Secretary of State records management form #1, record series profile program code 6901073, records series title "CHRIS Files."

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing amendments to ARM 37.57.102, 37.57.105, 37.57.106, 37.57.109, 37.57.110, 37.57.111, 37.57.117, and 37.57.118 pertaining to Children's Special Health Services (CSHS). CSHS is located in the Family and Community Health Bureau of the Montana Department of Public Health and Human Services. The program is charged by the Federal Maternal Child Health Block Grant (MHBG) to: "Support development and implementation of comprehensive, culturally competent, coordinated systems of care for children and youth who have or are at risk for chronic physical, developmental, behavioral, or emotional condition and who require health and related services of a type or amount beyond that required by children generally."

The purpose of the proposed rule amendments is to update the administrative rules governing the CSHS program. These updates include the revision of the Federal Poverty Limit, clarifying the financial assistance application process, updating the conditions eligible for financial assistance, and reimbursement cap for financial assistance. Some terms and definitions were changed to reflect current usage. Other changes have been proposed for ease of readability and clarification.

ARM 37.57.102

The proposed amendments provide definitions for the administration of the CSHS program. Previously used terms have been updated to reflect the current management of the program. Terms such as "HMK and HMK Plus" (updated state

program names), "eligibility year" (reflects the span of time for coverage), and "interdisciplinary team" (to define a service).

ARM 37.57.105 and 37.57 109

These sections are proposed to be amended for clarification purposes to clarify the requirements for financial assistance and the application process.

ARM 37.57.106

The proposed amendments reflect program name changes within the department e.g., Healthy Montana Kids (formerly CHIP), specifies the duration of the eligibility year, and has increased the federal poverty level guideline used by CSHS from 200% to 250% to enable CSHS to complement the HMK program. The potential impact of this amendment is not expected to exceed four children or youth with special health care needs.

ARM 37.57.109

The department is proposing to amend this section to clarify the functions and limitations of CSHS financial assistance.

ARM 37.57.110

The department is proposing to amend this section to correlate with how the program is currently operating. The proposed amendment reflects the funding source guidance to limit assistance when applied as a direct service. The funding source is federal funds allocated via the Maternal and Child Health Block Grant (MCHB). Each federal fiscal year (FFY) the CSHS allocation from the MCHB is reviewed and a determination made as to the maximum funds available for each CSHS enrolled client. CSHS has experienced a decline in number of financial assistance due to the Children Health Insurance Program (CHIP) expansion. Recently CHIP became Healthy Montana Kids (HMK) and increased the federal poverty level (FPL) to 250%. Medicaid was renamed, Healthy Montana Kids Plus (HMK+), and underwent expansion (FPL 133%). Generally, CSHS finds the majority of financial assistance enrollees have health care coverage and requests do not exceed \$2000.

ARM 37.57.111

The department is proposing to amend this section as it is necessary to provide a lower maximum amount of funding available to each client reflecting current practice. The allocation from the block grant is reviewed each FFY and determination made as to the amount each client will receive for the current FFY. The method of CSHS payment is calculated based on CSHS paying secondary to health care coverages. Since block grant funding has decreased, the specified break down for reimbursement is no longer needed of multiple procedures e.g., surgeries.

ARM 37.57.117

The department is proposing to amend this section to ensure providers do not balance-bill the client families.

ARM 37.57.118

The department is proposing to amend this section to correlate with current record destruction retention schedules as recorded with the Montana Secretary of Records and Information Bureau for three types of records created in the CSHS program. Records destruction are processed as required by 2-6-212, MCA.

Fiscal Impact

The department expects the proposed amendments in this notice to have a fiscal impact of less than \$8000.

The proposed amendments will expand eligibility to include approximately four individuals in Montana per federal fiscal year.

Alternative Considered

The alternative to the proposed rule amendments would be to make no changes to the existing rules. Leaving the existing rules unchanged would adversely affect CSHS clients that qualify on the income basis for Health Montana Kids and Healthy Montana Kids Plus, but not for CSHS financial assistance.

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: 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., July 5, 2012.

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

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

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

/s/ Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State May 29, 2012.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I (6.10.701), New Rule II)
(6.10.702), New Rule III (6.10.703),)
New Rule IV (6.10.705), New Rule V)
(6.10.706), and New Rule VI)
(6.10.707) pertaining to Securities)
Restitution Fund)

TO: All Concerned Persons

1. On April 12, 2012, the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI) published MAR Notice No. 6-199 regarding the public hearing on the proposed adoption of the above-stated rules at page 672 of the 2012 Montana Administrative Register, issue number 7.

2. On May 8, 2012, the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI) held a public hearing to consider the proposed adoption of the above-stated rules.

3. One commenter at the hearing testified that the proposed rules would benefit Montana citizens without incurring any cost to Montana taxpayers because funding for the Restitution Fund would come from individuals and firms who violated the Securities Act and not the state General Fund. There were no other comments at the hearing and no written comments were received up to the comment deadline of May 16, 2012.

4. The commissioner has adopted ARM 6.10.701, 6.10.702, 6.10.703, 6.10.705, 6.10.706, and 6.10.707 exactly as proposed.

/s/ Brett O'Neil
Brett O'Neil
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State May 29, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.38.208, 17.38.225, 17.38.234,)	
17.38.301, 17.38.302, 17.38.305,)	(PUBLIC WATER AND SEWAGE
17.38.310, and 17.38.312 pertaining to)	SYSTEM REQUIREMENTS)
treatment requirements, control tests,)	
testing and sampling records and)	
reporting requirements, definitions,)	
incorporation by reference, cross-)	
connections: regulatory requirements,)	
voluntary cross-connection control)	
programs: application requirements,)	
and standards and requirements for)	
cross-connection control)	

TO: All Concerned Persons

1. On February 9, 2012, the Board of Environmental Review published MAR Notice No. 17-331 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 267, 2012 Montana Administrative Register, issue number 3.
2. The board has amended the rules exactly as proposed.
3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: Comments were received from the public works department of a city that implements a cross-connection control program. The city noted that the cross-connection rules can require that backflow prevention devices be installed in private water service lines. These private lines are also regulated under state plumbing codes adopted by the Montana Department of Labor and Industry. The city stated that there appears to be a lack of coordination among the state agencies regarding cross-connection requirements. For example, these rules require that backflow prevention devices be maintained in accordance with manufacturer's specifications. ARM 17.38.305(3). The plumbing code sets standards for installation of backflow prevention devices, but does not require testing either upon installation or on any periodic schedule thereafter.

RESPONSE: The proposed amendments do not change ARM 17.38.305(3), other than renumbering, so this comment is outside the scope of this rulemaking. However, the comment can be addressed to clarify the application of the cross-connection rules. Backflow prevention devices may be subject to both the cross-connection rules and the plumbing codes. Under the cross-connection rules, backflow devices must be periodically tested if the manufacturer recommends it. In that case the public water supplier must require the line owner to provide evidence

of periodic testing of the device. This requirement does not conflict with the plumbing code.

COMMENT NO. 2: Is a building, such as the DEQ Metcalf Building, which serves 25 or more people daily, considered to be a public water supply system under 75-6-102(14), MCA?

RESPONSE: The question is outside the scope of this rulemaking, but can be addressed to clarify the application of the cross-connection rules. A building that serves 25 or more people daily for any 60 or more days in a calendar year could be considered a "public water supply system" as the term is defined in 75-6-102(14), MCA. However, the department applies these rules only to public water supply systems that have their own water source or have water mains with multiple service connections.

COMMENT NO. 3: Many backflow events affect internal building water quality but do not reach the public water main except in large events. Who has responsibility for drinking water quality in that case?

RESPONSE: The cross-connection rules apply to public water supply systems that have their own water source or have water mains with multiple service connections. However, the rules require the public system to address potential sources of contamination from any source, whether public or private. See definition of "cross-connection" in 75-6-102(5), MCA. The proposed amendments to the rules have not changed this aspect, but this question will be addressed to help clarify the application of the rules.

Cross-connections within private buildings can contaminate the drinking water within the building and, if there is backflow from the building into the public water supply system, the private cross-connection can contaminate the public drinking water supply. Consequently, the rules require a public water supplier to address cross-connections that are identified within the plumbing systems of its customers. The public water supplier must eliminate an identified cross-connection or, if that is not reasonably practicable and the cross-connection creates a health or water contamination hazard, the hazard must be eliminated by installation of an approved backflow prevention device or assembly. ARM 17.38.305. Alternatively, the public water supplier has the option to disconnect a customer whose plumbing creates a potential hazard.

COMMENT NO. 4: If private building owners are not regulated under these rules, there is a "disconnect" that limits the extent of authority that a public water supply system can exert over cross-connection issues.

RESPONSE: As stated in the Response to Comment No. 3, a public water supplier has the option to discontinue service to connections that may contaminate the public water supply. This authority gives the public water supplier the ability to enforce the requirements of the cross-connection rules.

COMMENT NO. 5: A survey of service connections has shown that many high-hazard service connections have no backflow protection. Of the high-hazard connections with backflow protection, few are being tested. Also, many fire lines

have not been tested for backflow protection due to lack of clear requirements to do so. What requirements do the proposed rules place on the city or on the affected businesses to correct these problems and at whose cost?

RESPONSE: As stated in the Response to Comment No. 3, the rules require public water supply systems to address potential sources of contamination from any source, whether public or private. The public water supplier, in this case the city, must require its customers to address cross-connections that are identified in their systems. This requirement is clearly stated in the rules. Standards for backflow prevention devices or assemblies are also set out in the rules and incorporated documents. The owner of the system with the cross-connection usually pays the cost of any corrective action.

COMMENT NO. 6: Under the proposed amendments, the definition of "approved backflow prevention assembly or devices" in ARM 17.38.301(1) no longer references the "List of Approved Backflow Prevention Assemblies." How will a city know which backflow prevention assemblies are approved?

RESPONSE: A public water supplier must now contact the department to determine whether a particular backflow prevention device or assembly is approved. The department will continue to use the "List of Approved Backflow Prevention Assemblies" as guidance. However, because the List changes continually, it is not practical to incorporate it by reference in rules. The change to the definition will have the added benefit of allowing the department to consider proposed assemblies or devices that are not on the List if they can be adequately justified.

COMMENT NO. 7: The definitions of "cross-connection" are not identical in the plumbing codes, the Manual of Cross-Connection Control, and 75-6-102, MCA.

RESPONSE: The three definitions of "cross-connection" are not identical, but the substance of the definitions is the same. A cross-connection is essentially a connection or potential connection between a potable water system and anything else that has the potential to lead to contamination of that water system.

COMMENT NO. 8: The American Water Works Association (AWWA) should not be eliminated from the definition of "certified backflow prevention assembly tester" in ARM 17.38.301(7). The proposed rules should list criteria for acceptable certification.

RESPONSE: The AWWA offers training and testing but does not certify backflow prevention assembly testers, so it is necessary to delete AWWA from the list of entities that issue certification. The proposed rules do not list criteria for certification because the department has no authority to certify a person to test backflow prevention assemblies.

COMMENT NO. 9: The proposed definition of "degree of hazard" in ARM 17.38.301(9) uses the terms "contaminant" and "pollutant." Do these terms have the same meaning as the terms "contamination" and "pollution" as defined in 75-6-102(4) and (12)(a), MCA?

RESPONSE: The terms "contaminant" and "pollutant," as used in these rules, do not have the same meaning as the terms defined in 75-6-102, MCA. The

"degree of hazard" definition is based on the definition in the Manual for Cross-Connections, and the terms "contaminant" and "pollutant" have special meanings that are commonly understood in the cross-connection industry. The definition is necessary to ensure that the regulated community properly understands those terms.

COMMENT NO. 10: What authority does the board have to regulate degrees of hazards and the risks they pose outside of adopted water quality or drinking water quality standards beyond "the point of service?"

RESPONSE: The board's authority to adopt rules that address contamination from cross-connections is found in 75-6-103, MCA. The statutory authority does not limit the board to regulating cross-connections based on promulgated water quality or drinking water quality standards. The board has authority to require a public water supplier to address a contamination source beyond the "point of service" because the definition of "cross-connection" in statute refers to both public and private sources of contamination. See 75-6-102(5), MCA.

COMMENT NO. 11: Several definitions in the incorporated Manual of Cross-Connection Control conflict with, or do not exist in, ARM 17.38.101 regarding delegated authority to local government for review of plans for public water and sewage systems.

RESPONSE: The definitions in ARM 17.38.101 pertain to the review of plans for proposed public water and sewage systems and do not apply to the cross-connection rules in ARM Title 17, chapter 38, subchapter 3.

COMMENT NO. 12: The proposed amendments update the incorporation of the Manual of Cross-Connection Control from the 1993 to the 2009 edition. Many of the practices contained in the Manual are outside the scope and authority of the department to require.

RESPONSE: The comment is not specific about what practices the commentor believes may be outside the scope of the board's authority. The board believes that its statutory authority to promulgate cross-connection rules is broad enough to allow incorporation of the Manual of Cross-Connection Control. See 75-6-103, MCA.

COMMENT NO. 13: With the adoption of the Manual for Cross-Connection Control, will the department be requiring and enforcing testing of the devices and assemblies?

RESPONSE: The rules already require that backflow prevention assemblies and devices be tested according to the manufacturer's specification. ARM 17.38.305(3), renumbered in this rulemaking as ARM 17.38.305(4). The public water supplier is responsible to ensure that cross-connection assemblies or devices are installed and maintained properly. A violation of the rules can form the basis for an enforcement action by the department under 75-6-110, MCA.

COMMENT NO. 14: Removal of the "List of Approved Backflow Prevention Assemblies" does not add any clarity. Will the department now undertake the

rigorous testing that is currently done by others, and how will those subject to the rules know what has been adopted?

RESPONSE: The department will not, itself, test backflow prevention assemblies, but will continue to rely on the List for guidance about acceptable equipment. As stated in the Response to Comment No. 6, the change to the definition will have the added benefit of allowing the department to consider proposed assemblies or devices that are not on the List if they can be adequately justified. A public water supplier must now contact the department to determine whether a particular backflow prevention assembly is approved.

COMMENT NO. 15: The provision in proposed ARM 17.38.305(3) stating that backflow prevention assemblies and devices must be approved by the department implies that future rule changes will be necessary to adjust to changing industry standards.

RESPONSE: Proposed ARM 17.38.305(3) will allow the department to approve assemblies on the "List of Approved Backflow Prevention Assemblies" and will also allow the department to approve assemblies that are not on the List which have been tested by another organization and found to be appropriate for the system. It is not anticipated that rule changes will be necessary each time the industry standard changes.

COMMENT NO. 16: Is the requirement in ARM 17.38.305 to eliminate cross-connections applicable to a public water supply system if the system does not have an approved voluntary cross-connection control program meeting the requirements of ARM 17.38.310 through 17.38.312?

RESPONSE: The requirements in ARM 17.38.305 apply to public water supply systems regardless of whether the systems have an approved voluntary cross-connection control program. Approval by the department of a cross-connection control program provides the benefit of allowing the public water supply system to verify that its cross-connection control program is in compliance with all of the requirements of the cross-connection rules.

COMMENT NO. 17: Can a public water supplier adopt and operate a voluntary cross-connection control program without making application to department for review and approval?

RESPONSE: A public water supplier is required to address cross-connections under ARM 17.38.305 but is not required to submit its cross-connection control program to the department for review. However, under the new amendments, the public water supplier must contact the department to determine whether a particular backflow prevention assembly is approved before it is installed.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, May 29, 2012.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.55.109 pertaining to incorporation by)
reference) (CECRA)

TO: All Concerned Persons

1. On April 12, 2012, the Department of Environmental Quality published MAR Notice No. 17-332 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 678, 2012 Montana Administrative Register, issue number 7. On April 26, 2012, the department published an amended MAR Notice No. 17-332 at page 814, 2012 Montana Administrative Register, issue number 8.

2. The department has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

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

By: /s/ Richard H. Opper
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, May 29, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) CORRECTED NOTICE OF
RULE III reporting certificate changes) ADOPTION

TO: All Concerned Persons

1. On February 23, 2012, the Department of Labor and Industry (department) published MAR notice no. 24-101-262 regarding the proposed adoption of the above-stated rule, at page 339 of the 2012 Montana Administrative Register, issue no. 4.

2. On May 10, 2012, the department published MAR notice no. 24-101-262 regarding the notice of adoption at page 994 of the 2012 Montana Administrative Register, issue no. 9.

3. This corrected notice is being filed to correct an error due to the duplicate numbering of an adopted rule in Title 24. The new renumbering of the rule is outlined in paragraph 4 of this notice.

4. The rule to be corrected is as follows:

<u>RULE #</u>	<u>ADOPTED #</u>	<u>CORRECTED #</u>	<u>CATCHPHRASE</u>
III	24.33.141	24.33.142	Reporting Certificate Changes

5. The corrected replacement page will be submitted to the Secretary of State's office on June 30, 2012.

/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 29, 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
Rule I pertaining to the Montana)
tobacco settlement fund)

TO: All Concerned Persons

1. On April 12 2012, the Department of Public Health and Human Services published MAR Notice No. 37-578 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 723 of the 2012 Montana Administrative Register, Issue Number 7.

2. The department has adopted the above-stated rule as proposed: New Rule I (37.117.101).

3. No comments or testimony were received.

/s/ Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State May 29, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.13.101 and 42.13.111)
relating to alcohol server training)
compliance)

TO: All Concerned Persons

1. On April 26, 2012, the department published MAR Notice Number 42-2-880 regarding the proposed amendment of the above-stated rules at page 880 of the 2012 Montana Administrative Register, Issue Number 8.

2. No comments were received. Therefore, the department amends the rules as proposed.

3. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State May 29, 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.

ADMINISTRATION, Department of, Title 2

I	Renewal Fees for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators, p. 1853, 2392
I-IV	Financial Responsibility of Mortgage Loan Originators and Control Persons - Ultimate Equity Owners of Mortgage Entities, p. 2108, 183
I-IX	Bank Debt Cancellation Contracts - Debt Suspension Agreements, p. 1430, 2801
I-IX	Credit Union Debt Cancellation Contract - Debt Suspension Agreements, p. 1842, 2816
2.21.901	and other rules - Disability and Maternity Leave Policy, p. 2101, 2513
2.21.6401	and other rules - Performance Management and Evaluation, p. 2105, 2514
2.59.104	Semiannual Assessment for Banks, p. 460, 883
2.59.1701	and other rules - Mortgage Services, p. 778
(Public Employees' Retirement Board)	
2.43.1306	Actuarial Rates, Assumptions, and Methods for Valuation Purposes - Actuarial Equivalence for the Board-Administered Defined Benefit Retirement Systems, p. 2196, 2800
2.43.2608	and other rules - Return of PERS Retirees to PERS-Covered Employment, p. 1839, 2515

- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 2332, 2799
- 2.43.5002 and other rules - Operation of Volunteer Firefighters' Compensation Act Administered by the Montana Public Employees' Retirement Board, p. 1572, 2261

(State Compensation Insurance Fund)

- 2.55.320 and other rule - Classifications of Employments - Construction Industry Premium Credit Program, p. 2580, 394

AGRICULTURE, Department of, Title 4

- I Eurasian Watermilfoil Management Area, p. 802, 1017
- I-V State Sampling Program, p. 935
- I-VI Nursery Program, p. 150, 735
- 4.12.1024 and other rule - Commodity Warehouses, p. 159, 497
- 4.12.1301 and other rules - Quarantine Program, p. 162, 498
- 4.12.1405 and other rules - Late Fees for Services, p. 154, 496

STATE AUDITOR, Title 6

- I-VI Securities Restitution Fund, p. 672
- 6.6.2801 and other rules - Surplus Lines Insurance Transactions, p. 1857, 2624
- 6.6.6501 and other rules - Actuarial Opinions, p. 2199, 2623
- 6.6.6705 and other rules - Valuation of Life Insurance Policies, p. 2584, 304
- 6.6.6802 and other rules - Formation and Regulation of Captive Insurance Companies, p. 2118, 2516

COMMERCE, Department of, Title 8

- 8.2.503 Administration - Submission of Applications of the Quality Schools Grant Program, p. 2443
- 8.2.503 Administration of the Quality Schools Grant Program - Project Grants, p. 2721, 395
- 8.94.3726 Incorporation by Reference for the CDBG Program, p. 135, 566
- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 530, 992
- 8.94.3814 Treasure State Endowment Program, p. 1866, 2518
- 8.94.3815 Treasure State Endowment Program, p. 2445
- 8.94.3815 and other rules - Governing the Submission and Review of Applications for Funding Under the Treasure State Endowment Program (TSEP), p. 2723, 396
- 8.99.303 Certified Regional Development Corporations Program, p. 533, 993
- 8.99.901 and other rules - Big Sky Economic Development Trust Program, p. 805

- 8.111.602 and other rule - Low Income Housing Tax Credit Program - Tax Credit Allocation Procedure, p. 1, 499
- 8.119.101 Tourism Advisory Council, p. 1439, 2519

EDUCATION, Department of, Title 10

- 10.13.307 and other rules - Traffic Education, p. 2447, 76
- 10.16.3803 and other rules - Special Education, p. 1772, 2262

(Board of Public Education)

- 10.54.3610 and other rules - Content Standards for English Language Arts and Literacy - General Standards - Communication Arts Content Standards and Performance Descriptors, p. 1868, 2520
- 10.54.4010 and other rules - Content Standards for Mathematics - Mathematics Content Standards and Performance Descriptors, p. 1931, 2522
- 10.57.217 and other rules - Educator/Specialist Discipline, p. 244, 1039
- 10.57.412 and other rule - Areas of Specialized Competency, p. 241, 1038
- 10.55.909 Student Records, p. 2461, 305

(Montana Arts Council)

- 10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 535

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I-III Bodies of Water Identified as Contaminated With Eurasian Watermilfoil, p. 811
- 12.9.602 and other rules - Upland Game Bird Release and Habitat Enhancement Programs, p. 463

(Fish, Wildlife and Parks Commission)

- I Deer Licenses Separated From Nonresident Big Game Combination Licenses, p. 1022
- I-III License Auctions and Lotteries, p. 1024
- 12.6.1112 and other rule - Falconry, p. 2467, 501
- 12.6.1401 and other rules - Raptor Propagation, p. 2463, 500
- 12.6.2204 and other rule - Adding Tilapia as a Controlled Species, p. 1019
- 12.11.610 and other rules - Recreational Use Rules on the Bitterroot River, Blackfoot River, and Clark Fork River, p. 767, 2524
- 12.11.2308 and other rules - No Wake Zones Surrounding Commercial Marinas, p. 253, 884

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.103 and other rules - Application Contents - Review Procedures - Compliance With Local Requirements - Certificate of Approval -

- Certification of Local Department or Board of Health - Sewage Systems, p. 1577, 2278
- 17.40.201 and other rules - Definitions - Classification of Systems - Certification of Operators - Examinations - Certified Operator in Charge of System-Exceptions, p. 257, 886
- 17.50.203 Completion of Shielding, p. 1442, 2142
- 17.55.109 Incorporation by Reference, p. 678, 814
- 17.56.101 and other rules - Definitions - Cleanup Plan - Release Categorization, p. 1775, 2279
- 17.56.308 and other rules - Underground Storage Tanks - Operating Tags - Delivery Prohibition, p. 1048, 2139
- 17.56.402 Petroleum UST Systems, p. 264
- 17.74.301 and other rules - Incorporation by Reference - OSHA Preclusion - Asbestos Project Management, p. 493, 718, 2264

(Board of Environmental Review)

- 17.8.801 and other rules - Air Quality - Definitions - Ambient Air Increments - Major Stationary Sources - Source Impact Analysis - Source Information - Sources Impacting Federal Class I Areas - Definitions - When Air Quality Permit Required - Baseline for Determining Credit for Emissions - Air Quality Offsets, p. 799, 2134
- 17.24.301 and other rules - Definitions - Format - Data Collection - Supplemental Information - Baseline Information - Operations Plan - Reclamation Plan - Plan for Protection of the Hydrologic Balance - Filing of Application and Notice - Informal Conference - Permit Renewal - Transfer of Permits - Administrative Review - General Backfilling and Grading Requirements - Blasting Schedule - Sedimentation Ponds - Other Treatment Facilities - Permanent Impoundments - Flood Control Impoundments - Ground Water Monitoring - Surface Water Monitoring - Redistribution and Stockpiling of Soil - Establishment of Vegetation - Soil Amendments - Management Techniques - Land Use Practices-Monitoring -Period of Responsibility - Vegetation Measurements - General Application and Review Requirements - Disposal of Underground Development Waste - Permit Requirement - Renewal and Transfer of Permits - Information and Monthly Reports - Drill Holes - Bond Requirements for Drilling Operations - Notice of Intent to Prospect - Bonding - Frequency and Methods of Inspections - Department's Obligations Regarding the Applicant/Violator System - Department Eligibility Review - Questions About and Challenges to Ownership or Control Findings - Information Requirements for Permittees - Permit Requirement-Short Form - Coal Conservation, p. 2726, 737
- 17.24.902 and other rule - General Performance Standards - Rules Not Applicable to In Situ Coal Operation, p. 1027
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89, 1244, 5

- 17.30.1201 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Effluent Limitations and Standards - Standards of Performance - Treatment Requirements, p. 771, 2131
- 17.38.208 and other rules - Treatment Requirements - Control Tests - Testing and Sampling Records and Reporting Requirements - Definitions - Incorporation by Reference - Cross-Connections: Regulatory Requirements - Voluntary Cross-Connection Control Programs: Application Requirements - Standards and Requirements for Cross-Connection Control, p. 267

TRANSPORTATION, Department of, Title 18

- I & II Fuel Tax Refund for Agricultural Uses, p. 330, 888
- 18.6.202 and other rules - Outdoor Advertising, p. 2470, 185
- 18.6.215 Outdoor Advertising Fees, p. 816
- 18.7.301 and other rules - Motorist Information Signs, p. 2393
- 18.8.101 and other rules - Motor Carrier Services, p. 819

CORRECTIONS, Department of, Title 20

- I-V Education of Exonerated Persons, p. 334
- 20.7.506 and other rules - Siting - Establishment - Expansion of Prerelease Centers, p. 1339, 2030, 2395

JUSTICE, Department of, Title 23

- 23.4.201 and other rules - Drug and Alcohol Analyses, p. 681
- 23.6.105 and other rules - Removal of a Member of the Tow Truck Complaint Resolution Committee - Removing References to the Public Service Commission and Satellite Operations - Clarifying Requirements Regarding Insurance - Requirements for Safety Certification of Tow Trucks - Extending the Time Period for Safety Certification of Tow Trucks, p. 1783, 2396
- 23.15.306 Mental Health Therapists, p. 1585, 2143

(Board of Crime Control)

- 23.14.204 and other rules - Duties and Functions of the Board of Crime Control, p. 275, 615, 743

(Gambling Control Division)

- 23.16.117 and other rules - Change in Business Entity Type - Transfer of Interest to a New Owner - Change of Liquor License Type - Change of Location for a Licensed Manufacturer, Distributor, or Route Operator - Card Game Tournaments - Licensure of Sports Tab Sponsors - Video Gambling Machine Bill Acceptors - Software Specifications for Video Keno Machines, p. 2205, 2628

- 23.16.1702 and other rules - Sports Pool Card Interval Payouts - Authorized Sports Pools - Design and Conduct of Sports Tab Game Payouts - Sports Tab Game Prizes, p. 7, 402

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I Registration for Out-of-State Volunteer Professionals, p. 2335, 79
I-VI Stay at Work/Return to Work for Workers' Compensation, p. 836
24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195, 573
24.11.462 and other rule - Unemployment Insurance, p. 473, 1040
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2484, 306
24.29.601 and other rules - Workers' Compensation Insurance Coverage Under Compensation Plan No. 1 and Plan No. 2, p. 283, 403
24.29.601 and other rules - Workers' Compensation Insurance Coverage Under Compensation Plan No. 1 and Plan No. 2, p. 693
24.33.121 Construction Contractor Registration Fees - Evidence of Compliance With Laws - Construction Contractor Registration Requirements, p. 339, 994

(Board of Alternative Health Care)

- 24.111.409 Inactive Status - Naturopathic Physician National Substance Formulary List - Direct-Entry Midwife Apprenticeship Requirements - Naturopathic Physician Continuing Education Requirements - Midwives Continuing Education Requirements, p. 345

(Board of Architects and Landscape Architects)

- 24.114.501 and other rules - Architect Examination - Landscape Architect Applications - Education and Experience, p. 1445, 2397

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - General Requirements - Licensing - School Requirements - Teacher-Training - Salon Preparation Storage and Handling - Continuing Education - Unprofessional Conduct, p. 2591, 616

(Board of Chiropractors)

- 24.126.301 and other rules - Definitions - Interns and Preceptors - Applications for Certification - Renewals - Continuing Education, p. 2212, 503

(Board of Dentistry)

24.138.509 and other rules - Dental Hygiene Limited Access Permit - Medical Assistance Program Relapse - Dentist Administration of Anesthesia - Anesthesia Definitions - Committee - Permits, p. 1791, 2629

(State Electrical Board)

24.141.405 and other rule - Fee Schedule - Nonroutine Applications, p. 1347, 1588, 2398

(Board of Funeral Service)

24.147.401 Fee Schedule, p. 351, 890

(Board of Hearing Aid Dispenser)

24.150.301 and other rules - Definitions - Fees - Record Retention - Examination - Transactional Document Requirements, p. 294, 894

(Board of Medical Examiners)

24.156.1401 and other rules - Acupuncturist Licensure - Unprofessional Conduct - Physician Assistant Supervision - Chart Review - Acupuncturist Discipline Reporting - Continuing Education - Physician Assistant Performing Radiologic Procedures - Acupuncture School Approval, p. 1591, 404, 504

(Board of Nursing)

24.159.301 and other rules - Definitions - Fees - Faculty for Practical Nursing Programs - Medication Aides - Prohibited Intravenous Therapies - Licensure by Examination - Medication Aides - Nurse Reexamination, p. 1350, 2144

24.159.2001 and other rules - Nurses' Assistance Program, p. 2338, 996

(Board of Outfitters)

24.171.401 and other rules - Fees - Outfitter Records - Safety Provisions - Inactive License - Guide License - Determination of Client Hunter Use - Renewals - Web Site Posting - Successorship, p. 1265, 2149

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Wholesale Drug Distributor Licensing - Registered Pharmacist Continuing Education - Use of Contingency Kits, Definition - Information Required for Submission - Electronic Format Required for the Transmission of Information - Requirements for Submitting Prescription Registry Information - Failure to Report Prescription Information - Registry Information Review - Unsolicited Patient Profiles - Access to Prescription Drug Registry Information - Registry Information Retention - Advisory Group - Prescription Drug Registry Fee - Release of Prescription Drug Registry Information to Other Entities - Interstate Exchange of Registry Information, p. 2606, 506

24.174.301 and other rules - Definitions - Dangerous Drug Fee Schedule - Administration of Vaccines by Pharmacists - Transmission of Prescriptions - Identification of Pharmacist-in-Charge - Minimum Information Required for Licensure - Telepharmacy Operations - Acceptable Cancer Drugs - Emergency Prescription Refills - Remote Medication Order Processing Services - Schedule I, II, III, IV, and V Dangerous Drugs - Board-Established Medical Assistance Program - Quality Improvement Program - Limited Service Pharmacy - Class IV Facility, p. 2761, 896

(Board of Physical Therapy Examiners)

24.177.401 and other rules - Examinations - Temporary Licenses - Licensure of Out-of-State Applicants - Foreign-Trained Physical Therapy Applicants - Continuing Education - Unprofessional Conduct - Screening Panel, p. 939

(Board of Plumbers)

24.180.301 and other rules - Definitions - Journeyman Must Work in the Employ of Master - Master Plumbers Registration of Business Name - Nonroutine Applications, p. 476

(Board of Private Security Patrol Officers and Investigators)

24.182.401 and other rules - Fee Schedule - Training Courses Standards - Curriculum, p. 1603, 2537

(Board of Psychologists)

24.189.401 Fee Schedule - Nonresident Psychological Services - Application Procedures - Required Supervised Experience - Work Samples - Examination - Professional Responsibility - Temporary Permit, p. 354, 1041

(Board of Professional Engineers and Professional Land Surveyors)

24.183.404 and other rules - Fee Schedule - Certificate of Authorization - Application - Grant and Issue Licenses - Uniform Standards, p. 1449, 80

(Board of Public Accountants)

24.201.501 and other rules - Education Requirements - Out-of-State Applicants - Retired Status - Profession Monitoring - Renewal and Continuing Education - Advisory Committee - Continuing Education Reporting for Permit to Practice - Reinstatement, p. 543

(Board of Real Estate Appraisers)

24.101.413 and other rules - Renewal Dates - Requirements - Fees - Definitions - Appraisal Management, p. 1610, 2401

24.207.402 Adoption of USPAP by Reference, p. 2487, 745

24.207.505 and other rule - Qualifying Education Requirements for Licensed Real Estate Appraisers - Residential Certification, p. 1362, 2400

(Board of Realty Regulation)

24.210.301 and other rules - Definitions - Fee Schedule - Trust Account Requirements - Internet Advertising Rules - Brokers - Salespersons - Property Management - Public Participation - Course Provider, p. 556

24.210.667 and other rule - Continuing Real Estate Education - Continuing Property Management Education, p. 815, 2280

(Board of Social Work Examiners and Professional Counselors)

I-XII Qualification of Social Workers and Professional Counselors to Perform Psychological Testing, Evaluation, and Assessment, p. 533, 2153

24.101.413 and other rules - Renewal Dates - Requirements - Licensure - Regulation of Marriage and Family Therapists, p. 550, 2158

LIVESTOCK, Department of, Title 32

32.2.404 and other rules - Department Livestock Permit Fees - Miscellaneous Fees - Definitions - Bison Unlawfully Estrayed - Public-Owned Migratory Bison From Herds Affected With a Dangerous Disease - Use of Brucella Abortus Vaccine - Domestic Bison Permit Before Removal From County or State - Livestock Market Releases, p. 1464, 2541

32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Official Trichomoniasis Testing - Certification Requirement - Reporting Trichomoniasis - Movement of Animals From Test Positive Herds - Epizootic Areas - Epidemiological Investigations - Exposed Herd Notification - Common Grazing - Grazing Associations - Penalties, p. 1470, 2632

32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Importation of Cattle From Mexico - Special Requirements for Goats - Tuberculosis and Brucellosis Test - Importation of Wild Species of Cloven Hoofed Ungulates - Llamas, p. 715

32.3.433 Designated Surveillance Area, p. 712

32.18.102 and other rules - Age Tally Mark - Numeral Mark - Placement of Digits - Brand Ownership and Transfer - Sale of Branded Livestock - Change in Brand Recording - Equine Breed Registry Mark - Freeze Branding - Recording and Transferring of Brand, p. 706

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Horse Creek Controlled Groundwater Area, p. 2218, 117

36.17.601 and other rules - Application Procedures - Loan Requirements of the Renewable Resources Grant and Loan Program, p. 365, 746

(Board of Land Commissioners)

- 36.25.110 Rental Rate for State Grazing Leases, p. 1479, 2641
- 36.25.801 and other rules - Land Banking Program, p. 1618, 2414
- 36.25.1011 and other rules - Establishment of Lease Rental Rates, Lease Assignments, and Sale Procedures for State Cabinsites, p. 2347, 82

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I Montana Tobacco Settlement Fund, p. 723
- 37.5.304 and other rules - Medicaid Credible Allegation of Fraud, p. 2222, 2823
- 37.12.301 and other rules - Licensure of Laboratories Conducting Analyses of Public Water Supplies, p. 1059, 2286
- 37.34.206 and other rules - Developmental Disabilities Eligibility Rules for Medicaid Only, p. 312, 1158, 1311, 900
- 37.34.114 and other rule - Certification of Persons Assisting in the Administration of Medication, p. 1030
- 37.62.102 and other rules - Montana Child Support Guidelines, p. 2356, 747
- 37.70.406 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1978, 2419
- 37.78.102 and other rules - TANF Policy Revisions, p. 2246, 2827
- 37.78.102 and other rule - Good Cause Criteria TANF Policy Manual, p. 726
- 37.80.101 and other rule - Permissive Licensing Facilities Exclusion From Subsidy Child Care Program, p. 1815, 2295
- 37.80.101 and other rules - Child Care Policy Manual Revisions, p. 2489, 195, 756
- 37.81.304 Maximum Big Sky Rx Premium Change, p. 2238, 2826
- 37.82.701 and other rules - Plan First 1115 Waiver Implementation, p. 298, 757
- 37.85.206 and other rules - Medicaid Diabetes and Cardiovascular Disease Prevention Services, p. 483
- 37.85.212 and other rule - Resource Based Relative Value Scale (RBRVS), p. 862
- 37.86.702 and other rules - Audiology - Hearing Aids, p. 1628, 1976, 2293
- 37.86.805 and other rules - Durable Medical Equipment - Hearing Aids, p. 2230, 2825
- 37.86.1101 and other rules - Medicaid Pharmacy Reimbursement, p. 1805, 2416
- 37.86.1501 and other rules - Home Infusion Therapy Program Revisions, p. 868
- 37.86.2207 EPSDT Services Reimbursement, p. 2227, 2824
- 37.86.2803 and other rules - Medicaid Inpatient Hospital Services, p. 2241, 2542
- 37.86.2803 and other rules - Medicaid Inpatient Hospital Services, p. 173, 624
- 37.86.2907 Medicaid Inpatient Hospital Services, p. 1625, 2292
- 37.86.3001 and other rules - Medicaid Outpatient Hospital Services, p. 948
- 37.86.4201 and other rules - Dialysis Clinics, p. 1811, 2294
- 37.87.733 and other rules - Updating the Children's Mental Health Bureau (CMHB) Fee Schedule, p. 873
- 37.87.1303 and other rules - Home and Community-Based Services (Waiver) for Youth With Serious Emotional Disturbance, p. 167, 622

- 37.88.901 and other rule - Mental Health Services for Adults Program of Assertive Community Treatment (PACT), p. 2234, 617
- 37.90.401 and other rules - Home and Community-Based Services for Adults With Severe Disabling Mental Illness, p. 851
- 37.95.102 and other rules - Infant Care, p. 600
- 37.104.101 and other rule - Emergency Medical Services (EMS), p. 2382, 187
- 37.107.117 Montana Marijuana Program, p. 595, 1061
- 37.108.507 Healthcare Effectiveness Data - Information Set (HEDIS) Measures, p. 845
- 37.111.101 Public Sleeping Accommodations, p. 375, 1042
- 37.115.104 and other rules - Pools - Spas - Other Water Features, p. 1482, 2657, 313

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.402 and other rules - Regulation of Motor Carriers, p. 1632, 2420
- 38.3.706 Regulation of Motor Carriers, p. 877
- 38.5.1010 and other rules - Electric Standards for Utilities - Pipeline Safety, p. 2255, 2829
- 38.5.1902 Qualifying Facilities, p. 2258

REVENUE, Department of, Title 42

- I Property Tax Abatement for Gray Water Systems, p. 612, 1001
- I Issuing Tax Certificates to LLCs Following Administrative Dissolution, p. 1988, 2425, 2543
- I-III Use by Brewers and Distillers of Ingredients Containing Alcohol, p. 2618, 199
- 42.9.102 and other rules - Pass-Through Entities, p. 1992, 2679
- 42.11.105 and other rule - Mark-Up on Liquor Sold by the State, p. 1642, 2296
- 42.12.101 and other rules - Liquor License Application General Regulation - Premises Suitability Requirements, p. 961
- 42.13.101 and other rules - Alcohol Server Training Requirements, p. 2005, 122
- 42.13.101 and other rule - Alcohol Server Training Compliance, p. 880
- 42.19.401 and other rule - Property Tax Assistance Program - Exemption for Qualified Disabled Veterans, p. 179, 511
- 42.20.102 and other rule - Property Tax Exemptions, p. 41, 627
- 42.20.105 and other rule - Valuation of Real Property, p. 730
- 42.20.432 and other rules - Validating Sales Information - Extension of Statutory Deadline for Assessment Reviews, p. 1646, 2673
- 42.21.113 and other rules - Property Taxes - Trend Tables for Valuing Property, p. 12, 409
- 42.21.158 and other rule - Aggregation of Property Tax for Certain Property, p. 1650, 2675
- 42.21.158 Personal Property Reporting Requirements, p. 49, 410
- 42.23.801 and other rule - Net Operating Losses - Consistency in Reporting With Respect to Property, p. 2125, 2700

42.38.101 and other rules - General Provisions and Disposition of Abandoned Property, p. 488, 1000

SECRETARY OF STATE, Office of, Title 44

- I Processes - Procedures for Early Preparation of Absentee Ballots, p. 1658, 2427
- I Acceptance of Electronic Records - Electronic Signatures by the Business Services Division - Filing for Certification Authorities Statement, p. 2505
- I Name Availability Standard for Registered Business Names, p. 2510, 135, 513
- I & II Business Services Division Requirements, p. 2797, 314
- 1.2.419 Scheduled Dates for the 2012 Montana Administrative Register, p. 2128, 2701
- 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