

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3727 pertaining to the) PROPOSED AMENDMENT
administration of the 2011-2012)
Federal Community Development)
Block Grant (CDBG) Program)

TO: All Concerned Persons

1. On July 11, 2012, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on July 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Maria Jackson, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2550; fax (406) 841-2771; TDD (406) 841-2702; or e-mail mjackson3@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2011-2012 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY ~~2011~~ 2012 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY 2011 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Public Facilities Projects and the FFY 2012 Application Guidelines for Housing and Neighborhood Renewal Projects.

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

- (a) policies governing the program;
- (b) requirements for applicants;

- (c) procedures for evaluating applications;
- (d) procedures for local project start up;
- (e) environmental review of project activities;
- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;
- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) planning assistance.

(3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcp> or <http://cdbged.mt.gov/draftguidelines.mcp>, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or ~~Business Resource Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.~~

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2012 Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program. Local governments must have these application guidelines in order to apply for FFY 2012 CDBG Housing and Public Facilities planning grant funds.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Maria Jackson, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2550; fax (406) 841-2771; TDD (406) 841-2702; or e-mail mjackson3@mt.gov, and must be received no later than 5:00 p.m., July 19, 2012.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in section 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

\s\ Kelly A . Casillas
KELLY A. CASILLAS
Rule Reviewer

\s\ Dore Schwinden
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State June 8, 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 |
| 17.30.1001, 17.30.1022, 17.36.345,) | PROPOSED AMENDMENT |
| 17.36.914, 17.38.101, 17.38.102,) | |
| 17.38.103, 17.38.106, 17.50.811,) | (WATER QUALITY) |
| 17.50.815, and 17.50.819 pertaining to) | (SUBDIVISIONS/ON-SITE |
| definitions, exclusions from permit) | SUBSURFACE WASTEWATER |
| requirements, subdivisions, wastewater) | TREATMENT) |
| treatment systems, plans for public water) | (PUBLIC WATER AND SEWAGE |
| supply or wastewater system, fees,) | SYSTEM REQUIREMENTS) |
| operation and maintenance) | (SOLID WASTE MANAGEMENT) |
| requirements for land application or) | |
| incorporation of septage, grease trap) | |
| wastes, and incorporation by reference) | |

TO: All Concerned Persons

1. On July 27, 2012, at 9:00 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 9, 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:

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

(1) through (13) remain the same.

(14) "Reclaimed wastewater" is defined in 75-6-102, MCA.

(14) and (15) remain the same, but are numbered (15) and (16).

(17) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (May 2012 edition).

(a) The board adopts and incorporates by reference Department Circular

DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (May 2012 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

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

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

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040, and 17.30.1041:

(a) through (e) remain the same.

(f) multifamily sewage disposal systems reviewed and approved by the Department of Public Health and Human Services under Title 50, chapters 50, 51, and 52, MCA, and multifamily sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after May 1, 1998. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix); and

(g) public sewage systems that ~~use~~ apply reclaimed wastewater at agronomic rates to land application as a method of disposal and that have been reviewed and approved by the department under Title 75, chapter 6, MCA, and ARM 17.38.101;

(h) public sewage systems that discharge unrestricted reclaimed wastewater and that have been reviewed and approved under Title 75, chapter 6, MCA, and ARM 17.38.101. Discharges of unrestricted reclaimed wastewater excluded under this rule remain subject to the monitoring and reporting requirements imposed as a condition of approval under ARM 17.38.101(8)(c).

(2) remains the same.

AUTH: 75-5-401, MCA

IMP: 75-5-401, 75-5-602, MCA

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) remains the same.

(b) Department Circular DEQ-2, "Design Standards for ~~Wastewater Facilities~~ Public Sewage Systems," ~~1999~~ 2012 edition;

(c) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL

REQUIREMENTS (1) remains the same.

(2) Department Circular DEQ-4, 2009 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, ~~1999~~ 2012 edition, which sets forth design standards for ~~wastewater facilities~~ public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER PUBLIC SEWAGE SYSTEM (1) For purposes of this rule, "delegated division of local government" means a local government that has been delegated authority pursuant to ARM 17.38.102 and 75-6-121, MCA, to review and approve plans and specifications for public water supply or ~~wastewater~~ public sewage systems, as designated in the written delegation.

(2) The purpose of this rule is to assure the protection of public health and the quality of state waters by requiring review and approval, by either the department or a delegated division of local government, of plans and specifications for siting, construction, and modification of public water supply and ~~wastewater~~ public sewage systems prior to the beginning of construction.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) through (e)(ii) remain the same.

(f) "Reclaimed wastewater" is defined in 75-6-102, MCA:

(f) through (m)(ii) remain the same, but are renumbered (g) through (n)(ii).

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or ~~wastewater~~ public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or ~~wastewater~~ public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) and (b) remain the same.

(c) the design report, plans, and specifications for all ~~wastewater~~ public sewage systems, except public subsurface sewage treatment systems, must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in ~~d~~ Department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for ~~Wastewater Facilities~~ Public Sewage

Systems." The design report, plans, and specifications for a ~~wastewater~~ public sewage system must also be designed to protect public health and ensure compliance with the Montana Water Quality Act, Title 75, chapter 5, MCA, and rules adopted under the Act, including ARM Title 17, chapter 30, subchapter 7;

(d) through (j) remain the same.

(5) through (7) remain the same.

(8) The department or a delegated division of local government shall issue a written approval for a public water supply system or ~~wastewater~~ public sewage system if it determines that the design report, plans, and specifications are complete and the applicant has complied with all provisions of this rule. The approval may be conditional as follows:

(a) the department's approval of a public water supply system may set forth conditions of approval which may include, but shall not be limited to, those specifying limits on quantities available for irrigation and fire flows, limited storage, standby power sources, and peak flows; ~~or~~

(b) the department's approval of a ~~wastewater~~ public sewage system may set forth conditions of approval which may include, but shall not be limited to, expected performance characteristics and performance limitations such as operations, staffing, financing, wastewater loads, standby power, and access; ~~or~~

(c) the department's approval of the use of reclaimed wastewater by a public sewage system must require compliance with the treatment standards, monitoring, recordkeeping, and reporting requirements required for each classification, as described in Department Circular DEQ-2.

(9) Except as provided in (10)(b), unless the applicant has completed the construction, alteration, or extension of a public water supply or ~~wastewater~~ public sewage system within three years after the department or a delegated unit of local government has issued its written approval, the approval is void and a design report, plans, and specifications must be resubmitted as required by (4) with the appropriate fees specified in this subchapter. The department may grant a completion deadline extension if the applicant requests an extension in writing and demonstrates adequate justification to the department.

(10) through (11) remain the same.

(12) A person may not commence or continue the operation of a public water supply or ~~wastewater~~ public sewage system, or any portion of such system, prior to certifying by letter to the department or a delegated division of local government that the system, or portion of the system constructed, altered, or extended to that date, was completed in accordance with plans and specifications approved by the department. For a system or any portion of a system designed by a professional engineer, the engineer shall sign and submit the certification letter to the department or a delegated division of local government.

(13) Within 90 days after the completion of construction, alteration, or extension of a public water supply or ~~wastewater~~ public sewage system, or any portion of such system, a complete set of certified "as-built" drawings must be signed and submitted to the department or a delegated division of local government. The department may require that the "as-built" submittal be accompanied by an operation and maintenance manual. For a system or any portion of a system designed by a professional engineer, the engineer shall sign and submit the certified

"as-built" drawings to the department or a delegated division of local government.

(14) remains the same.

(15) The department or a delegated division of local government may require that chemical analyses, microbiological examinations, flow tests, pressure tests, treatment plant performance records, or other measures of performance for a public water supply or ~~wastewater~~ public sewage system be conducted by the applicant to substantiate that the system complies with the criteria set forth in the design report, plans, and specifications.

(16) remains the same.

(17) When design reports, plans, and specifications submitted pursuant to this rule include a proposal to use reclaimed wastewater, the department or delegated division of local government may not approve the proposal until the applicant has obtained any necessary approvals required under Title 85, MCA, from the Department of Natural Resources and Conservation.

(18) An owner or operator of a public sewage system may not:

(a) use reclaimed wastewater for a use that has not been approved by the department or by a delegated division of local government, according to the use classification system in department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for Public Sewage Systems;" or

(b) use reclaimed wastewater that has not been treated to the applicable standards for the use set forth in department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for Public Sewage Systems."

~~(17)~~ (19) For purposes of this chapter, the ~~department~~ board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) remains the same.

(b) Department of Environmental Quality Circular DEQ-2, ~~1999~~ 2012 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works;

(c) through (i) remain the same.

~~(18)~~ (20) A copy of any of the documents adopted under ~~(16)~~ (19) may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

17.38.102 DELEGATION OF REVIEW OF SMALL PUBLIC WATER AND SEWER SEWAGE SYSTEM PLANS AND SPECIFICATIONS (1) The department may delegate to divisions of local government the review of plans and specifications for:

(a) small public water supply systems and small public ~~sewer~~ sewage systems; and

(b) extensions or alterations of existing public water and public ~~sewer~~ sewage systems that involve 50 or fewer connections.

(2) Delegation may occur only if:

(a) a division of local government submits a written application to the

department that includes the following:

(i) and (ii) remain the same.

(iii) a request that the department provide training for public water and sewer sewage system review.

(b) remains the same.

AUTH: 75-6-103, 75-6-121, MCA

IMP: 75-6-121, MCA

17.38.103 PUBLIC WATER AND SEWER SEWAGE PROJECTS ELIGIBLE FOR CATEGORICAL EXCLUSION FROM MEPA REVIEW (1) Except as provided in (2), a department action under this subchapter and under either Title 75, chapter 6, part 1 or Title 75, chapter 6, part 2, MCA, is excluded from the requirement to prepare an environmental assessment or an environmental impact statement if the application for department review is for any of the following projects:

(a) projects relating to existing infrastructure systems such as sewer sewage systems, drinking water supply systems, and stormwater systems, including combined sewer overflow systems that involve:

(i) through (4)(d) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through (e) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these citations.

(a) remains the same.

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

SCHEDULE II

| | |
|---|----------|
| Chapter 10 Engineering reports and facility plans | |
| engineering reports (minor) | \$ 280 |
| comprehensive facility plan (major) | \$ 1,400 |
| Chapter 30 Design of sewers | |
| per lot fee | \$ 70 |
| non-standard specifications | \$ 420 |
| collection system (per lineal foot) | \$ 0.25 |
| Chapter 40 Sewage pumping station | |
| force mains (per lineal foot) | \$ 0.25 |
| 1000 gpm or less | \$ 700 |
| greater than 1000 gpm | \$ 1,400 |
| Chapter 60 Screening grit removal | |
| screening devices and comminutors | \$ 420 |

| | |
|---|---------------|
| grit removal | \$ 420 |
| flow equalization..... | \$ 700 |
| Chapter 70 Settling | \$ 1,120 |
| Chapter 80 Sludge handling | \$ 2,240 |
| Chapter 90 Biological treatment..... | \$ 3,360 |
| nonaerated treatment ponds | \$ 1,120 |
| aerated treatment ponds | \$ 1,960 |
| Chapter 100 Disinfection..... | \$ 900 |
| <u>Chapter 120 Irrigation and Rapid Infiltration Systems.....</u> | <u>\$ 980</u> |
| Appendices A, B, and C, & D (per design)..... | \$ 980 |

(c) through (7) remain the same.

AUTH: 75-6-108, MCA
IMP: 75-6-108, MCA

17.50.811 OPERATION AND MAINTENANCE REQUIREMENTS FOR LAND APPLICATION OR INCORPORATION OF SEPTAGE (1) through (6) remain the same.

(7) Septage may be placed in an active sewage sludge management unit at a permitted wastewater treatment facility only if the facility is designed and operated to handle septage in a manner protective of human health and the environment and in conformance with Department Circular DEQ-2, Design Standards for Wastewater Facilities Public Sewage Systems.

(8) through (11) remain the same.

AUTH: 75-10-204, 75-10-1202, MCA
IMP: 75-10-204, 75-10-1202, MCA

17.50.815 GREASE TRAP WASTES (1) and (2) remain the same.

(3) Grease trap waste may be dewatered at a permitted wastewater treatment works designed in conformance with Department Circular DEQ-2, Design Standards for Wastewater Facilities Public Sewage Systems, a solid waste management system licensed in conformance with Title 75, chapter 10, part 2, MCA, or at a land application site approved in conformance with this subchapter.

(4) through (8) remain the same.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

17.50.819 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department hereby adopts and incorporates by reference:

(a) Department Circular DEQ-2, Design Standards for Wastewater Facilities Public Sewage Systems (1999 ed. 2012 edition), which sets forth design standards for wastewater facilities public sewage systems;

(b) through (3) remain the same.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

REASON: The board is proposing to amend Montana's rules regulating the design and construction of public sewage systems in ARM 17.38.101, 17.38.102, and 17.38.103 in order to clarify existing language, add requirements related to the department's approval of proposals to use reclaimed wastewater, and incorporate revisions to Department Circular DEQ-2, currently entitled "Department of Environmental Quality Design Standards for Wastewater Facilities" (1999 edition) (hereafter "DEQ-2"). In general, the proposed revisions to DEQ-2 consist of updates to the existing design standards, the addition of new design standards for relatively new technology, and the addition of treatment standards and associated classifications for reclaimed wastewater that will be reused for other purposes. The board is also proposing to change the title of DEQ-2 to be consistent with the changes in terms proposed in ARM 17.38.101. The draft Department Circular DEQ-2 can be viewed at <http://deq.mt.gov/wqinfo/pws/PlanReviewEngineer.mcp>.

In addition, the board is proposing amendments to ARM 17.30.1022 to provide a ground water permit exemption for certain classes of reclaimed wastewater and to add definitions into ARM 17.30.1001 to limit the new exemption to specific classes of reclaimed wastewater.

The board's specific reasons for amending the rules and revising DEQ-2 are as follows:

Rule Amendments

ARM 17.30.1001(14) and (17)

The board is proposing to amend ARM 17.30.1001 in order to incorporate the statutory definition of "reclaimed wastewater" in (14) and add a new definition of "unrestricted reclaimed wastewater" in (17) to supplement the existing definitions in Montana's ground water rules. The proposed adoption of these definitions will ensure that only reclaimed wastewater that is treated to the highest standards in DEQ-2 will qualify for an exemption from the ground water permit requirements, because the wastewater must comply with the standards specified in the definition of "unrestricted reclaimed wastewater." The board is further proposing to incorporate by reference DEQ-2 into ARM 17.30.1001(17), because the definition of "unrestricted reclaimed wastewater" requires compliance with Class A-1 or B-1 treatment standards, which are proposed for adoption in the revised DEQ-2.

ARM 17.30.1022(1)(g)

The board is proposing to amend ARM 17.30.1022(1)(g) to clarify that only public sewage systems that apply reclaimed wastewater at agronomic rates qualify for a ground water permit exemption. As currently written, the rule provides an exemption for any public sewage system that land applies its wastewater regardless of method or volume. By specifying that the wastewater must be applied at agronomic rates (i.e., the controlled application of wastewater in a manner that

ensures that all of the effluent is used by vegetation and no impacts to ground water will occur), the amendment clarifies that the exemption only applies to land application methods that do not result in impacts to ground water.

ARM 17.30.1022(1)(h)

The board is proposing to add a new exemption from the ground water permitting requirements in ARM 17.30.1022(1)(h), which will exempt discharges from public sewage systems that meet the definition of "unrestricted reclaimed wastewater." Under that definition, a discharge must be treated to the highest standards proposed for adoption in DEQ-2 prior to being used for other purposes. The proposed exemption would allow a public sewage system that meets Class A-1 or B-1 standards to discharge the treated water without first obtaining a ground water permit from the department.

The board is proposing this exemption for two reasons: (1) treating wastewater to the standards for Class A-1 or B-1 prior to reusing it poses minimal risk to public health and the environment; and (2) providing a ground water permit exemption may provide an incentive for public sewage systems to provide a higher level of treatment than required by current regulations governing ground water permits. In order to ensure that any exempt reclaimed wastewater continues to meet Class A-1 or B-1 treatment standards during the life of a reuse project, the board is proposing language in ARM 17.30.1022(1)(h) specifying that the reclaimed wastewater remains subject to the monitoring and reporting requirements imposed by the department during its approval of a reuse project.

ARM 17.36.345, 17.36.914, and 17.50.819

The board and department are amending these rules to update the incorporation by reference of DEQ-2, 2012 edition, to make the department's review under subdivisions and solid waste programs consistent with the department's review of public sewage systems under ARM 17.38.101.

ARM 17.38.101, 17.38.102, 17.38.103

The board is proposing to amend ARM 17.38.101, 17.38.102, and 17.38.103 to replace the terms "wastewater system" and "sewer," as used throughout the rules, with the term "public sewage system." The board is proposing this amendment to clarify that the rules only apply to "public sewage systems" that, by definition, are systems for the collection and disposal of sewage that serve 15 or more families or 25 or more persons daily for 60 or more days. In contrast, the term "wastewater system" is broadly defined in ARM 17.38.101 to mean "a public sewage system or other system that collects, transports, treats, or disposes of industrial wastes." Since the board's authority under 75-6-103, MCA, is expressly limited to adopting rules governing public sewage systems, the board is proposing this amendment to be consistent with its statutory authority.

ARM 17.38.101(8)(c)

The board is also proposing to add new requirements to ARM 17.38.101 in response to recent amendments to state laws governing the department's review and approval of public sewage systems (House Bill 52, 2011). Specifically, 75-6-103, MCA, has been amended to require the board to adopt rules establishing allowable uses and associated classifications of reclaimed wastewater and also adopt monitoring, reporting, and recordkeeping requirements tailored to each classification. In response to these directives, ARM 17.38.101(8) is being amended to add (c) specifying that the department's approval of a reclaimed wastewater project must require compliance with the treatment standards and reporting requirements currently being proposed for adoption in DEQ-2. The adoption of new (8)(c) is necessary to ensure that the department's approval of a reclaimed wastewater project imposes a clear legal obligation on the owner or operator to adhere to the treatment and reporting standards proposed for adoption in DEQ-2.

ARM 17.38.101(17)

The amendments to 75-6-103, MCA, further require the adoption of rules requiring applicants requesting the department's approval of a proposal to use reclaimed wastewater to first obtain from the Department of Natural Resources and Conservation "any necessary approvals required under Title 85, MCA." In response to this directive, the board is proposing to add a new (17) to ARM 17.38.101, which prohibits the department or a delegated division of local government from approving a reclaimed wastewater project until the applicant has obtained any necessary approvals under Title 85, MCA. Since a delegated division of local government may also approve a reclaimed wastewater project, the prohibition against approving a project without first obtaining any necessary approvals from the Department of Natural Resources and Conservation applies to those entities as well.

ARM 17.38.101(18)

Finally, the amendments to 75-6-103, MCA, require the adoption of a rule prohibiting the use of reclaimed wastewater, unless the particular use is allowed under the board's rules. The amendments also require a rule prohibiting the use of reclaimed wastewater, unless it has been treated to meet the standards adopted by the board for the particular use. In response to these directives, the board is proposing to add a new (18) to ARM 17.38.101. Under (18), an owner or operator of a public sewage system may not use reclaimed wastewater for a use that has not been adopted by the board in DEQ-2. The new section also prohibits an owner or operator from using reclaimed wastewater that has not been treated to the standards for that particular use specified in DEQ-2.

ARM 17.38.101(19)

The board is proposing to amend ARM 17.38.101(19) in order to incorporate the board's proposed revisions to DEQ-2 into rules regulating the design and

construction of public sewage systems. This amendment is necessary to provide the department with authority to require compliance with the new requirements proposed for adoption in DEQ-2, including requirements for reclaimed wastewater.

ARM 17.38.106

As a result of the proposed revisions to Circular DEQ-2, an adjustment to the fees in ARM 17.38.106 (2)(b), Schedule II, is necessary to account for the removal of the design standards currently in Appendix B and D and the consolidation of those design standards into new Chapter 120. In order to maintain the existing fee amount for the review of projects under Appendix B and D, the board is proposing to apply the fee amount currently provided for the department's review under both appendixes to the department's review of the same projects under new Chapter 120. The board is further proposing to eliminate Appendix B and D from Schedule II, since all projects currently reviewed under those appendixes will be reviewed under new Chapter 120.

The proposed amendments to the fee rule are necessary to ensure that the fees now assessed for review of projects under Appendix B and D will apply to the same projects that will now be reviewed under Chapter 120. Specifically, 75-6-108, MCA, requires the board to adopt rules to recover the department's costs for its review of plans and specifications submitted by persons for the alteration, construction, or extension of public sewage systems. Since no change to the existing fee for projects currently reviewed under Appendix B and D is being proposed, the board finds the adoption of the proposed fee for Chapter 120 is reasonable and necessary.

ARM 17.50.811 and 17.50.815

These rules are being amended to change the title of Department Circular DEQ-2 to be consistent with the other changes in the rule notice.

Circular DEQ-2 Revisions

DEQ-2, General Revisions

Many of the proposed revisions throughout DEQ-2 are based on new information and recommendations from the "parent document." All references to the parent document, as used in the board's reasons for revising DEQ-2, refer to the 2004 edition of a document entitled, "Recommended Standards for Wastewater Facilities," also known as the "Ten State Standards," published by the Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. This document is a compilation of common standards used by states in the design and preparation of plans and specifications for wastewater treatment facilities. Since its inception, DEQ-2 has been based primarily on the information contained within the parent document. New information from the 2004 edition of the parent document is being proposed for incorporation into DEQ-2 in order to provide: (1) design standards that reflect recent technological advances

in the wastewater industry; (2) additional and important design considerations; and (3) better clarity for design engineers through the expansion of text or a restructuring of its content. When a revision to DEQ-2 is being proposed based on a recommendation or requirement of the parent document, the reason for the revision indicates that fact.

In addition to the specific revisions explained below, the board is proposing to generally revise the text of DEQ-2 to replace the terms "DEQ," "reviewing agency," "regulatory agency," and "reviewing authority" with the single term "Department." The board is proposing this change to provide consistency and clarity throughout the document. The board is also proposing to add applicable titles next to the numerical internal references used throughout DEQ-2, which refer the reader to other sections of the document. This change is being made to assist the reader in identifying the content of the numerical references to other sections in DEQ-2.

DEQ-2, Section 10.1

This section addresses the planning document requirements for wastewater improvement projects. The board is proposing to amend the section by specifying the number of copies of engineering reports or facility planning documents that must be submitted to the department. The board is also deleting information that pertains to plans and specification submittals. The deleted information will be relocated in Chapter 20 which addresses plan and specification requirements.

DEQ-2, Section 11

This section addresses the informational requirements for engineering reports and facility plans. The board is proposing to amend this section by requiring the planning document to discuss the benefits and purpose of the proposed project. This amendment is necessary to provide the treatment works' owner with adequate information for decision making.

DEQ-2, Section 11.12

This section addresses the informational requirements for engineering reports. The board is proposing to amend this section to require more detail in the planning document. This information is necessary to provide a better basis for design and is also a requirement in the parent document.

DEQ-2, Section 11.14 and Section 11.15

The board is proposing to delete the site drawing information from Section 11.14 and add a new Section 11.15 to clarify that site drawings are mandatory rather than a recommendation, as currently stated in Section 11.14. This amendment is necessary to make site drawings a mandatory requirement and is consistent with the recommendation in the parent document.

DEQ-2, Section 11.18

The board is proposing to add this new section to recommend that the planning document include the reasons for selection of the proposed alternative. This amendment is necessary to provide the owner with adequate information for decision making. This amendment is also a recommendation in the parent document.

DEQ-2, Section 11.19

This section addresses the environmental impacts of the proposed project. The board is proposing to amend the section by requiring that the discussion of environmental impacts be expanded to include cumulative and secondary impacts, as well as how adverse impacts will be minimized and mitigated. This amendment is necessary in order to provide information to the funding and reviewing agencies that will assist the agencies in completing an environmental assessment or environmental impact statement for the project. This amendment is also a recommendation in the parent document.

DEQ-2, Section 11.23

This section addresses the informational requirements for facility plans. The board is proposing to amend the section by recommending that the wastewater improvements with a design life in excess of 20 years be designed for the extended period. This amendment is necessary to provide the owner with adequate information for decision-making purposes. This amendment is also a recommendation in the parent document.

DEQ-2, Section 11.24 d

This section provides definitions for key design parameters. The board is proposing to amend the section to provide a more precise definition of the "design peak instantaneous flow." This amendment is necessary because the amended definition is a design parameter used for the design of wastewater treatment facilities.

DEQ-2, Section 11.24 e

This section provides definitions for key design parameters. The board is proposing to add this section to provide a definition for "design maximum month flow." This addition is necessary because the design maximum month flow is a design parameter used for the design of wastewater treatment facilities.

DEQ-2, Section 11.242

This section addresses hydraulic capacity for facilities served by existing collection systems. The board is proposing to amend the section by recommending

that the wastewater flows should be more thoroughly evaluated prior to initiation of design and that actual flow data for wet weather flow conditions should be included in the facility plan. This amendment is necessary to encourage the collection of information that may result in better treatment and is also a recommendation in the parent document.

DEQ-2, Section 11.243

This section addresses hydraulic capacity for facilities served by new collection systems. The board is proposing to amend the section by deleting Figure 1 (depicting the ratio of peak hourly flow to design average flow) and replace it with the peaking factor equation, which was used to develop the peaking factor curve in Figure 1. This revision is necessary to ensure that the peaking factors used in the design are as accurate as possible, and eliminates the redundancy of information and guesswork associated with the use of Figure 1.

DEQ-2, Section 11.251 b 1 and 2

This section provides organic load definitions for wastewater facilities. The board is proposing to amend the section by adding a definition for "design total nitrogen." This amendment is necessary because total nitrogen is a key design parameter for many wastewater facilities that are subject to new Montana Pollutant Discharge Elimination System (MPDES) permits and Montana Ground Water Pollution Control System (MGWPCS) permits with requirements related to total maximum daily loads (TMDLs) for nitrogen and nondegradation analysis for nitrogen.

DEQ-2, Section 11.251 c 1

This section provides organic load definitions for wastewater facilities. The board is proposing to amend the section by adding a definition for "design total phosphorus." This amendment is necessary because total phosphorus is a key design parameter for many wastewater facilities that are subject to new MPDES permits with requirements related to total maximum daily loads (TMDLs) for nutrients.

DEQ-2, Section 11.252

This section addresses organic loads for facilities served by existing collection systems. The board is proposing to amend the section by adding language from the parent document that clarifies the informational requirements that are currently in DEQ-2, which address higher organic loads from industrial sources and from septage haulers.

DEQ-2, Section 11.253 a

This section addresses organic loads for facilities served by new collection

systems. The board is proposing to amend the section by adding a requirement that specific values must be used for determining influent per capita loads for total nitrogen and total phosphorus during the design of wastewater systems when actual influent loads for these parameters are not available. The values reported were obtained from Wastewater Engineering Treatment and Reuse by Metcalf & Eddy, 4th edition. This amendment is necessary to more accurately assess organic loads when no actual data on organic loads is available during the design phase.

DEQ-2, Section 11.253 d

This section addresses organic loads for facilities served by new collection systems. The board is proposing to amend the section by adding recommended language from the parent document that allows, in some circumstances, organic loading data from a similar municipality to be used for design purposes. This amendment is necessary to provide an alternative method of determining organic loads when no actual data is available.

DEQ-2, Section 11.27

This section requires the facility plan to address effluent permit limits and how the proposed facility will meet the limits. The board is proposing to amend the section by requiring the facility plan to address compliance with permit limits based on TMDLs, numeric water quality standards, and nondegradation requirements.

DEQ-2, Section 11.29 b

This section requires that the facility plan provide a detailed evaluation of each alternative considered. The board is proposing to add this section to require the facility plan to address the transport and treatment of wet weather flows. This amendment is a recommendation in the parent document.

DEQ-2, Section 11.29 c 1

This section requires that the facility plan provide a detailed site evaluation for each alternative considered. The board is proposing to amend this section by adding recommended language from the parent document that recommends consideration be given to facility location and future development as well as the use of nonaerated treatment technologies and the potential for odor generation for wastewater with high sulfate concentrations.

DEQ-2, Section 11.29 c 7

This section requires that the facility plan provide a detailed site evaluation for each alternative considered. The board is proposing to amend this section by adding recommended language from the parent document that prevents the construction of lagoons in karst areas unless geologic and construction details are acceptable.

DEQ-2, Section 11.29 c 12 to c 18

This section requires that the facility plan provide a detailed site evaluation for each alternative considered. The board is proposing to amend this section by requiring more detail in the planning document to address environmental impacts that may result from construction of the proposed alternatives. This amendment is necessary to provide a better basis for design and will provide the owner with adequate information for decision making. Adding these criteria to the site evaluation will enable the department to better assess and understand early in the project what sensitive or critical environmental resources may be impacted by the project and what mitigation or permitting requirements may be needed. This information is also required by the public funding agencies.

DEQ-2, Section 11.29 g

This section allows for the usage of technologies not included in the standards. The board is proposing to amend this section by reorganizing its content to provide better clarity.

DEQ-2, Section 11.29 i

This section addresses the method and level of treatment to be achieved during construction. The board is proposing to amend this section by adding language that requires that the department's permitting program be notified when a unit bypass is needed during construction. This addition is necessary to ensure that this step is not overlooked (a requirement in the facility's discharge permit), and to make sure adequate planning occurs to maintain overall treatment at the highest level possible during construction.

DEQ-2, Section 11.29 j

The board is proposing to add this new section to require the development of a plan of operation for wastewater treatment systems undergoing significant upgrades. The plan of operation will provide the community with an outline of key tasks that need to be completed prior to system start-up for the successful operation of the new facility. The plan of operation will address the development and implementation of an operating budget, administrative procedures, staffing and training plans, routine and emergency operational procedures, and an operation and maintenance manual. This new section is necessary to provide key information during the planning process.

DEQ-2, Section 11.29 l

This section requires cost estimates for the alternatives considered. The board is proposing to amend this section by requiring that engineering, administration, and contingency costs be added to the overall cost estimate. This information will provide the town or owner with adequate information for decision

making and will provide interested parties with a more comprehensive understanding of the financial impacts of the project.

DEQ-2, Section 11.29 m

This section addresses staffing and operational requirements for the alternatives considered. The board is proposing to add this section to ensure that the proper operator certification and the associated costs to hire the operator(s) is considered in the development of the alternatives analysis. The system classifications were taken from ARM 17.40.202(1)(c).

DEQ-2, Section 11.29 n

This section addresses the environmental impacts of the proposed project. The board is proposing to amend this section by requiring that the discussion of environmental impacts be expanded to include cumulative and secondary impacts and that the impacts to the environment and human population, as outlined under the Montana Environmental Policy Act, must be addressed as well. This information is necessary for the funding and reviewing agencies to complete a thorough environmental assessment or environmental impact statement for the project.

DEQ-2, Section 20

This section addresses the submittal of plans and specifications for the proposed project. The board is proposing to amend this section by relocating information from Section 10.1 that pertains to the plan and specification review, project certification, and as-built submittals. Additional language has been added to provide guidance and clarity regarding plan and specifications submittal requirements.

DEQ-2, Section 20.14

This section addresses project design criteria. The board is proposing to amend this section by adding recommended language from the parent document, which requires that downstream facilities be evaluated to ensure that sufficient capacity exists for the proposed project.

DEQ-2, Section 20.15

This section addresses the development of procedures for operation of the existing facilities during construction. The board is proposing to amend this section by adding a recommendation that facility personnel, essential to implementation of the operating procedures, be listed in the project documents.

DEQ-2, Section 21

This section addresses the project specifications. The board is proposing to

amend this section by adding recommended language from the parent document to provide clarity.

DEQ-2, Section 21.1

This section addresses the submittal of an operation and maintenance manual for the project. The board is proposing to delete this section and relocate the information to a new operation and maintenance section that provides more details regarding operation and maintenance manual content.

DEQ-2, Section 23

This section addresses the submittal of additional information to the department. The board is proposing to amend this section by adding pump curves and buoyancy calculations to the list of information that may need to be submitted for a project. This additional information is necessary to provide clarity to the design engineer on the type of information the department may request to determine the adequacy of a project design.

DEQ-2, Section 24

This section addresses the submittal of deviation requests by the owner or operator for the project. The board is proposing to amend this section by reorganizing its content to provide better clarity.

DEQ-2, Section 24.1

This section addresses the procedure for the submittal of deviation requests for the project. The board is proposing to amend this section by requiring a professional engineer to submit all deviation requests on a newly developed form from the department. Additional information has been added to this section to provide clarity to the deviation process.

DEQ-2, Section 25

The board is proposing to add this new section which addresses the submittal requirements of an operation and maintenance manual for the project. In addition, it requires that the system have an operation and maintenance manual prior to system start-up and provides the design engineer with guidance on the type of information that must be included in the document. These changes will ensure that the system owner has the information needed to successfully operate the facility and will provide conformity of operation and maintenance manuals.

DEQ-2, Section 33.1

This section addresses the minimum pipe diameter for gravity sewer mains. The board is proposing to amend this section by reorganizing its content to provide

clarity.

DEQ-2, Section 33.2

This section addresses the minimum bury depth to prevent sewer pipes from freezing. The board is proposing to amend this section by establishing a minimum bury depth of four feet and requiring a review of local building codes for determination of maximum frost depths to ensure that four feet is adequate.

DEQ-2, Section 33.41

This section addresses the minimum slopes for gravity sewer mains. The board is proposing to amend this section by adding recommended language from the parent document that requires sewer mains to be designed with minimum self-cleansing flow velocities.

DEQ-2, Section 33.42

This section addresses minimum flow depths in gravity sewer mains. The board is proposing to amend this section by adding language that clarifies the need to obtain a deviation from the department when minimum pipe slopes are not met.

DEQ-2, Section 33.5

This section addresses curvilinear sewer mains. The board is proposing to amend this section by adding recommended language from the parent document, which requires that curvilinear sewers must provide a minimum flow velocity of two feet per second.

DEQ-2, Section 33.83 a through d

This section addresses pipe bedding material and placement for sewer main installation. The board is proposing to amend this section by deleting existing language and replacing it with the pipe bedding requirements located in the Montana Public Works Standard Specifications (MPWSS) 6th edition. Engineering consultants typically do not reference the bedding classes included in the current section, but instead reference the MPWSS for pipe bedding material requirements. Including the bedding requirements in DEQ-2 will simplify the review process by eliminating the need to cross check against the MPWSS.

DEQ-2, Section 33.84

This section addresses trench backfill requirements for sewer main installation. The board is proposing to amend this section by adding language from the MPWSS that includes backfill compaction requirements depending on surface restoration needs. Engineering consultants commonly reference the MPWSS for trench backfill requirements. Including these requirements in DEQ-2 will simplify the

review process by eliminating the need to cross check against the MPWSS.

DEQ-2, Section 33.92

This section addresses the testing of sewer mains for leakage. The board is proposing to amend this section by allowing video inspections on sewer mains with active service connections. This amendment is necessary because it is not possible to conduct water or low air pressure testing on sewer mains with active service connections.

DEQ-2, Section 33.10

The board is proposing to add this new section which addresses the use of casing pipes on sewer mains. This information will clarify and provide consistency in the department's review of casing pipe installations.

DEQ-2, Section 34.1

This section addresses manhole spacing on sewer mains. The board is proposing to amend this section by requiring the town or owner, under certain circumstances, to submit documentation stating that adequate cleaning equipment is available for the proposed manhole spacing.

DEQ-2, Section 34.2

This section addresses drop type manholes. The board is proposing to amend this section by making the "recommended" use of a drop pipe, when sewers enter manholes at an elevation 24 inches or more above the manhole invert, a "requirement." The use of a drop pipe is a requirement in the parent document.

DEQ-2, Section 34.4

This section addresses the flow channel height through manholes. The board is proposing to amend this section by making the "recommendation," that the flow channel for pipes greater than eight inches in diameter be formed to the full height of the outer sewer pipe, a "requirement." Larger diameter pipe is utilized with higher flows. Deeper channels will contain the flow better and prevent the deposition of solids within the manhole structure.

DEQ-2, Section 34.6

This section addresses the watertightness of manholes. The board is proposing to amend this section by adding recommended language from the parent document that requires manhole lift holes and grade adjustment rings to be properly sealed to prevent the infiltration of water.

DEQ-2, Section 34.7

This section addresses the testing requirements for the confirmation of manhole watertightness. The board is proposing to amend this section by adding vacuum and water testing procedures. This amendment will provide the design engineer with better guidance on testing requirements and will indicate under which conditions testing must take place. The vacuum testing procedure is recommended in the parent document and the water testing procedure is similar to the septic tank testing in both Circular DEQ-4 and the "San Antonio Water System Standard Specification for Construction."

DEQ-2, Section 35

This section addresses the use of inverted siphons in sewer collection systems. The board is proposing to amend this section by making the "recommended" use of at least two barrels for inverted siphons a "requirement." Use of at least two barrels for inverted siphons is a requirement in the parent document.

DEQ-2, Section 36.11

This section addresses cover depths for sewers entering or crossing streams. The board is proposing to amend this section by requiring the engineer to conduct a scour analysis to justify the proposed burial depth.

DEQ-2, Section 36.21

This section addresses piping material for sewers entering or crossing streams. The board is proposing to amend this section by recommending that a casing pipe be used when crossing streams and providing additional requirements when material other than ductile iron pipe is used for stream crossings. This amendment will provide the design engineer with better guidance and clarity of construction requirements for stream crossings and requires the use of mechanical joints or encasement in concrete to maintain alignment and improve structural integrity.

DEQ-2, Section 36.22

This section addresses construction methods and practices for sewers entering or crossing streams. The board is proposing to amend this section by listing the specific permits that may be required for work done in and around streams. Adding this information will provide the design engineer with better guidance and clarity regarding which permits are needed and which regulatory agencies should be contacted.

DEQ-2, Section 37

This section addresses aerial crossings of sewer collection systems. The board is proposing to amend this section by making the "recommendation," that the bottom of the sewer pipe be located above the 50-year flood plain, a "requirement." In addition adequate justification must be submitted for the use of pier structures to support sewer mains and, if sewers are to be attached to bridges, the town or owner must obtain written permission from the bridge owner. These amendments will provide the design engineer with better guidance and clarity regarding the design requirements of aerial crossings.

DEQ-2, Section 38

This section addresses the protection of water supplies from sewer collection systems. The board is proposing to amend this section by making the "recommendation," that the factors listed in Circular DEQ-1 be considered in the establishment of acceptable isolation distances between water and sewer mains, a "requirement."

DEQ-2, Section 38.2

This section addresses the setback distances of sewer mains from water works structures. In addition to the 100-foot separation from public water supply wells, the board is proposing to amend this section by requiring a 50-foot separation between sewer mains and all other wells. This amendment is necessary to provide consistency with ARM 17.36.323 regarding horizontal setback distances. In addition, language has been added requiring documentation from the operating authority of the collection system stating that all waterworks units, within 100 feet of the proposed sewer main alignment, have been identified and are shown on the plans. The way the standard is currently written, it is hard to know if there are no waterworks units in the area or if the engineer simply overlooked it. Adding this language will ensure that these setback distances are not overlooked on any project.

DEQ-2, Section 38.31

This section addresses the horizontal separation of water and sewer mains. The board is proposing to amend this section by deleting parts (a) and (b) of the existing language and replacing it with the recommended language from the parent document requiring that sewers be constructed in compliance with public water supply standards and pressure tested to 150 psi to assure watertightness.

DEQ-2, Section 38.32

This section addresses the vertical separation of water and sewer mains. The board is proposing to amend this section by deleting parts (b) and (d) of the existing language and replacing it with the recommended language from the parent document requiring that sewers be constructed in compliance with public water

supply standards and pressure tested to 150 psi to assure watertightness. The amendment also allows a minimum separation of six inches provided that flowable fill, or a watertight carrier pipe, that extends ten feet on both sides of the pipe crossing is used. This amendment eliminates the need for submittal of a deviation when the 18-inch separation could not be met, which will save time during the review process.

DEQ-2, Section 39

This section requires the conformance of service connections with local and state plumbing codes. The board is proposing to amend this section by updating the ARM reference number that incorporates by reference the uniform plumbing code.

DEQ-2, Section 42.22

This section addresses equipment removal from pumping stations. The board is proposing to amend this section by adding recommended language from the parent document that requires the pumping station to remain operational when an individual pump is removed for maintenance.

DEQ-2, Section 42.231

This section addresses access by personnel into pumping stations. The board is proposing to amend this section by reorganizing its content to provide better clarity.

DEQ-2, Section 42.24

This section addresses the buoyancy of pumping stations due to ground water. The board is proposing to amend this section by requiring the submittal of buoyancy calculations to the department when the potential for high ground water exists. This amendment will ensure proper design to protect the structure from potential floatation.

DEQ-2, Section 42.321

This section addresses bar racks for pumping stations. The board is proposing to amend this section by adding recommended language from the parent document that references other sections that must be considered in the design of bar racks in pumping stations.

DEQ-2, Section 42.33

This section addresses pump opening sizes. The board is proposing to amend this section by adding language that allows smaller pump openings and allows the passing of smaller spheres for grinder pumps. The current standard does not take into consideration smaller piping diameters permissible with grinder pumps.

This amendment will allow the use of grinder pumps without the need to obtain a deviation from the department regarding pump openings, which will simplify the review process.

DEQ-2, Section 42.36

This section addresses pump intakes. The board is proposing to amend this section by making the "recommendation," that each pump have its own intake, a "requirement." Each pump having its own intake is a requirement in the parent document.

DEQ-2, Section 42.4

This section addresses pump controls for pumping stations. The board is proposing to amend this section by adding recommended language from the parent document requiring dual air compressors for bubbler control systems and the alternation of pumps daily, instead of each cycle, for suction lift stations.

DEQ-2, Section 42.52

This section addresses check valve placement requirements for pumps. The board is proposing to amend this section by adding language that allows swing and flexible disk check valves to be located on a vertical run of pipe. Allowing these check valves to be installed in the vertical run will prevent the need for the submittal of a commonly approved deviation and simplify the review process.

DEQ-2, Section 42.62

This section addresses sizing of wet wells for pumping stations. The board is proposing to amend this section by adding language that recommends wet wells be designed with the flexibility to accommodate phased growth. In addition, an equation has been added to calculate the wet wells "active" volume. These amendments will ensure that the value added by the improvements is optimized and will provide the design and review engineers with information to confirm wet well sizing. The wet well volume equation is recommended in the State of Washington Department of Ecology document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 42.73

This section addresses electrical controls for pumping stations. The board is proposing to amend this section by adding recommended language from the parent document that recommends an automatic increase in ventilation rates whenever hazardous concentrations of gases or vapors are detected.

DEQ-2, Section 42.74

This section addresses pumping station electrical equipment. The board is proposing to amend this section by adding recommended language from the parent document, which requires that all electrical equipment in the lift station be installed in accordance with the National Electrical Code for Class 1, Division 1, Group D locations.

DEQ-2, Section 42.75

This section addresses ventilation requirements in pumping station wet wells. The board is proposing to amend this section by adding recommended language from the parent document, which requires that the air used for ventilation be 100 percent fresh.

DEQ-2, Section 42.76

This section addresses ventilation requirements in pumping station dry wells. The board is proposing to amend this section by adding recommended language from the parent document, which requires that the air used for ventilation be 100 percent fresh.

DEQ-2, Section 43

This section addresses suction lift pumping stations. The board is proposing to amend this section by adding language from Section 43.1 for clarity.

DEQ-2, Section 43.2

This section addresses pumping equipment compartment location and wet well access for suction lift pumping stations. The board is proposing to relocate information from existing Section 43.1 and to create a new section for clarity.

DEQ-2, Section 44.32

This section addresses electrical controls for submersible lift stations. The board is proposing to amend this section by adding recommended language from the parent document, which requires that electrical controls located outside be housed in a weatherproof structure.

DEQ-2, Section 44.4

This section addresses the location of valves for submersible lift stations. The board is proposing to amend this section by adding recommended language from the parent document, which requires that provisions be made to drain or remove accumulated water in the valve chamber.

DEQ-2, Section 45 through 45.3

These sections address the minimum design requirements for screw pump stations. The board is proposing to add information that addresses covers, the isolation of pump wells, and bearing lubrication using recommended language from the parent document.

DEQ-2, Section 46

This section addresses alarm systems for lift stations. The board is proposing to amend this section by adding recommended language from the parent document, which requires a back-up power supply for the alarm system and identification of the alarm condition. In addition, a requirement was added requiring thermal and moisture sensors on submersible pumps. This requirement was added for compliance with Section 44.1, which requires an effective method to detect seal failure.

DEQ-2, Section 47.2

This section addresses emergency pumping capability for lift stations. The board is proposing to amend this section by making the "recommendation," that a riser be provided on the force main to hook up a portable pump, a "requirement." Having a riser on the force main to hook up a portable pump is a requirement in the parent document. In addition, language has been added requiring that a separate portable pump or generator is to be provided for each lift station within the community to ensure that the community's entire collection system remains functional during extended power outages.

DEQ-2, Section 47.3

This section addresses emergency storage requirements for lift stations. The board is proposing to amend this section by adding language that recommends one hour of emergency storage be provided for lift stations, but also provides the department with the flexibility to alter the storage requirements based on site specific conditions. This amendment is necessary to provide the design engineer with sizing guidance.

DEQ-2, Section 47.44

This section addresses utility substations for emergency power to pumping stations. The board is proposing to add this new section that requires each independent substation to be capable of operating the pump station at its rated capacity. This amendment is a requirement in the parent document.

DEQ-2, Section 49.1

This section addresses force main diameters and velocities. The board is

proposing to amend this section by adding language that requires force mains that serve grinder pumps to be designed with a minimum velocity of two feet per second and a minimum diameter of 1.5 inches. In addition, language was added to limit the force main velocity to less than eight feet per second. This amendment is necessary to provide the design engineer with force main sizing guidance. Limiting force main velocities is a requirement in the State of Washington Department of Ecology document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 49.3

This section addresses the termination of force mains in a manhole. The board is proposing to amend this section by adding recommended language from the parent document that requires corrosion protection of the manhole.

DEQ-2, Section 49.4

This section addresses pressure changes in force mains. The board is proposing to amend this section by specifying that the use of surge protection devices must be evaluated to protect the force main. This amendment is a requirement in the parent document.

DEQ-2, Section 49.71

This section addresses friction coefficients used in the Hazen-Williams equation to calculate pump flows. The board is proposing to amend this section by requiring the design engineer to consider both new pipe and old pipe flow conditions and to consider how the higher discharge rates with the new piping will impact the pumps and downstream facilities.

DEQ-2, Section 49.10

This section addresses maintenance considerations for force mains. The board is proposing to amend this section by requiring isolation valves where force mains connect to a common force main and recommending the installation of cleanout ports for pig launching and catching. These amendments are based on recommendations in the parent document.

DEQ-2, Section 51.1

This section addresses general considerations for the siting of wastewater treatment facilities. The board is proposing to amend this section by requiring, in addition to considering nondegradation requirements, that consideration be given to future requirements from the development of TMDLs or compliance with water quality standards when selecting a site, to ensure that adequate space exists for future facilities that may be required to provide increased levels of treatment. This amendment is necessary to ensure that a comprehensive evaluation is made of future compliance issues.

DEQ-2, Section 52

This section addresses the need for wastewater facilities to provide the necessary degree of treatment to meet water quality standards established by the state. The board is proposing to add language encouraging the design engineer to consider future permit requirements that are related specifically to the implementation of TMDLs, new water quality standards, and the state's nondegradation policy.

DEQ-2, Section 53.8

This section addresses the evaluation of pumps at wastewater treatment facilities. The board is proposing to add this section to ensure that a thorough evaluation of major pumps or key unit processes has been made by the design engineer.

DEQ-2, Section 54.1

This section addresses the installation of mechanical equipment at wastewater treatment facilities. The board is proposing to amend this section by making the "recommendation," that the installation and initial operation of major items of mechanical equipment be inspected and approved by a representative of the manufacturer, a "requirement." This amendment is necessary to ensure that new equipment is installed and operating correctly.

DEQ-2, Section 54.21

This section addresses bypass structures and piping at wastewater treatment facilities. The board is proposing to amend this section by adding language that requires the capability to manually operate all bypasses and recommending that a fixed high water level bypass overflow be provided. These amendments are recommended in the parent document.

DEQ-2, Section 54.5

This section addresses the hydraulic testing of water bearing units. The board is proposing to add this section to require that all water bearing structures be hydraulically tested and to establish leakage standards. The leakage standards are based on recommendations developed by the American Concrete Institute Committee 350 and the American Water Works Association Committee 400, as presented in the joint subcommittee report entitled "Testing Reinforced Concrete Structures for Watertightness." This amendment is necessary to establish standardized criteria for testing the watertightness of concrete structures.

DEQ-2, Section 54.6

This section addresses the use of paint to color-code piping in wastewater

treatment facilities to facilitate identification. The board is proposing to amend this section by making the "recommendation," that the use of mercury or lead in paint be avoided, a "requirement" due to health concerns associated with mercury and lead. In addition, the existing language was altered making color-coding of pipelines a requirement for all plants, not just a recommendation for large facilities. The operation of all facilities is enhanced by having piping that is readily identifiable. Three colors and their associated piping contents were added based on recommendations from the parent document.

DEQ-2, Section 54.8

This section addresses erosion control at wastewater treatment facilities during construction. The board is proposing to amend this section by adding clarifying language that specifically states that a dewatering or storm water permit may be required.

DEQ-2, Section 56.22

This section addresses the direct connections of potable water piping and sewer connected wastes. The board is proposing to amend this section by adding language that requires a backflow prevention assembly be used on any potable water line that serves a wastewater treatment facility and adding language that directly references cross-connection requirements, as provided in state rules governing cross-connections and the Uniform Plumbing Code. These amendments will ensure that the potable water supply is adequately protected.

DEQ-2, Section 56.23

This section addresses the indirect connections of potable water piping and sewer connected wastes. The board is proposing to amend this section by adding clarifying language for the usage of backflow devices and includes requirements where air gaps are used. The air gap requirements are based on the Technical Brief entitled "Cross Connection and Backflow Prevention" published by the National Drinking Water Clearinghouse (2004 edition).

DEQ-2, Section 56.24

This section addresses the use of an individual well to provide potable water to a wastewater treatment facility. The board is proposing to amend this section by making the "recommendation," that the well be constructed in accordance with Circular DEQ-3 and the Montana Board of Water Well Contractor's rules, a "requirement."

DEQ-2, Section 56.7

This section addresses composite sampling equipment for influent and effluent flows. The board is proposing to amend this section by requiring the

sampling point to be located prior to any process return flows. This amendment is based on a recommendation in the parent document.

DEQ-2, Section 57.1

This section addresses safety equipment for wastewater facilities. The board is proposing to amend this section by recommending that OSHA and the Montana Department of Labor and Industry Safety Bureau be contacted for any additional safety considerations that may be implemented for the protection of visitors and workers to the treatment facility. In addition, language has been added requiring suitable lighting be provided for all access and work areas. These amendments will promote operator and visitor safety and assist with maintenance activities. Finally, vector control was added to the list of safety provisions. This amendment is recommended in the parent document.

DEQ-2, Section 57.27

This section addresses protective clothing and equipment for wastewater system personnel. The board is proposing to amend this section by requiring that UV light safety goggles and rubber gloves be provided to operations personnel for facilities that use UV disinfection systems and that masks be provided in areas where exposure to aerosols and sprays may occur. These amendments are necessary to provide further protection to operations personnel.

DEQ-2, Section 57.30

This section addresses eyewash devices and safety showers. The board is proposing to add this new section to clarify where the safety devices must be located within the facility. In addition, the new section specifies the discharge pressure, capacities, and water temperature that must be provided to the eyewash devices and safety showers. These amendments are required in the parent document.

DEQ-2, Section 58.341

This section addresses fume hood design considerations for Category II laboratories. The board is proposing to amend this section by recommending that the air intake for the laboratory be balanced against all exhaust ventilation, including the fume hood, so that an overall positive pressure is maintained in the laboratory. This amendment is recommended in the parent document.

DEQ-2, Section 58.38

This section addresses safety equipment and considerations for Category II laboratories. The board is proposing to amend this section by deleting information that covers eyewash devices and safety showers, as this information is already covered in Section 57.30.

DEQ-2, Section 58.41

This section addresses siting, space requirements, and the layout for Category III laboratories. The board is proposing to amend this section by recommending that analytical and storage areas are isolated from sources of contamination. In addition, language has been added requiring adequate security for storage areas and that provisions are made for the storage and disposal of chemical wastes. These amendments are based on recommendations and requirements in the parent document.

DEQ-2, Section 58.44

This section addresses the location, design, materials, fixtures, and exhaust considerations for fume hoods and canopy hoods in Category III laboratories. The board is proposing to amend this section by making many of the "recommendations" in the current text "requirements." A category III laboratory is typically used at more complex systems when a high level of sampling is required. These amendments will result in an improved working environment and will promote laboratory technician safety.

DEQ-2, Section 58.49

This section addresses safety equipment and considerations for Category III laboratories. The board is proposing to amend this section by deleting information that covers eyewash devices and safety showers, as this information is already covered in Section 57.30.

DEQ-2, Section 61.129

This section addresses the removal and cleaning of screening material. The board is proposing to amend this section by adding clarifying language that requires washing of the screening material for devices with an opening of 0.5 inch or less. This amendment is necessary as these screens tend to also screen out a significant amount of organic material, which can result in the generation of odors. Washing the screening material will return much of the organic material back to the influent flow stream for treatment in the facility and reduce odors in the headworks building.

DEQ-2, Section 61.130

This section addresses the construction material for bar racks. The board is proposing to add this new section to specify what materials are acceptable for use in the construction of bar racks due to the corrosive environment.

DEQ-2, Section 61.16

This section addresses the cleaning needs for facilities that use coarse screens. The board is proposing to add this new section to require that hosing

equipment be provided for cleaning. The parent document has the same requirement for fine screen facilities.

DEQ-2, Section 61.21

This section addresses the use of fine screens in wastewater treatment facilities. The board is proposing to amend this section by adding clarifying language that lists the various types of screens that can be used and by requiring automated washing of screening material for all fine screens. This amendment is necessary because fine screens tend to also screen out a significant amount of organic material, which can result in the generation of odors. Washing the screening material will return much of the organic material back to the influent flow stream for treatment in the facility and reduce odors in the headworks building.

DEQ-2, Section 61.22

This section addresses the design and installation of fine screens. The board is proposing to amend this section by adding language that allows the manufacturer of the fine screen to determine if a coarse screen should precede the fine screen. The cleaning strategies and mechanism of present-day fine screens does not necessitate the need for coarse screens.

DEQ-2, Section 61.25

This section addresses the use of hoods on fine screens. The board is proposing to add this new section requiring that fine screens be equipped with hoods to contain any aerosols and spray from the backwash system. This amendment is necessary for operator safety and to prevent the floor from becoming wet and slippery.

DEQ-2, Section 62.2

This section addresses considerations for the use of comminutors and grinders in wastewater treatment. The board is proposing to amend this section by adding clarifying language indicating that accumulation of stringy material, from use of these devices, may require special design considerations to protect equipment in downstream unit processes, as well as result in additional operation and maintenance activities for operations.

DEQ-2, Section 63.3

This section addresses design parameters for grit removal facilities. The board is proposing to amend this section by adding clarifying language that defines what flow designates a small treatment system and providing recommended design parameters for aerated grit chambers and horizontal grit chambers. The values reported were obtained from a document entitled, "Wastewater Engineering Treatment and Reuse," by Metcalf & Eddy (4th edition).

DEQ-2, Section 65.2

This section addresses the location of flow equalization basins. The board is proposing to amend this section by making the current "recommendation," that equalization basins be located downstream of pretreatment facilities, a "requirement." Flow equalization is typically used for mechanical treatment facilities that are also equipped with screening devices. Requiring this layout will prevent the excessive accumulation of solids in the equalization basin, making maintenance of the system easier for the operator.

DEQ-2, Section 65.51

This section addresses mixing and draw-off piping in flow equalization basins. The board is proposing to amend this section by making the current "recommendation," that corner fillets and hopper bottoms be used in equalization basins, a "requirement." A hopper bottom provides the most efficient means for the removal of any solids that settle out and will simplify maintenance activities associated with the equalization basin.

DEQ-2, Section 71.2

This section addresses flow distribution and control for clarifiers. The board is proposing to add language that prevents the use of valves for flow proportioning. This amendment is necessary because valves are more susceptible to plugging. In addition, since they are submerged, a visual confirmation to assess if flows are being evenly split between multiple units cannot be made. This can lead to flow imbalances resulting in overloading to individual tanks.

DEQ-2, Section 72.1

This section addresses clarifier dimensions. The board is proposing to amend this section by increasing the minimum side water depth for primary clarifiers from seven to ten feet. This amendment is recommended in the parent document. In addition, clarifying language has been added recommending that a minimum side wall depth of 16 feet be used to meet stringent phosphorous or total suspended solid limits (TSS). The increased depth will provide increased settling and improve the removal of particles. The 16-foot side water depth is based on values reported in a document entitled "Wastewater Engineering Treatment and Reuse," by Metcalf & Eddy (4th edition).

DEQ-2, Section 72.21

This section addresses surface overflow rates for primary and intermediate settling tanks. The board is proposing to amend this section by recommending a maximum detention time of 2.5 hours in the primary settling tank. This value was obtained from a document entitled "Wastewater Engineering Treatment and Reuse," by Metcalf & Eddy (4th edition). The board is also proposing to amend this section

by adding recommended language from the parent document that addresses surface overflow rates for intermediate settling tanks.

DEQ-2, Section 72.8

This section addresses the use of baffles in settling basins. The board is proposing to add this new section recommending that baffles be utilized in settling basins for systems that must meet stringent phosphorous or TSS limits. The baffles prevent short-circuiting caused by density currents resulting in improved treatment.

DEQ-2, Section 73.2

This section addresses sludge collection and removal from clarifiers. The board is proposing to amend this section by adding language from the parent document that recommends suction withdrawal from clarifiers over 60 feet in diameter and for activated sludge facilities that nitrify.

DEQ-2, Section 72.23

This section addresses sludge removal piping diameters. The board is proposing to amend this section by allowing sequencing batch reactors and membrane bioreactor plants to have sludge removal piping that is four inches in diameter. This amendment is consistent with the manufacturer's recommendations for these types of facilities. In addition, language was added requiring that provisions be made that allow for the return sludge to be sampled, which will enhance operability of the plant.

DEQ-2, Section 73.24

This section addresses sludge removal from clarifiers. The board is proposing to amend this section by discouraging the use of air-lift pumps for secondary sludge removal where stringent TSS or phosphorous limits are required. Air-lift pumps lack the capability of providing a wide range of flow control limiting the operability of the clarifier and the operator's ability to optimize unit process performance.

DEQ-2, Section 74.4

This section addresses the use of covers on final settling basins to prevent them from freezing. The board is proposing to amend this section by adding language that recommends nitrogen removal facilities consider covering their final settling basins, which have been shown to be prone to freezing in some parts of the state.

DEQ-2, Section 81

This section addresses facilities for sludge processing at mechanical

treatment plants. The board is proposing to amend this section by adding recommended language from the parent document requiring that the department be contacted if any sludge processing system is being considered that is not covered by these standards, to ensure that state and federal sludge disposal requirements can be met.

DEQ-2, Section 82

This section provides key considerations in the selection of sludge handling processes. The board is proposing to amend this section by adding clarifying language that discusses the importance of time and temperature to meet pathogen and vector attraction reduction in accordance with regulations for sludge stabilization provided in 40 CFR Part 503. This amendment is recommended in the parent document.

DEQ-2, Section 84.132

This section addresses the installation of access manholes on the top of anaerobic digesters. The board is proposing to amend this section by adding clarifying language from the parent document that recommends the access manholes have a 30-inch diameter.

DEQ-2, Section 84.31

This section addresses the design of the anaerobic digester tank capacity. The board is proposing to amend this section by adding clarifying language from the parent document that requires consideration of the solids retention time at peak loadings in the determination of tank capacity. The board is also proposing to amend this section by making the "recommendation," that tank sizing design calculations be submitted to the department, a "requirement."

DEQ-2, Section 84.45

This section addresses the installation of electrical equipment associated with anaerobic digester appurtenances. The board is proposing to amend this section by changing the electrical requirement from Class I, Division 2 to Class I, Division 1. This amendment is required in the parent document.

DEQ-2, Section 84.47

This section addresses ventilation requirements for areas that contain anaerobic digester appurtenances and digester gas piping. The board is proposing to amend this section by adding recommended language from the parent document that requires at least 12 complete air changes per hour, on a continuous basis, for areas designated Class I, Division 2.

DEQ-2, Section 84.531

This section addresses heating requirements for anaerobic digesters. The board is proposing to amend this section by adding clarifying language from the parent document that recommends an operating temperature range of 85° to 100 °F for the optimization of mesophilic digestion.

DEQ-2, Section 84.542

This section addresses the use of boilers to heat sludge in anaerobic digesters. The board is proposing to amend this section by making the "recommendation," that boiler controls be automatic, a "requirement." Automatic controls will enhance operator safety and optimize system performance.

DEQ-2, Section 84.7

This section addresses anaerobic digestion sludge production. The board is proposing to add this new section by removing information from existing DEQ-2, Section 88.11, which covered anaerobic solids production values based on the treatment process and population equivalents, and inserting that information into new Section 84.7.

DEQ-2, Section 85.4

This section addresses mixing equipment in aerobic digesters. The board is proposing to amend this section by including a minimum mixing energy requirement of 0.75 Hp/1000 ft³ of digester capacity for mechanical mixing equipment. This value was obtained from a document entitled "Wastewater Engineering Treatment and Reuse" by Metcalf & Eddy (4th edition).

DEQ-2, Section 85.8

This section addresses aerobic digestion sludge production. The board is proposing to add this new section by removing information from existing DEQ-2, Section 88.12, which covered aerobic solids production values based on the treatment process and population equivalents, and inserting that information into new Section 85.8.

DEQ-2, Section 86.3

This section addresses odor control from sludge storage tanks. The board is proposing to amend the section by deleting the sentence that states: "The reviewing authority should be contacted for design and air pollution control objectives to be met for various types of air scrubber units." The department does not have design standards for air scrubber units.

DEQ-2, Section 87.23

This section addresses piping supports located in digestion tanks. The board is proposing to amend this section by stressing the importance of designing the piping support system to withstand the corrosive environment of the digestion tank.

DEQ-2, Section 88.1

This section addresses sludge dewatering. The board is proposing to amend the section by deleting information that pertains to aerobic and anaerobic solids production values. The deleted information is being relocated to sections 84.7 and 85.8.

DEQ-2, Section 88.3

This section addresses the use of ponds as sludge dewatering units. The board is proposing to amend the section by deleting the information related to sludge dewatering and relocating it to Section 89.2, which addresses sludge storage ponds. This revision is recommended in the parent document.

DEQ-2, Section 88.32

This section addresses protection of the water supply in mechanical dewatering facilities. The board is proposing to add this new section by adding recommended language from the parent document that requires the water system to be designed in accordance with Section 56.23 (Indirect Connections) of DEQ-2. This amendment will ensure that the water supply remains adequately protected from contamination.

DEQ-2, Section 89.22

This section addresses the location of ponds for sludge storage. The board is proposing to add language that requires a minimum separation of 500 feet between water wells and sludge storage ponds. This separation distance is required by a provision in state water quality laws at 75-5-605, MCA.

DEQ-2, Section 89.23

This section addresses the seal of ponds used for sludge storage. The board is proposing to add language that requires the test results from the leakage test be submitted to the department for approval. This will ensure that the leakage meets department standards.

DEQ-2, Section 89.25

This section addresses the use of ponds for sludge storage. The board is proposing to add this new section by adding recommended language from the

parent document that requires that the pond be equipped with a method of decanting and for supernatant to be returned to the treatment process.

DEQ-2, Section 89.31

This section addresses the disposal of sludge. The board is proposing to add this new section by adding recommended language from the parent document that requires drainage facilities at sludge vehicle transfer stations to collect and return any spillage or washdown material to the treatment plant or sludge storage facility.

DEQ-2, Section 89.32

This section addresses the disposal of sludge via sanitary landfilling. The board is proposing to amend this section by adding language that explains that sludges typically must pass a Toxicity Characteristic Leaching Procedure (TCLP) test for disposal in a landfill. In addition, language has been added requiring documentation from the operating authority of the landfill stating that they are licensed and willing to accept sewage sludge.

DEQ-2, Section 89.33

This section addresses the disposal of sludge via land application. The board is proposing to amend this section by adding recommended language from the parent document that lists several design considerations for the proper disposal of sludge at a land application site. Clarifying language was also added stating that a sludge disposal permit from the U.S. Environmental Protection Agency (EPA), along with department approval, is required for the land application of sludge.

DEQ-2, Section 91.211

This section addresses the wastewater distribution system in trickling filters. The board is proposing to amend this section by adding recommended language from the parent document that adds design considerations for rotary distributors and motor driven distributor arms.

DEQ-2, Section 92.12

This section addresses the use of activated sludge for wastewater treatment. The board is proposing to amend the section by deleting information that pertains to sequencing batch reactors. Design considerations for sequencing batch reactors are addressed in Section 96.

DEQ-2, Section 92.2

This section addresses the pretreatment of wastewater for activated sludge facilities. The board is proposing to amend this section by adding recommended language from the parent document that requires screening devices, with a clear

opening of 1/4-inch or less, to be provided prior to the activated sludge process.

DEQ-2, Section 92.31

This section addresses capacities and permissible loadings in activated sludge facilities. The board is proposing to amend this section by adding clarifying language that references Section 95.31 for the design of systems that incorporate nitrification into the treatment process.

DEQ-2, Section 92.32 b

This section addresses short-circuiting through small aeration tanks at activated sludge plants. The board is proposing to amend this section by requiring that tanks be designed with a means of positive control. This requirement prevents short-circuiting through the tank.

DEQ-2, Section 92.331

This section addresses the general requirements associated with the oxygen demand at activated sludge plants. The board is proposing to amend this section by adding clarifying language that requires, in addition to the maximum diurnal organic loading, that the diurnal peak TKN loading be taken into account for nitrogen removal plants. Furthermore a reference is included directing the design engineer to Section 95.31 for additional nitrification design considerations.

DEQ-2, Section 92.41

This section addresses return sludge rates for activated sludge facilities. The board is proposing to amend this section by adding recommended language from the parent document that includes minimum and maximum return sludge rates for step aeration, complete mix, and single stage nitrification processes, and requiring design flexibility that enables operation in various process modes. In addition, return sludge rates for Biological Nutrient Removal treatment processes have been added. The range of 70% to 120% is supported by information from the Water Environment Federation (WEF) in a document entitled "Design of Municipal Wastewater Treatment Plants" (4th edition) and from a seminar entitled "Basics of Biological Nutrient Removal" presented to department staff by Dr. Bill Oldham in February 2009.

DEQ-2, Section 92.5

This section addresses flow measuring devices for various unit processes. The board is proposing to amend this section by making the "recommendation," that flow rate measuring devices be installed for various unit processes, a "requirement." This amendment will ensure that the design is not limiting the operator's ability to optimize unit process performance.

DEQ-2, Section 93.26

This section addresses the separation distance between water wells and wastewater treatment ponds. The board is proposing to add this new section that requires a minimum separation of 500 feet between water wells and wastewater treatment ponds. This separation distance is required by a provision in state water quality laws at 75-5-605, MCA. Language is also included that directs the design engineer to Section B.6 for the separation requirements for storage ponds.

DEQ-2, Section 93.34

This section addresses the number of treatment cells and piping requirements for treatment ponds. The board is proposing to amend this section by making the "recommendation," that piping flexibility be incorporated into the design to allow for isolation of a treatment cell or splitting the flow to two or more cells, a "requirement". Piping flexibility is essential for providing adequate treatment under different operational scenarios.

DEQ-2, Section 93.341

This section addresses controlled discharge facultative treatment lagoon system design considerations. The board is proposing to delete this section as this information is included in Table 93-1, entitled "Facultative Pond Design Criteria."

DEQ-2, Section 93.342

This section addresses flow through facultative treatment lagoon system design considerations. The board is proposing to delete this section as this information is included in Table 93-1, entitled "Facultative Pond Design Criteria."

DEQ-2, Section 93.36

This section addresses design criteria for facultative ponds. The board is proposing to amend this section by changing the minimum operating depth of storage cells from two feet to one foot for land application and total retention systems. This amendment is necessary so the minimum operating level in Table 93-1 is in agreement with Note 2 of the Table, which states the detention time for storage lagoons can be based on the volume between one foot and the maximum operating depth. In addition, the board is proposing to amend the minimum operating depth of the primary cell for total retention systems from two feet to four feet. Since total retention systems are typically utilized in smaller communities with lower flows, this amendment will ensure that the primary cell is not oversized and is able to maintain an adequate depth of water, especially during system start-up, to keep the sludge covered, minimize odors, and provide better treatment.

DEQ-2, Section 93.411

This section addresses pond embankment or dike construction. The board is proposing to amend this section by deleting the reference to the Standard Proctor Density and instead referencing AASHTO T99 and ASTM D698 for compaction requirements. Referencing AASHTO T99 and ASTM D698 is consistent with the compaction methods cited in the revised Section 33.83 of DEQ-2, which relies on the standards and methods in the document entitled "Montana Public Works Standard Specifications (MPWSS)" (6th edition).

DEQ-2, Section 93.415

This section addresses freeboard depths for wastewater treatment pond systems. The board is proposing to amend this section by adding clarifying language that defines a small treatment system as being 25,000 gallons per day or less.

DEQ-2, Section 93.416 b

This section addresses the use of riprap on the interior slopes of pond embankments for erosion control. The board is proposing to amend this section by deleting the sentence that allows for riprap to be limited only to interior dikes receiving prevailing winds. Previous projects have shown that, where limited riprap has been allowed, erosion still occurs on the interior slopes at the water line and from rain and snowmelt around the entire pond, regardless of wind direction.

DEQ-2, Section 93.421

This section addresses pond bottom construction. The board is proposing to amend this section by deleting the reference to the Standard Proctor Density and instead referencing AASHTO T99 and ASTM D698 for compaction requirements. Referencing AASHTO T99 and ASTM D698 is consistent with the compaction methods cited in the revised Sections 93.411 and 33.83 of DEQ-2, which rely on the standards and methods in the document entitled "Montana Public Works Standard Specifications (MPWSS)" (6th edition).

DEQ-2, Section 93.422

This section addresses pond seal leakage requirements. The board is proposing to amend this section by adding language that clarifies the leakage allowances, testing duration, and testing protocol for pond liners. This amendment is necessary to ensure that the leakage test is included in the specifications for review and approval by the department. In addition, language from the parent document was added that clarified the testing of soil and bentonite liners.

DEQ-2, Section 93.434

This section addresses the placement of influent lines in treatment ponds. The board is proposing to amend this section by adding clarifying language that the influent line must be located above the required sludge storage depth. This will ensure that flow into the treatment pond does not become obstructed.

DEQ-2, Section 93.442 a 3

This section addresses drawdown structure design for irrigation storage ponds. The board is proposing to add this new section that allows the bottom pipe for land application systems to be located one foot above the pond bottom. Adding this design standard will provide consistency with the allowable operating range proposed in Table 93-1 for land application systems.

DEQ-2, Section 93.442 a 4

This section addresses piping requirements for cell bypass. The board is proposing to amend this section by deleting the language associated with cell bypass requirements as this information is already included in Section 93.34.

DEQ-2, Section 95

A provision in this section allows department approval for other biological processes not covered in DEQ-2. The board is proposing to relocate this information from existing Section 95 to new Section 98.

DEQ-2, Section 95

The information in this section addresses design standards for Biological Nutrient Removal (BNR) wastewater treatment systems. The board is proposing to add new information in Section 95 to ensure that key design components and requirements for the biological removal of phosphorus and nitrogen are addressed in the design of BNR facilities to optimize treatment and operability. The board finds that the inclusion of this new information in DEQ-2 is necessary so that owners and operators of public sewage systems have the necessary design standards for installing BNR treatment as a means to meet future permit limits for phosphorus and nitrogen.

The design standards proposed for inclusion in this section are supported by information from the following documents and seminars: (1) Water Environment Federation's (WEF) "Design of Municipal Wastewater Treatment Plants" (4th edition); (2) WEF's Manual of Practice No.34 entitled "Nutrient Removal"; (3) "Biological Nutrient Removal in Advanced Wastewater Treatment Plants: Design and Operational Considerations," a seminar presented to department staff by Glen Daigger (May 2011); (4) "Phosphorus Removal - Tips for Operators, Trainers, and Design Engineers," a WEF Webcast (June 2011); (5) "Biological Nutrient Removal," a seminar presented to department staff by Ron Schuyler (June 2011); (6) "Basics of

Biological Nutrient Removal," a seminar presented to department staff by Dr. Bill Oldham (February 2009); (7) "Improving Performance of Biological Wastewater Treatment Systems," an METC sponsored course (August 2008); (8) "2009 Nutrient Removal Conference," a WEF sponsored course; and (9) "2007 Nutrient Removal Conference," a WEF sponsored course.

DEQ-2, Section 96

This section addresses design standards for Sequencing Batch Reactor (SBR) wastewater treatment systems. The board is proposing to add this new section to DEQ-2 to ensure that key design components and requirements are addressed in the design of SBR facilities to optimize treatment and operability. The board finds that the inclusion of this new information in DEQ-2 is necessary so that owners and operators of public sewage systems have the necessary design standards for installing SBR treatment as a means to meet future permit limits for nitrogen and phosphorus.

The design standards proposed for inclusion in this section are supported by information from: (1) the parent document; (2) WEF's document entitled "Design of Municipal Wastewater Treatment Plants" (4th edition); (3) Texas Commission on Environmental Quality's "Chapter 217 - Design Criteria for Domestic Wastewater Systems"; (4) "Aqua SBR Design Manual"; and (5) State of Washington Department of Ecology's "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 97

This section addresses design standards for Membrane Bioreactors (MBR) wastewater treatment systems. The board is proposing to add this new section to ensure that key design components and requirements are addressed in the design of MBR facilities to optimize treatment and operability. The board finds that the inclusion of this new information in DEQ-2 is necessary so that owners and operators of public sewage systems have the necessary design standards for installing MBR treatment as a means to meet future permit limits for nitrogen and phosphorus.

The design standards proposed for inclusion in this section are supported by information from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition) and the "2008 Membrane Technology," which is a WEF sponsored course.

DEQ-2, Section 98

This section addresses approval for other biological processes not covered in DEQ-2. This new section refers the reader to Section 53.2, which contains the requirements for approval and use of innovative technologies not covered in DEQ-2.

DEQ-2, Section 102.2

This section addresses chlorine dosages. The board is proposing to amend

this section by adding dosage requirements for lagoon facilities and changing trickling films to fixed films, which is a more general term and includes rotating biological contactor systems as well.

DEQ-2, Section 102.31

This section addresses the storage of chlorine gas cylinders. The board is proposing to amend this section by making the "recommendation," that chlorine gas cylinders be stored upright, a "requirement." Proper storage will enhance operator safety.

DEQ-2, Section 102.32

This section addresses the storage of chlorine gas in one-ton containers. The board is proposing to amend this section by adding language that states a means for securing the containers must be provided. Proper storage will enhance operator safety.

DEQ-2, Section 102.45

This section addresses piping requirements for chlorine disinfection systems. The board is proposing to amend this section by adding recommended language from the parent document, which requires that a chlorine piping system be color coded to ensure that interconnection between the chlorine and sodium hydroxide systems cannot occur. These amendments will promote operator safety.

DEQ-2, Section 102.511

This section addresses the use of locker-type chlorine enclosures for small systems. The board is proposing to amend this section by adding language from Section 5.4.2 of Circular DEQ-1, entitled "Standards for Water Works" (2006 edition). This amendment will provide cost savings to small systems.

DEQ-2, Section 102.53

This section addresses heating requirements for chlorination rooms. The board is proposing to amend this section by adding recommended language from the parent document, which allows liquid hypochlorite to be stored in unheated areas.

DEQ-2, Section 102.6

This section addresses sampling and testing associated with chlorine disinfection. The board is proposing to amend this section by adding clarifying language that states sampling must be done in accordance with permit requirements.

DEQ-2, Section 103.2

This section addresses dechlorination chemical dosages. The board is proposing to amend this section by adding recommended language from the parent document, which includes dosage requirements for sodium thiosulfate and sodium sulfite.

DEQ-2, Section 103.42

This section addresses mixing requirements for dechlorination systems. The board is proposing to amend this section by adding language from the parent document, which recommends that the chemicals be introduced at a point of adequate hydraulic turbulence or requires that mechanical mixing be provided.

DEQ-2, Section 103.51

This section addresses the storage of dechlorination chemicals. The board is proposing to amend this section by making the "recommendation," that sulfur dioxide housing guidelines follow those used for chlorine gas, a "requirement." This amendment will promote operator safety.

DEQ-2, Section 104

This section addresses ultraviolet (UV) radiation disinfection systems. The board is proposing to amend this section by expanding its content to include both open channel and closed vessel UV units and providing additional requirements that relate to the characterization of the wastewater, system hydraulics, installation and maintenance considerations, system sizing, electrical provisions, and spare parts needs. Due to safety concerns with chlorine disinfection, and as UV technology has evolved, the use of UV to meet disinfection needs has been on the rise. Expansion of the UV disinfection system section will ensure improved system design and reliability.

DEQ-2, Chapter 110

This chapter addresses supplemental treatment processes with a specific emphasis on phosphorus removal by chemical treatment. The board is proposing to amend this chapter to expand the process design requirements for coagulation, chemical mixing, flocculation, and filtration. This amendment will change the current focus from phosphorus removal to only clarification in general.

DEQ-2, Section 111.123

This section addresses feed water characteristics and conditions that must be considered in the clarification process. The board is proposing to add this new section to ensure that water and solid characteristics, over the range of conditions expected, are defined for the proposed clarification process. The language for this

section was obtained from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 111.21

This section addresses dosage considerations for the coagulation process. The board is proposing to amend this section by adding design considerations and requirements for coagulation processes that use charge neutralization or sweep coagulation. This amendment will ensure that key design parameters are addressed when these processes are proposed. The language for this section was obtained from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 111.22

This section addresses chemical selection for phosphorus removal. The board is proposing to amend this section by adding language from the parent document, which recommends that additional considerations in the chemical selection process. This amendment will ensure a more thorough evaluation regarding chemical selection.

DEQ-2, Section 111.24

This section addresses chemical mixing for the coagulation process. The board is proposing to amend this section by adding design considerations and requirements for mechanical mixers and in-line static mixers. This amendment will ensure that key design parameters are addressed when these devices are used. The language for this section was obtained from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 111.25

This section addresses flocculation for the clarification process. The board is proposing to amend this section by adding design considerations and requirements for flocculation basins. This amendment will ensure that key design parameters are addressed in the design of flocculation basins. The language for this section was obtained from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition).

DEQ-2, Section 111.26

This section addresses settling for the clarification process. The board is proposing to amend this section by referencing additional settling processes that are located in Circular DEQ- 1. This amendment will give the designer more options for solids separation in the clarification process, as well as provide basic design requirements.

DEQ-2, Section 111.27

This section addresses filtration for the clarification process. The board is proposing to amend this section by establishing filtration design requirements based on treatment objectives and effluent uses. Given the potential for human contact when the use of reclaimed wastewater is approved by the department, the board is proposing to require filtration for reclaimed wastewater that is equivalent to the filtration required in the drinking water industry. Due to the variety of filters available and accompanying design requirements, the board is proposing language that requires compliance with Circular DEQ-1, Section 4.2 (Filtration), rather than repeat those requirements in DEQ-2. This amendment will ensure that adequate filtration units are used for the proposed uses.

DEQ-2, Section 111.33

This section addresses dry chemical feed systems for phosphorus removal. The board is proposing to amend this section by adding some additional design requirements from Circular DEQ-1, "Standards for Water Works," for dry chemical feed systems including the use of gravimetric or volumetric feeders and mixing requirements for dissolved solutions. These amendments will improve the delivery of dry chemicals to the treatment process.

DEQ-2, Chapter 120

This chapter addresses design standards and other considerations for irrigation and rapid infiltration systems. The board is proposing to replace and incorporate the existing design standards from DEQ-2 (1999 edition) in Appendix B, "Standards for the Spray Irrigation of Wastewater," and Appendix D, "Standards for Rapid Infiltration Basins," into a new Chapter 120. As proposed, the new chapter 120 will not only include the information from both Appendix B and D, but also expand and clarify the content of the information in the current Appendix B. The new information relating to the irrigation with wastewater is necessary to provide design considerations, including tables and equations, from a document entitled "Process Design Manual for Land Treatment of Municipal Wastewater Effluents," published by the U.S. EPA.

DEQ-2, Section 121

Section 121, formerly Appendix B, provides design standards for the irrigation of wastewater at or below agronomic rates. Notable additions to Section 121 include the development of treatment standards and an associated classification system for reclaimed wastewater used for irrigation and the inclusion of key design components from a document entitled "Process Design Manual for Land Treatment of Municipal Wastewater Effluents," published by the U.S. EPA.

In the current version of DEQ-2, EPA's design manual for land treatment is merely incorporated by reference. In this rulemaking, the board is proposing to insert key portions of the text, tables, and equations from EPA's manual into Section

121, which will simplify the review process by eliminating the need to cross reference against the EPA document. The board is also proposing to enhance the requirements and content of the Operations and Maintenance (O&M) Manual for irrigation with wastewater by requiring a discussion of critical operation tasks and the establishment of a recordkeeping database to track irrigation practices. A comprehensive O&M Manual is necessary to ensure that the irrigation with reclaimed wastewater occurs in accordance with the department's approval.

Other provisions of EPA's manual proposed for inclusion in Section 121 are requirements for buffer zones, access control of the irrigation site, effluent monitoring, and soil testing. These provisions will ensure that public health and any potential receiving waters are protected during land treatment of domestic wastes.

In addition, the board is proposing to include classifications and associated treatment standards for reclaimed wastewater that is applied to land at or below agronomic rates. The new classes and standards that are required for irrigation uses at agronomic rates are identified in Section 121.3. That section establishes four classifications of reclaimed wastewater that differ by the degree of additional treatment required for each class following secondary treatment, as specified in 40 CFR Part 133. The four classifications of reclaimed wastewater that are identified in Section 121.3 require less treatment than classes that meet the definition of "unrestricted reclaimed wastewater" that are included in revised Appendix B. A more detailed explanation of the derivation of the four classes and associated treatment standards is provided in the board's reasons for revising Appendix B. The board is proposing to adopt these four classifications and associated treatment standards for land treatment of effluent, because the additional treatment requirements specified in Section 121.3, along with the monitoring, reporting, and design requirements proposed for adoption in Section 121, will ensure that public health and the beneficial uses of any potential receiving water will be protected.

DEQ-2, Section 122

Section 122, formerly Appendix D, provides design standards for rapid infiltration systems. The board is proposing to revise Section 122 by including tables and text from EPA's document entitled "Process Design Manual for Land Treatment of Municipal Wastewater Effluents" (2006 edition), relating to the design of rapid infiltration systems. These additions from EPA's manual include hydraulic loading rates, infiltration/percolation basin loading requirements, and minimum number of cells. In addition, the board is proposing to include design guidance for the use of subsurface absorption cells, also known as ground water infiltrators, for the disposal of treated effluents in Section 12.24, as an addition to traditional "open basin" design requirements. The board is proposing these revisions to provide clarity to the design requirements for rapid infiltration systems.

DEQ-2, Appendix A, Section A.11

This section addresses the handling of septage at wastewater treatment facilities. The board is proposing to amend this section by adding language from the parent document, which recommends that grease not be hauled to wastewater

treatment plants for disposal.

DEQ-2, Appendix A, Section A.12

This section addresses the characterization of septage. The board is proposing to amend this section by adding language from the parent document, which recommends that the septage source be sampled and analyzed with consideration of those results in the design of septage receiving and treatment systems.

DEQ-2, Appendix A, Section A.25

This section addresses the point of introduction of septage into the wastewater treatment process. The board is proposing to amend this section by recommending that septage enter the treatment process upstream, or within the headworks of the facility, and clarifying that other points of introduction require adequate justification.

DEQ-2, Appendix A, Section A.36

This section addresses the location of septage-receiving facilities at wastewater treatment plants. The board is proposing to amend this section by adding language that recommends that the septage-receiving facility be located and designed to allow for the slow release of septage into the treatment system during the nonpeak periods. This addition is necessary to prevent "shock loads" from upsetting the treatment process that can lead to permit violations.

DEQ-2, Appendix A, Section A.50

This section addresses recording devices at septage-receiving facilities. The board is proposing to amend this section by recommending that a key pad, card reader, or similar recording device be installed at septage receiving facilities. This amendment will help track the source and volume of septage received at the facility.

DEQ-2, Appendix B

This new Appendix B establishes design standards and other considerations for public sewage systems that propose to use reclaimed wastewater for other purposes. In Appendix B, the board is proposing to establish requirements for using reclaimed wastewater for a variety of uses that go beyond its use for irrigation at agronomic rates. If adopted, this proposal will expand the allowable reuse alternatives available to public sewage systems in a manner that is consistent with EPA guidance and national design standards. The board's proposal to adopt new Appendix B, in combination with the irrigation reuse standards in Chapter 120, Section 121, is in response to the recent enactment of House Bill 52 (2011), authorizing the board to adopt rules identifying allowable uses of reclaimed wastewater and classifications for those uses. The newly enacted state law also

requires the adoption of treatment, monitoring, and reporting standards tailored to each classification to protect the uses of the reclaimed wastewater and any receiving water. The classification, standards, and allowable uses proposed for adoption in Appendix B are based on EPA guidance and standards established in many other western states. The levels of treatment for each of the proposed classifications have been extensively evaluated by public health agencies, primarily in California, Washington, Florida, and Texas, and have been determined in each of those states to be protective of public health and the environment.

DEQ-2, Appendix B, Section B-2

This section includes definitions that are used throughout Appendix B. These definitions are necessary to describe and define the allowable uses, treatment standards, and other requirements for the use of reclaimed wastewater.

DEQ-2, Appendix B, Section B.3

This section identifies, in tabular form, all of the allowable uses of reclaimed wastewater proposed for adoption by the board and the class of reclaimed wastewater required for each use. The allowable uses identified in this section will provide alternatives for using reclaimed wastewater, in lieu of potable water, for such things as landscape impoundments, firefighting, construction dust control and compaction, industrial use, and aquifer recharge and injection.

DEQ-2, Appendix B, Section B.4

This section establishes treatment standards to achieve the quality of reclaimed water that would be required for each of the various uses identified in B.3, Table B-1. Table B-2 in Section B.4 establishes six classifications of reclaimed wastewater that are differentiated by the degree of additional treatment provided following secondary treatment, which is applicable to each class. The highest degree of treatment within the classification system is required for Class A-1 and B-1 reclaimed waters. These waters not only meet the various treatment standards used or recommended by other states and EPA, but must also meet Montana's nondegradation requirements prior to reuse.

DEQ-2, Appendix B, Section B.5

This section establishes requirements for the conveyance of reclaimed wastewater. The board is proposing to require compliance with the standards adopted by the board for the conveyance of drinking water, set forth in Circular DEQ-1. The board is proposing this approach because reclaimed wastewater is typically delivered to the place of reuse in the same manner as drinking water. Therefore, Section B.5 requires compliance with the standards in Circular DEQ-1 for drinking water pumping facilities (DEQ-1, Chapter 6), storage tanks and basins (DEQ-1, Chapter 7), and delivery piping, trenching, and bedding (DEQ-1, Chapter 8). In addition, Section B.5 requires the use of purple piping or marking to identify

reclaimed wastewater conveyance systems. This last requirement is based upon EPA guidelines for water reuse.

DEQ-2, Appendix B, Section B.7

This section establishes requirements for fencing and advisory signs as a means of notifying the public and protecting public health when appropriate to do so. The board is proposing to adopt provisions that allow the department to determine when fencing or signs are needed on a case-by-case basis.

DEQ-2, Appendix B, Section B.8

This section requires a written agreement or lease arrangement that secures the land where reclaimed wastewater will be used for a period of 20 years or more. The board is proposing this requirement to avoid situations where the owner of the reclaimed wastewater has no place to send the reclaimed wastewater in the event that a landowner refuses to accept it.

DEQ-2, Appendix B, Section B.9

This section establishes requirements for measuring the flow of reclaimed wastewater on a daily basis and also requires sampling the reclaimed wastewater prior to reuse. The board is proposing to adopt these provisions to ensure that the quality and amount of reclaimed wastewater complies with the department's approval of the reuse project.

DEQ-2, Appendix B, Section B.10

This section establishes specific requirements for an O&M Manual for various uses of reclaimed wastewater. The requirements in this section are tailored to each use so that, when prepared, the manual establishes clear requirements for the operation, treatment, monitoring, and recordkeeping of reclaimed wastewater. This section also authorizes the department to establish and require project-specific operations and monitoring when justified by the project. The board is proposing these requirements to ensure that the reclaimed wastewater system is operated and maintained, according to the department's approval, so that public health and the environment are protected.

DEQ-2, Appendix C

This appendix addresses design standards and considerations for alternative sewer collection systems. The board is proposing to amend Appendix C by expanding its content to include information on small diameter gravity systems, septic tank effluent pump systems, grinder pump systems, and their associated requirements with regard to system hydraulics, material considerations, and connection to conventional sewer systems. The proposed expansion of the appendix requires these systems to have an O&M Manual prior to system start-up

and provides guidance on the type of information that must be included in the manual. The standards developed in Appendix C are supported by information from the State of Washington Department of Ecology's document entitled "Criteria for Sewage Works Design" (2008 edition); EPA's document entitled "Alternative Wastewater Collection Systems" (October 1991); and EPA's document entitled "Decentralized Systems Technology Fact Sheet Small Diameter Gravity Sewers" (September 2000).

DEQ-2, Appendix D

This appendix establishes guidelines for sewer rehabilitation. The board is proposing a new Appendix D to provide general information and guidance regarding rehabilitation techniques for sewer mains, sewer service connections, and manholes, which do not require extensive trench excavation and pipe replacement. Rehabilitation methods covered in the appendix include sliplining, cured-in-place pipe, and pipe bursting. The guidelines developed in the new Appendix D are supported by information from EPA's document entitled "Collection Systems O&M Fact Sheet Trenchless Sewer Rehabilitation" (September 1999).

DEQ-2, Appendix E

This appendix addresses required information on capacity development for wastewater systems. The board is proposing a new Appendix E in order to provide the department with the information necessary for its review and evaluation of a proposed new system. The information required in Appendix E includes management, operation, maintenance, and financing of the system. By requiring the submission of this information to the department, the department will be able to evaluate a new system for proper system maintenance, operation, and financial planning that will provide long-term stability of a new system. The language proposed for inclusion in Appendix E is based on language taken from Appendix A of Circular DEQ-1, entitled "Standards for Water Works" (2006 edition). This proposed addition of the information in new Appendix E is necessary to meet the requirements of 75-6-103(2)(f), MCA, which requires the board to adopt rules concerning the technical, managerial, and financial capacity of a proposed public sewage system to ensure that the system is capable of meeting the applicable requirements in DEQ-2.

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., August 7, 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 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 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/ 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. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, June 11, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

| | | |
|-------------------------------------|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 32.3.1205, 32.3.2001 pertaining |) | AMENDMENT |
| animal contacts, and brands and |) | |
| earmarks |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

1. On July 30, 2012, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, July 13, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.1205 ANIMAL CONTACTS (1) Any nonvaccinated or not currently vaccinated animal ~~subject to rabies which has been bitten by a known~~ that has been exposed to a confirmed rabid or suspected rabid animal must be either ordered destroyed by the state veterinarian or quarantined in strict isolation in a place and manner approved by the state veterinarian for a period of ~~6~~ six months, ~~and then if cats or dogs vaccinated as set forth in paragraphs (2) or (3) below, or destroyed. If the animal is to be quarantined, rabies vaccine should be administered upon entry into isolation.~~

~~(2) If a dog or cat has not been vaccinated against rabies within time limits prescribed by, and otherwise in accordance with, a current "compendium of rabies vaccines" issued by the national association of states public health veterinarians, inc. The dog or cat may be quarantined in an approved manner and place for a period of 180 days. The cat or dog must then be vaccinated in accordance with the above mentioned "compendium on rabies vaccines", held in quarantine for an additional 14 days, and then released. Any currently vaccinated animal as defined in the Compendium of Animal Rabies Prevention and Control that has been exposed to a confirmed rabid or suspected rabid animal should be revaccinated immediately and observed for 45 days.~~

~~(3) If the dog or cat has been vaccinated against rabies within time limits prescribed by, and otherwise in accordance with, the "compendium on rabies vaccines" described above, the dog or cat may be revaccinated and released.~~

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

32.3.2001 BRANDS AND EARMARKS (1) The following (1)(a) and (1)(b) are brands required for import of cattle into Montana:

(a) cattle originating from Mexico must be "M" branded as required by 9 CFR 93.427.

(b) cattle originating from Canada must have a CAN hot iron brand as permanent origin identification. The brand must be 2-3 inches tall applied high on the right hip, consistent with VS memo 591.64.

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

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

REASON: Section 81-2-102, MCA requires that official orders last no more than five years. Changes in ARM 32.3.2001 incorporate outdated official orders.

The Compendium on Rabies Prevention and Control recommends euthanasia for unvaccinated animals exposed to rabies due to public health concerns. However, current ARM does not provide the option for the department to require euthanasia. The proposed rule revision improves readability and addresses this shortcoming.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., July 20, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. July 20, 2012.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State June 11, 2012.

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

In the matter of the adoption of New)
Rules I through VIII pertaining to state-)
owned navigable waterways)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

To: All Concerned Persons

1. On July 11, 2012, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Director's Conference Room at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 2, 2012, to advise us the nature of the accommodation that you need. Please contact Jessica Jenewein, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3544; fax (406) 444-2684; e-mail jjenewein@mt.gov.

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

NEW RULE I DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context:

- (1) "Bed" means an area on or above state-owned land between the low-water marks of a navigable river channel, excepting any portion of the land 50 feet below the thalweg of the channel and excepting any minerals therein.
- (2) "Board" means the state Board of Land Commissioners.
- (3) "Calculated market value" means the market value of a footprint derived by multiplying the current per acre value of the land above the low-water mark on the adjacent larger parcel nearest the footprint by the footprint area, then discounting the result by fifty percent.
- (4) "Commercial use" means an activity conducted on, within, or over a navigable river for profit, excluding any extraction of minerals, but including, but not limited to:
 - (a) marinas;
 - (b) restaurants; or
 - (c) retail service outlets at that location.
- (5) "Department" means the Department of Natural Resources and Conservation.
- (6) "Easement" means a nonpossessory right of use issued either permanently or for a term of years for a particular purpose in a defined area of servient real property appurtenant to, and for the benefit of a dominant tenement

property, which is binding upon subsequent lessees, users, and owners of the real property.

(7) "Footprint" means:

(a) an area which may be occupied by a structure;

(b) an area which may be occupied for the construction or maintenance of a structure; or

(c) an area of the bed of a navigable river below the low-water mark as provided in 70-16-201, MCA, which may be modified for a private use.

(8) "Land classification" means a categorization of land according to its principal value, as defined in 77-1-401, MCA.

(9) "Land use license" means a contract issued by the department for land use, not to exceed a ten-year term, for any use of state land other than its primary classification which is compatible with the department's multiple use objectives and the primary classification of the land.

(10) "Lease" means a contractual authorization issued by the department to another party or entity for use of a footprint not to exceed 99 years.

(11) "Low-water mark" means the location of the water line of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest upstream hydrograph station.

(12) "Marina" means a small harbor, boat basin, or moorage facility operated by a private club, enterprise, or municipality that provides boat berthing, docking and mooring, and incidental services such as mooring buoys, boat hoists/lifts, boat launch ramp, fishing, or retail services.

(13) "Navigable river" means a river adjudicated as navigable for title purposes by a court of competent jurisdiction.

(14) "Public use" means activities on navigable waters that are guaranteed by law to the general public to use navigable waters to fish, hunt, trap, navigate, camp, install docks and wharves, and recreate; provided that no physical occupation by a boat positioned, moored, or anchored in a specific location is made for any longer than fourteen days in any thirty-day period. After the fourteenth day a fee shall be assessed for term use for the entire duration of the stay.

(15) "Specific location" means within a radius of 500 feet of any location where a structure or vessel was previously positioned, moored, or anchored upon the bed of a navigable river.

(16) "Thalweg" means the deepest portion of the active channel of a stream or river.

AUTH: 77-1-204, 77-1-1117, MCA

IMP: 77-1-1110, 77-1-1117, MCA

NEW RULE II PURPOSE AND APPLICABILITY (1) Pursuant to Article X, Section 11(1) of the 1972 Montana Constitution and 70-1-202(1) and 77-1-102(2), MCA, the title to all navigable rivers is held by the board in trust for the benefit of the public.

(2) The board, through the department as the board's administrative arm, shall manage and administer the navigable rivers of the state of Montana to:

(a) ensure the public's right to fully use and enjoy this resource for commerce, navigation, fishing, hunting, recreation and other public trust values; and

(b) generate income from navigable rivers for the public trust in a manner consistent with these rules and other laws.

(3) The department may, upon request by an applicant, issue an easement, lease, or license for the board's approval of the use of a river bed which is not yet adjudicated as navigable.

(a) Any such easement, lease, or license, which is voluntarily sought by an applicant, shall only convey a contingent right to use the riverbed based upon the validity and extent of the board's title to the river bed.

(b) The department may issue such contingent-right easements, leases, and licenses only where the department has historical documentation that the river was susceptible of use in commerce at statehood.

(c) Private use may be made of the bed of an unadjudicated river without prior department authorization, unless and until five years has passed since the department:

(i) has published public notice twice in a newspaper of general circulation in the area of the river that the river has been adjudicated as navigable; and

(ii) has given notice to adjacent landowners that the river has been adjudicated as navigable.

(4) Navigable rivers are classified as class 4 lands under 77-1-401, MCA.

AUTH: 77-1-1109, 77-1-1117, MCA

IMP: 77-1-1109, MCA

NEW RULE III SEVERABILITY (1) If any part of [New Rule I] through [New Rule VIII] is found to be invalid, all valid parts that are severable from the invalid part remain in effect in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

AUTH: 77-1-1117, MCA

IMP: 77-1-1117, MCA

NEW RULE IV AUTHORIZATION FOR USE OF NAVIGABLE WATERWAYS

(1) Except as otherwise provided in this rule, fixed structures placed within the bed of a navigable river or suspended above the bed of a navigable river shall require prior written authorization from the department.

(2) The following uses require no prior written department authorization:

(a) public uses as defined in [New Rule I]; and

(b) uses and structures described in 85-16-101, MCA.

(3) Individuals seeking department authorization for the use of the bed of a navigable river must complete and submit an application form as prescribed by the department.

(4) Department authorization shall be in the form of a lease, license, or easement.

(5) All leases, licenses, or easements shall include a provision reserving all rights and interests other than those specifically granted by the lease, license, or easement. These reservations include, but are not limited to mineral reservations.

(a) No lease, license, or easement issued under this rule shall allow that lessee, licensee, or easement holder to mine upon the premises described therein any:

(i) coal, oil, gas and other minerals; and

(ii) deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining, or other commercial purposes.

(6) All necessary federal, state, and local permits shall be acquired by those requesting authorization to use a navigable river or other river as specified in [New Rule II(3)].

(a) Copies of permits must be furnished to the department prior to the department authorizing the use of the bed of a navigable river.

(b) However, the department may choose to issue a lease, license, or easement prior to receipt of permit copies where the lease, license, or easement is conditioned upon the applicant's receipt of a permit and the filing of a copy of the permit with the department.

(7) As provided in 77-1-121, MCA, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when issuing a lease, license, or easement for the use of the bed of a navigable river that expressly states that the lease, license, or easement is subject to further permitting under any of the provisions of Title 75 or 82, MCA.

(a) An environmental analysis may be conducted to assess the impact a permanent easement may have on the navigability of the river.

(8) The department may require agreement holders to remove hazards from the river, including structures that are no longer in use.

(9) Leases and easements for the use of the beds of navigable rivers are assignable. Easements for the use of beds of navigable rivers shall be appurtenant to dominant tenement real property.

AUTH: 77-1-1111, 77-1-1115, 77-1-1117, MCA

IMP: 77-1-1115, 77-2-102, MCA

NEW RULE V FEES FOR USES IN NAVIGABLE WATERWAYS

(1) The lease, license, or easement area shall consist of the footprint only.

(2) The application fee for a land use license, lease, or easement for a use of the bed of a navigable waterway is \$50.

(3) The annual fee for a land use license for the use of the bed of a navigable waterway is \$150. The license fee for the first year shall be \$150 without regard to the date when the license term begins.

(4) The fee for a lease for the use of the bed of a navigable waterway shall be the greater of the product of the lease rate multiplied by the calculated market value of the footprint or a minimum fee of \$150. The process for calculating the market value lease rate will be as described in 77-1-905, MCA, and ARM 36.25.915. The department reserves the right to impose higher market value lease rates where the proposed use of the bed subjects the state, the department, or the trust

beneficiaries to greater risk of damage to trust lands. However, generally, the market value lease rates will be guided by consideration of various market and risk factors, including, but not limited to:

- (a) the potential for waste, and the costs of demolition, reclamation, and liability;
 - (b) market evidence; and
 - (c) the current fee schedule developed by the department.
- (5) Any lease for a use of the bed of a navigable waterway beginning after March 1 of a lease year will have a prorated bill for the first year. The prorated bill will include the effective lease date through February 28 of the following year.
- (6) The fee for an easement shall be the greater of:
- (a) fees established per ARM 36.2.1005;
 - (b) the calculated market value of the footprint;
 - (c) market evidence; or
 - (d) current fee schedule developed by the department.
- (7) Application fees for historic land use licenses, leases, and easements will be deposited into the state special revenue fund.
- (a) The revenue from the application fees may be used for processing historic easement applications.
- (8) Lease and license revenues will be deposited into the public land trust fund, according to Article X, Section 5(1) of the Constitution.
- (9) Easement revenues will be deposited into the permanent public land trust fund according to Article X, Section 5(2) of the Constitution.

AUTH: 77-1-209, 77-1-1117, MCA
IMP: 77-1-1117, MCA

NEW RULE VI SELECTION OF LEASE, LICENSE, OR EASEMENT

- (1) An applicant may apply for a land use license for a noncommercial or nonresidential use of the bed of a navigable river requiring a term of ten years or less.
- (2) An applicant may apply for a lease for commercial or residential use of the bed of a navigable river requiring a term of 99 years or less.
 - (a) A lease will be issued by the department through a competitive bid process per 77-1-904, MCA.
- (3) An applicant may apply for an easement for those uses described in 70-30-102 and 77-2-101, MCA, which serve public purposes and which require a permanent easement.

AUTH: 77-1-1115, 77-1-1117, MCA
IMP: 77-1-1115, MCA

NEW RULE VII RELOCATION AND EXPANSION OF FOOTPRINT;

CHANGE OF USE (1) The holder of a lease, license, or easement within a navigable river may increase the size of the footprint or relocate the footprint and associated improvements, or both. The department will determine whether to:

- (a) amend the existing lease, license, or easement; or

(b) issue a new lease, license, or easement.

(2) The holder of a lease, license, or easement for a water diversion shall submit an application as prescribed by the department when a footprint or associated facilities are proposed to be relocated or expanded. Initiation of any work within the low-water marks of the navigable river shall begin only after the application has been submitted to the department and the department has authorized the work.

(3) The expansion or relocation of a lease, license, or easement footprint and associated improvements may be authorized when:

(a) all necessary federal, state, and local permits have been issued;

(b) all payments due to the state for the use of the existing footprint have been paid in full; and

(c) the expanded and/or relocated footprint provides for the same beneficial use.

(i) A footprint for a water irrigation or diversion structure or use proposed for expansion and/or relocation shall be considered to have the same beneficial use when the water right and the property benefitted by the use remain the same as before the expansion and/or relocation.

(4) The department may require the holder of an existing lease, license, or easement to complete an application for a new authorization if the holder proposes to change the beneficial use of the footprint.

(5) Subject to the other provisions of this rule, if the area of the new lease footprint is larger or smaller than the originally approved footprint, the department will adjust the lease fee through a lease amendment to reflect the calculated value of the new footprint.

(6) If the new easement footprint is larger than the originally approved footprint, the department will value the additional easement area according to [New Rule V]. The department will not refund the easement holder if the easement area of the new footprint is smaller than the originally approved footprint.

(7) Full market value of the new footprint will be established through an appraisal conducted in compliance with ARM 36.25.917.

(8) Relocation and expansion of a footprint under a lease, license, or easement which represents a historic use under [New Rule VIII] is exempt from the Montana Environmental Protection Act (MEPA), 77-1-201, et seq., MCA, and the Antiquities Act, 22-3-401, et seq., MCA.

AUTH: 77-1-1116, 77-1-1117, MCA

IMP: 77-1-134, 77-1-1116, MCA

NEW RULE VIII HISTORICAL USES IN NAVIGABLE WATERWAYS

(1) Persons using the bed of a navigable river adjudicated before [the effective date of these rules], without written authorization from the department prior to [the effective date of these rules], that wish to continue the use must complete an application prescribed by the department and provide the application to the department by July 15, 2017.

(2) Persons using the bed of a river adjudicated as navigable after [the effective date of adoption of these rules], without prior written authorization from the

department, that wish to continue their use must complete an application prescribed by the department and submit the application to the department within five years of the date that the department issues a public notice that the river has been adjudicated as navigable. The requirements of this rule do not apply to:

- (a) footprints related to hunting, fishing, or trapping;
- (b) footprints that existed prior to November 8, 1889;
- (c) footprints for which the applicant can show an easement obtained from a state agency prior to [the effective date of these rules], or the date of adjudication, whichever is later; or

- (d) footprints associated with a power site regulated pursuant to Title 77, chapter 4, part 2, MCA.

(3) The authorization shall only include the footprint of the historical use of the navigable river by the applicant or the applicant's predecessor in interest.

(4) The department shall determine if authorization of the use and footprint for which application is made will be a lease, license, or easement according to the criteria in [New Rule VI].

(5) The department shall issue authorization for a lease, license, or easement for an historic use if the applicant provides the following:

- (a) an application fee of \$50;

- (b) a notarized affidavit on a form prescribed by the department demonstrating:

- (i) the applicant or the applicant's predecessor in interest used the bed of a river that has been determined navigable in compliance with [New Rule I(13)], and that the use continues;

- (ii) the historic use of the acreage covered by the footprint occurred prior to [the effective date of these rules], or the date the river was adjudicated as navigable, whichever is later; and

- (iii) the use for which authorization is sought is documented by a statement of identical historic use in a notarized affidavit;

- (c) evidence demonstrating the use for which authorization is sought and describing the footprint of the historic use. Such evidence may include any combination of:

- (i) aerial photographs;

- (ii) a 310 permit issued prior to construction of the historic use;

- (iii) construction or engineering documents;

- (iv) a GPS survey;

- (v) a professional survey by a registered land surveyor; or

- (vi) a water right pertinent to the structure to be permitted; and

- (d) annual payment of the lease or license fee or payment for the full market value of the easement footprint.

(6) The authorization for easements is approved by the board. Leases and licenses may be approved by the department.

(7) The department, at its discretion, may make a site inspection of the use for which authorization is sought.

(8) The department shall waive the survey requirements of 77-2-102, MCA, if the department determines that there is sufficient information available to define the

boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(9) The applicant for authorization of an historic use may request to relocate the use within the navigable river, subject to the requirements of [New Rule VII].

(10) The department is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2, MCA, for issuance of an authorization for historic uses.

AUTH: 77-1-1112, 77-1-1117, 77-2-102, MCA

IMP: 77-1-1112, 77-2-102, MCA

REASONABLE NECESSITY: Chapter 359 of the 2011 Montana Session Laws established procedures for the issuance of leases, licenses, and easements upon the beds of state-owned navigable waterway. This Act was codified as 77-1-121, 77-1-134, 77-1-1109 through 77-1-1117 and 77-2-102, MCA. New Rules I through VIII are reasonably necessary to describe and define the application and leasing processes for leases, licenses, and easements upon the beds of state-owned navigable waterways. The rules address: historical use; use after the effective date of these rules; and the resulting compensation received by the state.

The assumption is that DNRC would process an average of 200 easement applications per year, which would include a \$50 application fee for each application. The application fees would be deposited into the historic riverbed use account to fund the processing of the applications. The proposed fees are expected to apply to approximately 200 easements at \$500 per easement, and would generate approximately \$100,000 for the public land trust fund each year.

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 Jessica Jenewein, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3544; fax (406) 444-2684; e-mail jjenewein@mt.gov, and must be received no later than 5:00 p.m. on July 19, 2012.

5. Jeanne Holmgren, Department of Natural Resources Real Estate Management Bureau, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Adoption conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on May 31, 2012.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on June 11, 2012.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

| | | |
|--|---|--------------------------|
| In the matter of the repeal of ARM |) | NOTICE OF PUBLIC HEARING |
| 36.14.102, 36.14.103, 36.14.105, |) | ON PROPOSED REPEAL, |
| 36.14.801, the amendment of ARM |) | AMENDMENT, AND |
| 36.14.101, 36.14.201, 36.14.203, |) | ADOPTION |
| 36.14.204, 36.14.206 through |) | |
| 36.14.208, 36.14.301, 36.14.401, |) | |
| 36.14.402, 36.14.803, and the adoption |) | |
| of New Rule I regarding dam safety and |) | |
| permitting |) | |

To: All Concerned Persons

1. On July 19, 2012, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed repeal, amendment, and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than July 2, 2012, to advise us of the nature of the accommodation that you need. Please contact Michele Lemieux, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; telephone (406) 444-6613; fax (406) 444-0533; e-mail mlemieux@mt.gov.

3. The department proposes to repeal the following rules:

36.14.102 DUTIES AND AUTHORITY

AUTH: 85-15-110, MCA

IMP: 85-15-106, MCA

REASONABLE NECESSITY: This rule is being repealed because DNRC's duties and authorities are set forth in the Dam Safety Act (Title 85, Chapter 15, MCA). Also, much of this rule is not about authority but rather defines how capacities are determined for dams in series and for reservoirs that include excavations. The rules for defining capacity for hazard determination have been integrated with the text of New Rule I.

36.14.103 EXEMPTIONS

AUTH: 85-15-110, MCA

IMP: 85-15-107, MCA

REASONABLE NECESSITY: This rule is being repealed because exemptions are defined in statute (85-15-107, MCA).

36.14.105 LIABILITY

AUTH: 85-15-110, MCA

IMP: 85-15-305, MCA

REASONABLE NECESSITY: This rule is being repealed because the relationship between liability and the Dam Safety Act (act) is statutorily specified in 85-15-305, MCA.

36.14.801 JURISDICTIONAL SIZE OF THE DAM OR RESERVOIR

AUTH: 85-15-110, MCA

IMP: 85-15-106, 85-15-214, MCA

REASONABLE NECESSITY: This rule is being repealed because the act already defines jurisdiction.

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

36.14.101 DEFINITIONS In addition to the terms defined by 85-15-105, MCA, the following definitions apply in this subchapter, ~~Unless~~ unless the context requires and clearly states otherwise, ~~in these rules~~:

(1) through (5) remain the same.

~~(6) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water with an impounding capacity of 50 acre-feet or greater measured to the crest of the dam embankment.~~

~~(67)~~ (7) "Days" means calendar days, ~~including~~ including Sundays and holidays. If the final day is in a time calculation falls on a holiday, or weekend, it the day shall be the next following ~~day of business~~ succeeding regular business day.

(8) and (9) remain the same but are renumbered as (7) and (8).

~~(10) "Existing dam or reservoir" means any dam or reservoir 50 acre-feet or greater complete and capable of impounding water prior to October 1, 1985, or under construction on that date and completed with reasonable diligence.~~

~~(11)~~ (12) "Height of dam" means the vertical distance from the lowest elevation of the dam crest to the lowest point of natural ground, including any stream channel, along the downstream toe of the dam.

~~(12) "High-hazard corps-inspected dam" means a dam that was determined to be high-hazard by the corps of engineers pursuant to P.L. 92-367 and for which a resultant dam safety report has been submitted to the owner.~~

(13) and (14) remain the same but are renumbered (10) and (11).

~~(15) "New dam" or "new reservoir" means a dam or reservoir where initial construction occurs after October 1, 1985.~~

(12) "Maximum normal operating pool":

(a) means the elevation of lowest uncontrolled principal spillway for on-stream reservoirs;

(b) means the elevation of the emergency spillway for flood control structures; and

(c) is defined on a case-by-case basis according to reservoir operation for off-stream reservoirs.

(16) remains the same but is renumbered (13).

(147) "Operation plan" means the written instructions prepared by the owner that prescribe:

(a) the proper operation procedures;

(b) maintenance procedures;

(c) emergency procedures, and warning plan; and

(d) any other features necessary to the safe operation of the dam or reservoir.

(18) remains the same but is renumbered (15).

AUTH: 85-15-110, MCA

IMP: 85-15-106, 85-15-209, 85-15-210, 85-15-212, MCA

REASONABLE NECESSITY: These amendments are reasonably necessary to conform with the statute, clarifying that non-high-hazard dams may also be regulated. Section (11) was added to clearly define "maximum normal operating pool", which is not defined in statute. The amendments also correct minor formatting and grammatical errors.

36.14.201 WHO HAS TO APPLY FOR HAZARD DETERMINATION

(1) An application for hazard determination must be made by an owner proposing to construct, including new construction, alteration, repair, enlargement, or removal of, any dam or reservoir that has or could impound to the ~~crest of the dam~~ maximum normal operating pool 50 acre-feet or more.

(a) This requirement applies even if the department performed a hazard determination on previous construction to the dam or reservoir and found it not to be a high-hazard dam. ~~This requirement does not apply to the owner who already possesses a valid operation permit for the high-hazard dam.~~

(2) Applications for hazard determinations are not necessary for the following, as loss of life from dam failure is not likely to occur:

(a) wastewater pond dams that are subject to regulation under the Department of Environmental Quality;

(b) naturally occurring reservoirs;

(c) an obstruction in a canal used to raise or lower water inside the canal, or to divert water from the canal;

(d) a flood levee on the bank of a natural lake or stream, the primary purpose of which is to control floodwaters;

(e) railroad fill structure and road or highway fill not intended to store or accumulate water for future use; and

(f) an obstruction in the channel of a stream, watercourse, or floodplain, which has the single purpose of spreading water within the bed of the stream or watercourse or floodplain upstream from the obstruction for irrigation of only that land containing the spread water.

AUTH: 85-15-110, MCA
IMP: 85-15-107, 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to conform with the statute which defines capacity based on the elevation of the normal operating pool rather than the crest of the dam. The amendments also address wastewater pond dams subject to regulation by the Department of Environmental Quality (DEQ), which already have construction requirements where loss of life from dam failure is unlikely (offstream, upstream lining, low dam height, low angle embankment slopes, overflow pipes, significant below ground surface storage). An owner of a dam that has already been classified as high-hazard would have no need to apply for a hazard determination, thus stating that the requirement does not apply is irrelevant. There are two existing wastewater pond dams that were classified as high-hazard. However, they were built according to DEQ construction requirements and loss of life is not likely to occur for reasons stated above. The high-hazard designation would be rescinded for these dams. The amendments also correct minor formatting and grammatical errors.

36.14.203 MULTIPLE DAMS (1) A single application may be submitted for more than one dam ~~only~~ when the dams are:
(a) for the same reservoir or in series; and
(b) the dams would flood the same drainage if failure should occur.

AUTH: 85-15-110, MCA
IMP: 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because dams in series on a drainage have an effect on each other that warrant evaluation as a single system. The amendments also correct minor formatting and grammatical errors.

36.14.204 APPLICATION
(1) through (2)(c) remain the same.
(d) signature of owner or owner's authorized representative and date of the signature; and
(e) through (3) remain the same.

AUTH: 85-15-110, MCA
IMP: 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to allow for the fact that owners commonly task their engineers with permitting responsibilities.

36.14.206 CRITERIA FOR DETERMINATION (1) The department's hazard determination shall be based on the consequences of dam failure, ~~not the condition, probability, or risk of failure.~~

(2) A dam must be classified high-hazard if the impoundment capacity is 50 acre-feet or larger measured at the maximum normal operating pool, and it is determined that a loss of human life is likely to occur within the breach flooded area as a result of failure of the dam.

(a) Loss of life is assumed likely to occur if the following structures are present or planned for as a matter of public record or notice in the breach flooded area:

(i) occupied houses and farm buildings;

(ii) stores;

(iii) gas stations;

(iv) parks;

(v) golf courses;

(vi) stadiums;

(vii) ball parks; and

(viii) interstate, principal, and other paved highways, including railroads, highway rest areas, RV areas, and developed campgrounds. Excluded from this list are unpaved county roads and all private roads.

(3) For purposes of the hazard determination classification in this section, the following apply.

(a2) The breach flooded area, for the purpose of this classification only, is the flooded area caused by a breach of the dam with the reservoir full to the crest of the emergency spillway maximum normal operating pool.

(b3) The evaluation of the effects of flood inundation, for the purpose of classification, will continue downstream until the flood stage is equal to that of the 100-year floodplain.

(c4) The breach flow hydrograph and downstream routing of the breach flows, for the purpose of classification, will be estimated by the department either by visual determination or dam breach modeling techniques.

(5) Loss of life is assumed to occur if the following structures are present or planned for as a matter of public record or notice in the breach flooded area: occupied houses and farm buildings, stores, gas stations, parks, golf courses, stadiums, ball parks, interstate, principal, and other paved highways, and including railroads, highway rest areas, RV areas, developed campgrounds; and excluding unpaved county roads and all private roads.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to conform with the statute which defines capacity based on the elevation of the normal

operating pool rather than the crest of the dam. The amendments also correct minor formatting and grammatical errors.

36.14.207 CHANGE IN CLASSIFICATION (1) A high-hazard dam owner may request the department to reconsider a hazard determination.

(a) A request for reconsideration must include the data and analyses necessary to show that the dam is not a high-hazard dam.

(b) The owner shall pay for reasonable inspection costs incurred by the department as a result of the reconsideration.

(2) A classification of high-hazard dam is automatically rescinded if the dam is constructed to impound less than 50 acre-feet measured to the ~~crest of the dam~~ maximum normal operating pool, or if the dam is breached.

(a) A construction permit is necessary to perform the construction to reduce the impoundment capacity of the high-hazard dam or breach the high-hazard dam.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to conform with the statute. Reservoir capacity for purposes of the Act is determined based on elevation of the normal operating pool rather than crest of the embankment. The amendments also correct minor formatting and grammatical errors.

36.14.208 DAMS IN SERIES (1) The worst case scenario shall govern for determining the hazard classification of dams in series where more than one mode of failure is possible among the dams. Classification shall be based on potential for failure under combined and, if applicable, individual dam breach scenarios.

(2) The upstream dam must be classified as a high-hazard dam if:

(a) If an upstream dam has the capability to create failure in a downstream high-hazard dam because of its failure flood wave, ~~the upstream dam must be classified as a high-hazard dam;~~ or

(b) If the failure flood wave of the upstream dam will ~~cause failure of the downstream dam, and the combined flows will likely cause a loss of life,~~ with or without failure of the downstream dam ~~the upstream dam must be classified as a high-hazard dam.~~

(3) Wastewater ponds that are separated by internal berms are not considered to be dams in series.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because there are situations where a downstream dam's spillway can handle the failure flood of an upstream dam. However, these high spillway flows can cause loss of life, as little warning time is available during a dam failure. The rule also clarifies that wastewater ponds separated by berms are not considered to be dams in a series

because wastewater ponds are lined and offstream; and, the failure of an internal berm or divider between wastewater pond cells and the subsequent failure of the pond is unlikely. The amendment helps clarify the hazard classification for dams in series and corrects minor formatting errors.

36.14.301 CONSTRUCTION PERMIT APPLICATION - GENERAL REQUIREMENTS (1) An owner who wishes to construct, alter, repair, enlarge, or remove a high-hazard dam shall apply for, and receive from the department a construction permit prior to any construction.

(2) remains the same.

~~(3) The requirements of this sub-chapter do not apply to high-hazard, corps-inspected dams until July 1, 1990.~~

(34) An application for a construction permit must include: the application form,

(a) the engineering design report, and three sets of ;

(b) the construction plans and specifications; and

(c) the application form provided by the department. The application form must:

(i) be signed by the owners of the dam or reservoir;

(ii) include the name, address, and phone number of the owner; and

(iii) include the name and purpose of the proposed dam or reservoir.

~~(5) Each application must include a form provided by the department and signed by the owners of the dam or reservoir. The application form must include the name, address, and phone number of the owner, name of the proposed dam or reservoir, and its purpose.~~

(6) through (8) remain the same but are renumbered (4) through (6).

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because the date referred to in (3) has passed. Also, the move to electronic documentation negates the need to submit multiple copies. The amendments also correct minor formatting and grammatical errors.

36.14.401 OPERATION PERMIT REQUIREMENTS

(1) remains the same.

~~(a) by October 1, 1990, for an unpermitted high-hazard existing dam;~~

~~(b) by July 1, 1995, for an unpermitted high-hazard corps-inspected dam;~~

(ae) before operation of a high-hazard dam for which a construction permit has been issued; and

(bd) by the date specified in the permit for renewal of an operation permit for a permitted high-hazard dam.

AUTH: 85-15-110, 85-15-212, 85-15-213, MCA

IMP: 85-15-212, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because the dates referred to in the rule have passed.

36.14.402 OPERATION PERMIT APPLICATION - GENERAL

REQUIREMENTS (1) Applications, including applications for renewal, of a permit to operate high-hazard dams must include:

(a) an operation plan pursuant to ARM 36.14.403, ; and

(b) ~~an inspection report pursuant to ARM 36.14.603, notification that an inspection has been completed,~~ except for a new dam for which a construction permit has been issued.

(2) ~~The investigation and inspection report~~ A report of the inspection pursuant to ARM 36.14.603 must be submitted to the department within 90 days of the inspection, before the application can be considered complete. The inspection must be of the dam in its condition and configuration at the time of the application, and the investigation must have been conducted within 90 days of the date of submitting the application.

(3) Within 30 days of receipt of a permit application, the department shall:

(a) notify the applicant of any errors or omissions, and request any additional information necessary to properly evaluate the application. ~~The department shall ;~~ and

(b) establish a reasonable time frame for the applicant to submit the necessary information.

(4) After receipt of all required information, the department shall issue or deny the permit within 90 days, but not before approval of any construction pursuant to a construction permit.

AUTH: 85-15-110, 85-15-213, MCA

IMP: 85-15-212, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because it generally takes engineering firms a minimum of two months to prepare an inspection report, submit it to the owner for review, and finally submit it to DNRC. In order to complete the above tasks in advance of permit renewal date, the dam inspection must be done in advance of permit renewal date by several months. This often causes the dam inspection to be done at a less than ideal time (e.g. during the winter when snow covers the dam, or late fall when the reservoir is empty). It also causes the inspection date to be continually advanced at every renewal period. Timing of a dam inspection can be critical in order to do a proper evaluation. By only requiring that the inspection be complete by permit renewal date, not submittal of the report, engineers are given the flexibility to schedule the inspection that best suits that particular dam. All inspection reports will still be submitted in accordance with the requirements of ARM 36.14.603 which ensure the reports are timely and representative of the dam's current condition, as per 85-15-212 and 85-15-213, MCA. The amendments also correct minor formatting errors.

36.14.803 INVESTIGATION AND INSPECTION

(1) through (3) remain the same.

(4) Prior to the department-ordered inspection, notification must be given to the dam owner and complainant of the date and estimated cost of the inspection.

(a) Within a reasonable time, the owner shall provide all readily available engineering design and performance data to the department or inspector.

(b) The owner shall allow access and operate the dam and its facilities as directed by the inspector or the department for the inspection.

(5) If upon inspection the department finds the dam to be defective, the department shall order the necessary remedial action to eliminate the defect and make the dam, reservoir, or appurtenant works safe. The order must be in writing and delivered to the owner either personally or by certified mail ~~or personally~~.

(a) Remedial action may include submittal of an engineering design report, plans, and specifications.

AUTH: 85-15-110, MCA

IMP: 85-15-106, 85-15-214, 85-15-215, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary because a review by DNRC engineers of methods and procedures used to repair or remediate the dam may be necessary to ensure the owner's compliance with 85-15-110 and 85-15-214, MCA. The amendments also correct minor formatting errors.

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

NEW RULE I RESERVOIR CAPACITY DETERMINATION

(1) The department may calculate the reservoir capacity in acre-feet, in absence of detailed data, as 0.4 times the vertical height in feet from the downstream toe of the dam to the maximum normal operating pool times the water surface area at that level in acres.

(2) Reservoir capacity due to excavation in the impoundment area is excluded from capacity calculations.

(3) This rule applies to multiple or a series of dams erected on a valley, basin, coulee, or ravine where each reservoir is less than 50 acre-feet, but all are operated singly as one reservoir containing more than 50 acre-feet. Whether the series is operated as a single reservoir will be a question of fact in each instance. Factors to consider include:

(a) whether all dams or reservoirs are under the same ownership and control;

(b) whether all dams or reservoirs operate as a unit (i.e., if one of the dams or reservoirs suffers a change, it will in most instances affect one or more of the other dams or reservoirs); or

(c) whether the dams or reservoirs are physically proximate and on the same valley, basin, coulee, or ravine.

AUTH: 85-15-110, MCA

IMP: 85-15-106, 85-15-209, MCA

REASONABLE NECESSITY: The reservoir capacity determination was moved from ARM 36.14.102. Capacity determination is only a factor when deciding if a hazard

classification is required. This rule is reasonably necessary because previously, capacity due to excavation in the impoundment area was included in deciding whether or not a hazard classification application is required. However, below ground surface storage does not contribute to dam breach flood flows and potential loss of life and is neglected during a hazard determination. Hazard determination is based on the volume of reservoir that could exit the dam during a breach. The reservoir capacity determination was moved from ARM 36.14.102 to New Rule I(3) because capacity determination is only a factor when deciding if a hazard classification is required.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to: Michele Lemieux, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; telephone (406) 444-6613; fax (406) 444-0533; e-mail mlemieux@mt.gov, and must be received no later than 5:00 p.m. on July 19, 2012.

7. Michele Lemieux, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

8. An electronic copy of this Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Fred Robinson

FRED ROBINSON

Rule Reviewer

Certified to the Secretary of State on June 11, 2012.

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

In the matter of the amendment of)
ARM 37.86.3607 pertaining to case)
management services for persons)
with developmental disabilities)
reimbursement.)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 11, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of 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 July 3, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older and for Children with Developmental Disabilities Residing in a Children's Community Home, effective ~~August 1, 2014~~ August 1, 2012, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures.

(2) The department adopts and incorporates by this reference Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older and for Children with Developmental Disabilities Residing in a Children's Community Home, in effect ~~August 1, 2014~~ August 1, 2012, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, and published by the department as the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, Section One, Rates of

Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older or Who Reside in a DD Children's Group Home. A copy of Section One of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 56-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.86.3607, regarding case management services for persons with developmental disabilities reimbursement.

ARM 37.86.3607 adopts and incorporates Section One of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures. The department proposes to amend this manual and update the effective date to August 1, 2012. Paragraphs IV, V, VI, and VII of Section One of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures display how the targeted case management (TCM) rate is calculated, how many TCM full-time employees (FTE) each case management contractor is expected to employ using the rate methodology, and set a cap on the maximum amount each contractor can be paid for providing TCM services. As such, when a provider requires additional FTE, the manual and the rule must be updated, which hinders a provider who needs an immediate increase of FTE.

The department has determined that the manual is not the appropriate venue to list provider specific FTE, and believes the manual should contain only the procedures required to calculate the specific rates. Therefore, the department removed the provider specific information and located it in the appendix of the provider contract. Additional amendments to the proposed manual add and/or update language to provide clarity and improve readability. Specific changes to the manual may be viewed at the following web site:

<http://www.dphhs.mt.gov/dsd/TCMRateManualSectionOne.pdf>

5. The department intends to apply these rules retroactively to August 1, 2012, as the department is aware of a current need of a provider to increase their FTE in order to manage their caseload. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 19, 2012.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.40.307 and 37.40.361) PROPOSED AMENDMENT
pertaining to nursing facility)
reimbursement)

TO: All Concerned Persons

1. On July 16, 2012, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 July 9, 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:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) through (2)(c) remain the same.

(d) The total payment rate available for the period ~~July 1, 2011~~ September 1, 2012 through ~~June 30, 2012~~ June 30, 2013 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on ~~July 1, 2011~~ September 1, 2012. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.40.361 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE

REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~July 1, 2014~~ September 1, 2012 and for the six months thereafter, nursing facilities must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing types and rates of payment for comparable services and tracking distribution of direct care wage funds to designated workers.

(2) remains the same.

(a) The department will determine the lump sum payments, twice a year commencing ~~July 1, 2014~~ September 1, 2012, and again in six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.40.307 and 37.40.361.

SUMMARY OF POLICY CHANGE:

The proposed changes to the Medicaid nursing facility reimbursement rules are:

1. Implement proposed legislative funding for nursing facility reimbursement for state fiscal year (SFY) 2013. This calculation is updated to include new estimates of patient days and patient contribution amounts and to incorporate new case mix indices into the rate calculation for SFY 2013.
2. Continue the funding for wage increases or lump sum payments for nursing facility direct care and ancillary services workers for SFY 2013. Funding from House Bill 2 (HB 2) provides funding for a one time only (OTO) direct care/ancillary worker wage or lump sum payment increase. Rate increase is for direct care and ancillary staff for the 2013 biennium only.
3. Incorporate date changes where appropriate for SFY 2013.

The rule continues the methodology of implementing legislative funding for nursing facility reimbursement, including updated estimated patient days, patient contribution amounts and case mix indices (CMI) (acuity) into the rate calculation for SFY 2013.

RATIONALE:

The department will provide rate sheets to all providers in advance of the rule hearing for verification purposes and in order to facilitate comments. These sheets will distribute the funding available in order to meet the department goals for a price-based system of reimbursement and will incorporate legislatively appropriated funding levels.

Changes for direct care wages:

Funding will continue to be available from HB 2 to provide for a one time direct care worker wage increase for nursing facility providers. This direct care wage increase is for direct care and ancillary staff for 2013 only and continues the funding that was available in SFY 2012 for this purpose. Total funding of approximately \$3,981,106 will be available to provide for a one time only direct care/ancillary worker wage or lump sum payment increase. This funding will be paid to nursing facilities as a lump sum payment twice a year using the methodology that was adopted in 2010/2011 and can only be used to provide worker wage or lump sum payment increases. These funds are one time only and as such will not be an ongoing reimbursement source after 2013. Providers will need to be aware that any funds put into their wage structure may not be available in future years after this biennium.

Price-Based Reimbursement:

The department proposes to continue a price-based reimbursement approach to help mitigate conditions affecting nursing facilities. Statewide occupancy rates are at 69% in Montana nursing facilities at the current time. At the same time, the care needs of the typical nursing facility resident are increasing. Residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As these trends towards lower occupancy and increased acuity continue, it becomes more important than ever that nursing facility providers receive rates that are reflective of the cost of doing business. Without a price-based reimbursement approach, increased costs due to lower occupancy levels and unpredictability of the system of reimbursement are more likely to be passed on to the private pay residents.

Intergovernmental Transfer Program:

The 2011 Legislature continued approval for the use of local county matching funds as a source of additional revenue for nursing facility providers. The intergovernmental fund transfer (IGT) program is an important component of overall reimbursement that helps maintain access to, and the quality of, nursing facility services. IGT will be available for fiscal year 2013.

SPECIFIC CHANGES BEING PROPOSED:

For rate year 2013 (September 1, 2012 - June 30, 2013) the nursing facility per diem rate will be computed as follows:

1. The Medicaid per diem rates will include two components. The operating component (includes both operating and capital combined) is the same rate for all

nursing facilities and represents 80% of the overall price. The nursing component will be adjusted for individual nursing facility acuity and is 20% of the overall price.

2. Medicaid per diem rates will be established September 1, 2012.

3. The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index will be calculated quarterly based upon a set point in time, using the most recent annual or quarterly MDS information. Medicaid case mix for annual rate setting will be based on the most recent four quarter average of Medicaid CMLs for each nursing facility.

ESTIMATED FINANCIAL/BUDGET IMPACTS:

These proposed rule changes are necessary to implement legislative funding for nursing facility reimbursement for SFY 2013. The total state and federal funding available for SFY 2013 for rate calculation purposes is currently projected at \$137,745,206 which is comprised of \$15,445,871 in state special revenue, \$31,745,637 in state general funds and \$90,553,698 in federal funds. The additional funding of lump sum payments to providers for direct care workers and ancillary staff of \$1,363,926 of state special revenue and \$2,617,180 in federal funds for a total appropriation of \$3,981,106 for the nursing facility program. The estimated total funding available for SFY 2013 for nursing facility reimbursement is estimated at approximately \$170,212,529 of combined state funds, federal funds, and \$32,467,323 in patient contributions. These numbers do not include at risk provider funds or direct care wage funding. Anticipated days for SFY 2013 are estimated at 1,047,333 using estimates of caseload adopted by the Legislature.

The estimated total funding impact of the onetime payments to 'at-risk' nonstate governmental providers and other nursing facilities not determined to be 'at risk', has been appropriated at \$8,614,173 in total funds of which \$2,951,216 comes from state special revenue funds and approximately \$5,662,957 comes from federal funding sources.

Eighty-two nursing facility providers participated in the Medicaid nursing facility payment program and approximately 4,755 recipients received services in SFY 2012 in nursing facilities under Medicaid. Proposed rates have been adjusted to incorporate changes from 2012 to 2013 in the areas of case-mix indices, Medicaid bed days, and funding levels. Some individual providers are projected to have a rate decrease as a result of these changes in acuity and occupancy levels. It is estimated that approximately 21 providers will see a rate reduction due to these changes and the remaining providers will see varying levels of rate increases.

The analysis of Medicaid nursing facility rates that is annually conducted by Myers and Stauffer, LC shows that in SFY 2011 (report dated 2/27/2012) Montana Medicaid on average is reimbursing 96.90% of the cost of providing nursing facility services. Even if some individual rates decrease on average the current reimbursement rate methodology is covering nearly 97% of the costs being incurred in Montana nursing facilities. The department considered the impact of the rate

changes on efficiency, economy, quality of care, and access to Medicaid services and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a(a)(30(A) even with these decreases.

5. The department intends the proposed rule changes to be applied effective September 1, 2012.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 19, 2012.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

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

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

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) CORRECTED NOTICE OF ADOPTION
Rules I through IV pertaining to financial)
responsibility of mortgage loan)
originators and control persons and)
ultimate equity owners of mortgage)
entities)

TO: All Concerned Persons

1. On October 13, 2011, the department published MAR Notice No. 2-59-458 regarding a public hearing on the proposed adoption of the above-stated rules at page 2108 of the 2011 Montana Administrative Register, Issue No. 19. On January 26, 2012, the department published the notice of adoption at page 183 of the 2012 Montana Administrative Register, Issue No. 2.

2. The department misnumbered (5) of ARM 2.59.1741 (New Rule III) by incorrectly numbering two sections (4). The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

2.59.1741 PROCEDURES FOR DETERMINING FINANCIAL RESPONSIBILITY (1) through (4)(c) remain as adopted.

~~(5)~~(4) Applications must be deemed withdrawn or abandoned if the applicant fails to provide the information requested by the department within 60 days of notification to the applicant by the department of deficiencies in the application or December 31, whichever comes first.

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on June 30, 2012.

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

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

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through V relating to the State)
Sampling Program)

TO: All Concerned Persons

1. On May 10, 2012, the Department of Agriculture published MAR Notice No. 4-14-206 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 935 of the 2012 Montana Administrative Register, Issue Number 9.

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

COMMENT #1: That every sampling request include a statement that it meets the minimum standards of claimant.

RESPONSE #1: This is a redundant statement and creates unneeded paperwork as all requests must be made following a protocol approved by the department and the claimant.

COMMENT #2: A rule stating a claimant or their agent must be allowed to sample if the department cannot for any reason do the sample.

RESPONSE #2: This is outside the scope of the law and cannot be set in rule.

COMMENT #3: That a claimant has to agree to all changes to a protocol not just a requester.

RESPONSE #3: This is not necessary as the department ties each protocol to its creator. In the rare event that the requester and the claimant are not the same as to a protocol or in the event of a different party wanting to use a modified established protocol, the department would view these as different protocols and if necessary double sample to two different protocols.

3. The department has adopted the following rules as proposed: New Rule I (4.12.1808), II (4.12.1809), III (4.12.1810), IV (4.12.1811), V (4.12.1812).

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, June 11, 2012.

BEFORE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

| | | |
|--------------------------------------|---|------------------------|
| In the matter of the adoption of new |) | NOTICE OF ADOPTION AND |
| Rule I and Rule II pertaining to the |) | REPEAL |
| implementation of the Big Sky |) | |
| Economic Development Trust |) | |
| Program and the repeal of ARM |) | |
| 8.99.901, 8.99.902, 8.99.903, |) | |
| 8.99.904, 8.99.905, 8.99.906, |) | |
| 8.99.907, 8.99.908, 8.99.909, |) | |
| 8.99.910, 8.99.911, 8.99.912, |) | |
| 8.99.913, 8.99.914 , 8.99.915, |) | |
| 8.99.916 pertaining to the |) | |
| implementation of the Big Sky |) | |
| Economic Development Trust |) | |
| Program |) | |

TO: All Concerned Persons

1. On April 26, 2012, the Department of Commerce published MAR Notice No. 8-99-103 pertaining to the proposed adoption and repeal of the above-stated rules at page 805 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted the above-stated rules as proposed: New Rule I (8.99.917), Rule II (8.99.918).

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

COMMENT #1: One comment was received regarding the need for flexibility in order to serve businesses and ensure that their work and proprietary information will be kept confidential and that assisted businesses will retain ownership of their copyrighted materials.

RESPONSE #1: The Big Sky Economic Development Trust Fund (BSTF) planning project contracts allow for an assisted business to request prior written approval from the department and the contractor for copyright or patent protection prior to accepting BSTF funding.

COMMENT #2: One comment was received regarding clarification in terms of how Big Sky Economic Development Trust Fund funds can be used and that flexibility in program policies will enable Economic Development Organizations and the Big Sky Trust Fund program to provide assistance to innovative and globally competitive businesses.

RESPONSE #2: The guidelines published on the program's web site at www.bstf.mt.gov provide guidance on eligible activities for Big Sky Trust Fund funds. Program staff is happy to answer additional questions or provide clarifications on a case-by-case basis as needed.

COMMENT #3: One comment was received related to the Big Sky Trust Fund administrative fee not fully covering the cost of the required work and a suggestion was made to assemble a committee of stakeholders to address questions as they arise.

RESPONSE #3: The department feels that the current 5% for project administration is adequate. The department administers the Certified Regional Development Corporation program that provides separate funding to regional organizations to deliver department programs on a regional basis, including the Big Sky Economic Development Trust Fund program.

4. The department has repealed ARM 8.99.901, 8.99.902, 8.99.903, 8.99.904, 8.99.905, 8.99.906, 8.99.907, 8.99.908, 8.99.909, 8.99.910, 8.99.911, 8.99.912, 8.99.913, 8.99.914, 8.99.915, and 8.99.916 as proposed.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

| | | |
|--|---|-------------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT AND |
| ARM 32.18.102, 32.18.103, 32.18.104, |) | ADOPTION |
| 32.18.105, and 32.18.107 and the |) | |
| adoption of NEW RULES I and II, |) | |
| pertaining to 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, and recording and |) | |
| transferring of brands |) | |

TO: All Concerned Persons

1. On April 12, 2012, the Department of Livestock published MAR Notice No. 32-12-222 regarding the proposed amendment and adoption of the above-stated rules at page 706 of the 2012 Montana Administrative Register, issue number 7.

2. The Department of Livestock has amended ARM 32.18.102, 32.18.103, 32.18.104, 31.18.105, and 32.18.107, and adopted New Rules I (32.18.109) and II (32.18.110) exactly as proposed.

3. No testimony or comments were received.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.433 pertaining to designated)
surveillance area)

TO: All Concerned Persons

1. On April 12, 2012, the Department of Livestock published MAR Notice No. 32-12-223 regarding the proposed amendment of the above-stated rule at page 712 of the 2012 Montana Administrative Register, issue number 7.

2. The department has amended the following rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(c) remain the same.

(d) Beaverhead County – from Madison-Beaverhead County line, south of Sweetwater Road to East Bench Road near Dillon, then south of East Canal Bench Road to White Lane, then south of White lane to Blacktail Road, then south of Blacktail Road to Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop to Interstate 15, then east of Interstate 15 to the Montana/Idaho border.

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

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

COMMENT 1: If a cattle herd comes up positive during the winter/spring, it will be quarantined. This puts a huge burden on seasonal grazers who rely on other ground for grazing. If the animals can't go to summer pasture, it will break the rancher. What will MDOL do to help the producer?

RESPONSE 1: Some of the recent federal rules changes give more flexibility in management of an affected herd. However, the time of year that a positive is found could impact the degree of difficulty associated with quarantining a herd.

COMMENT 2: Most of the animals in the proposed boundary area come in for seasonal grazing, often during the low risk time period. Can the rules be modified for those producers?

RESPONSE 2: Testing variances can be addressed in individual herd plans.

COMMENT 3: Montana Code Annotated 81-2-108 states that it is illegal for diseased animals to run at large in Montana and therefore, the current elk study breaks this law. Additionally, working groups need to be provided with copies of the laws that pertain to the issues that they address.

RESPONSE 3: This MCA has not been interpreted to apply to brucellosis in wildlife. It is worth noting that wildlife species have numerous endemic diseases, therefore, it is impractical or impossible to interpret this MCA literally. Furthermore, in cases where the Legislature tasks MDOL with wildlife responsibilities, it has done so prescriptively as in 81-2-120, MCA: Management of wild buffalo or wild bison for disease control. Additionally, a meeting attendee responded that last year's study was done on their ranch and they support the participation of elk in the study because more information on diseased animals is needed. Considering their resident elk herd of 3,000, only 100 were captured and 12 were positive. That is not a very significant number of known positive animals in the wild.

COMMENT 4: Can open cows from the DSA be taken to market without having a test first?

RESPONSE 4: Cattle can be tested at market, but they need official identification to leave the DSA.

COMMENT 5: Reimbursements for testing have come out of the general fund. What is the plan to secure more money for reimbursements as the DSA continually increases in size?

RESPONSE 5: The major source for funding comes from per capita fees. While the Legislature appropriated 50% per capita fees and 50% general fund for testing reimbursement, limited general fund has been used for testing reimbursements at this point. MDOL will continue to request general fund for the DSA.

COMMENT 6: The bulk of agriculture producers in the state don't care about the DSA and won't want to pay for testing in the future; additionally, most legislators in the state don't know what brucellosis is and don't care.

RESPONSE 6: Montana producers outside the DSA benefit from not having to test for brucellosis where the risk is negligible. DSA producers benefit from the DSA by being subject to one set of regulations (MDOL), availability of reimbursement for testing costs, and ability to provide input to the Board of Livestock and MDOL for needed changes to the program.

COMMENT 7: If reimbursements for testing come out of per capita fees, what other programs are not being funded?

RESPONSE 7: MDOL agrees that there are other priorities that could be funded in the absence of DSA expenditures. The Board of Livestock approved per capita fee increases to address the reduced cash balance partially due to the DSA expenditures.

COMMENT 8: A good way to get the message [of the DSA producers' sacrifice] out to other producers is to do another Economic Analysis that takes into account more of the costs to DSA producers. The Economic Analysis published a year ago did not address all costs to producers or other agency costs (i.e. APHIS funding that went to FWP for the elk study).

RESPONSE 8: It is difficult to capture every cost associated with the brucellosis program, however MDOL feels that the most significant costs were accounted for in the economic impact statement. In addition to preserving state brucellosis Class Free Status that benefits all Montana livestock producers, MDOL reimburses producers \$2/head per brucellosis test. Wyoming and Idaho do not have producer reimbursements available. Reimbursement costs are not affected by the elk study because it's being funded by APHIS.

COMMENT 9: This is a prudent and timely expansion due to the seropositive elk found during the recent increased surveillance by MFWP.

RESPONSE 9: MDOL agrees. Adjusting the DSA is based on new information and finding at-risk animals.

COMMENT 10: The DSA should be getting smaller, not larger. The MDOL should be doing whatever it takes to eliminate brucellosis from the state rather than just keep increasing the DSA. If the area is just going to be increased every year or so, it will soon encompass the entire state. The idea that the DSA will only affect a small percentage of producers is a myth. It will affect every producer in the state, a few at a time. If we continue to allow wolves to relocate the FWP's elk herds and the Governor to relocate the bison herds, it won't take very long.

RESPONSE 10: MDOL supports efforts such as the Elk Working Group to find novel solutions to brucellosis in wildlife. MDOL is also maintaining a focus on prevention of disease transmission and early detection in livestock.

COMMENT 11: The expansion of the DSA is not addressing the real issue of brucellosis in the elk herd and the potential spread to livestock. The FWP and National Park Service should be accountable for eliminating the disease in the animals they claim to control before any more burdens are placed on the livestock producers.

RESPONSE 11: There is a high priority on obtaining more complete and accurate information on the prevalence and distribution of infected elk in the state of Montana.

The following comments are outside the scope of the proposed rule:

1. Numerous questions were asked regarding the specifics of the elk study.

RESPONSE: A representative from Montana Fish, Wildlife, and Parks was present to respond to questions relating to the elk study.

2. Rather than turn the positive elk loose after they have been captured and collared, couldn't the animals be quarantined for further study? That way more information can be gathered from the offspring of positive animals as well.

RESPONSE: Information from a captive elk study would be incomplete in that the value of elk movements, behavior, and impact to the environment in the wild would be lost.

3. MDOL's response to whether the department would support financing for vaccination research was disappointing. My understanding is that the select agent listing for brucella may change soon. An argument for this change is that there are 3.5 million visitors to YNP every year and there has not been a documented case of undulant fever among those visitors.

RESPONSE: At a previous IBMP meeting, MDOL did not embrace the Citizen's Working Group recommendation in regards to vaccination research. (However, at the most recent meeting, MDOL did support these efforts as part of the IBMP.)

4. Are revaccinated (Adult Vaccinated) animals open or pregnant at the time of vaccination? Have there been many abortions in AV'd pregnant animals?

RESPONSE: Adult vaccinating nonpregnant animals is recommended. Pregnant animals can be vaccinated, however the abortion rate is highly unpredictable (aware of documented cases between 0% and 40%).

5. Does the rest of the state recognize the sacrifice of the DSA producers?

RESPONSE: Please see the response for item #6 above.

6. The next major step is to remove *Brucella abortus* from the select agent list allowing for the development of a superior vaccine for livestock.

RESPONSE: MDOL supports the select agent delisting and development of a better vaccine for livestock and wildlife.

7. We always vaccinate our calves. Do you get anything more out of an animal when it is AV'd?

RESPONSE: Once an animal reaches approximately 4.5 years of age, it no longer benefits from calfhood vaccination. Therefore, adult vaccination is recommended in higher risk areas.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

| | | |
|---|---|-------------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT AND |
| ARM 32.3.201, 32.3.212, 32.3.212B, |) | ADOPTION |
| 32.3.214, 32.3.221, 32.3.225, and the |) | |
| adoption of NEW RULES I and II |) | |
| pertaining to 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, |) | |
| and llamas |) | |

TO: All Concerned Persons

1. On April 12, 2012, the Department of Livestock published MAR Notice No. 32-12-224 regarding the proposed amendment and adoption of the above-stated rules at page 715 of the 2012 Montana Administrative Register, issue number 7.

2. The Department of Livestock has amended the above-stated rules exactly as proposed.

3. The department has adopted New Rule I (32.3.227) and II (32.3.228) exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State June 11, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.78.102 and 37.78.508)
pertaining to good cause criteria)
TANF policy manual)

TO: All Concerned Persons

1. On April 12, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-579 pertaining to the proposed amendment of the above-stated rules at page 726 of the 2012 Montana Administrative Register, Issue Number 7.

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

3. No comments or testimony were received.

4. The department intends the proposed rule amendments to be applied retroactively to June 8, 2012. This coincides with the effective date of the TANF manual incorporated by reference in the proposed rulemaking. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ GERALYNN DRISCOLL
Rule Reviewer

/s/ MARY E. DALTON acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.108.507 pertaining to)
healthcare effectiveness data and)
information set (HEDIS) measures)

TO: All Concerned Persons

1. On April 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-580 pertaining to the proposed amendment of the above-stated rule at page 845 of the 2012 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

4. The department intends the proposed rule amendment to be applied retroactively to January 1, 2012. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

/s/ Kurt R. Moser
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 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 AND
Rules I through IV, amendment of) AMENDMENT
ARM 37.90.401, 37.90.402,)
37.90.408, 37.90.410, 37.90.425,)
37.90.428, 37.90.442, and 37.90.460)
pertaining to home and community-)
based services for adults with severe)
disabling mental illness)

TO: All Concerned Persons

1. On April 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-581 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 851 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted New Rule I (37.90.403), New Rule II (37.90.415), New Rule III (37.90.416), New Rule IV (37.90.417) as proposed.

3. The department has amended ARM 37.90.401, 37.90.402, 37.90.408, 37.90.410, 37.90.425, 37.90.428, 37.90.442, and 37.90.460 as proposed.

4. No comments or testimony were received.

5. These rule amendments are effective on July 1, 2012.

/s/ Michelle Maltese
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.212 and 37.86.105)
pertaining to resource based relative)
value scale (RBRVS))

TO: All Concerned Persons

1. On April 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-582 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 862 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 37.86.105 as proposed.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains as proposed.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the anesthesia units for anesthesia services, are multiplied in order to establish the RBRVS fee for a service. There are four conversion factor categories:

(i) and (ii) remain as proposed.

(iii) mental health services, which applies to the following health care professionals listed in (2): licensed psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year 2013 is ~~\$22.80~~ \$22.81; and

(iv) through (14) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-125, MCA

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

COMMENT #1: A comment was received that the proposed rule changes do not comply with the intent of Senate Bill 241 (SB 241). The commenter states that the legislative intent of SB 241 is for all physicians to be treated the same, regardless of

specialty, and that all physicians should, at a minimum, be paid the same Medicaid rates they received in SFY 2010.

RESPONSE #1: 53-6-124(7), MCA defines the resourcebased relative value scale (RBRVS) to mean the Medicare resource based relative value scale contained in the physician's Medicare fee schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services. SB241 did not change the definition of RBRVS.

The RBRVS system is used nationwide by many health plans, including Medicare and many state Medicaid programs. The system was developed by Medicare and implemented in 1992. In 1997 the Montana Department of Public Health and Human Services (the department) adopted an RBRVS based fee schedule as the basis for payment for most services provided to Medicaid clients by physicians, midlevel practitioners, therapists, and other individual practitioners. The department has used an RBRVS system to calculate provider rates since 1997.

The relative value unit (RVU) component of the RBRVS system is revised annually by CMS and the American Medical Association (AMA). An RVU is a numerical value assigned to every medical procedure based on its relative value in relation to other medical services. There are thousands of medical procedures identified by current procedural terminology (CPT) codes. RVUs are added for new procedures and the RVUs for existing medical procedures may increase or decrease from year to year. The department annually proposes to amend ARM 37.85.212(1)(i) to adopt current RVUs for CMS and the AMA. The department uses RVUs for medical procedures that are determined by CMS and the AMA.

The RBRVS system for setting rates uses the following formula to set a reimbursement rate for a medical procedure:

$$\text{RVU} \times \text{Conversion Factor} \times \text{Policy Adjuster (if any)} = \text{Reimbursement rate}$$

The department annually calculates conversion factors for allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid clients' health care during the upcoming state fiscal year (SFY) by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The conversion factor for licensed physicians is described in 53-6-124 and 53-6-125, MCA. The fee paid by the department for a service is calculated by multiplying that procedure's RVU by the conversion factor and any policy adjusters. Policy adjusters by statute are not permitted to be less than one.

The department believes that in order to maintain rates at levels no lower than 2010 rates and stay within the Legislature's appropriation for SFY 2013 (the same amount as 2010 with only an adjustment for caseload). The department would have to maintain the 2010 Medicare RVU scale that is obsolete and would be out of

compliance with the definition of RBRVS at 53-6-124(7), MCA. The department believes that the approach proposed in this rule meets the intent of SB241 to not lower reimbursement from 2010, while continuing to also meet the intent of the remaining portions of the MCA by keeping the Medicare RBRVS in place. While this approach will pay some individual services and providers an amount less than or more than what was paid historically, the department has made every effort to assure that the aggregate payments will remain the same for physicians.

The Legislature has established a system for setting Medicaid rates. The intent of the statute is to set the rates for all services, including physician services. Physician services are based on the RBRVS system and the factors listed in 53-6-113(3), MCA. The department has implemented the language of SB 241 to be consistent with all the provisions of Title 53, chapter 6, MCA adopted by the Legislature.

COMMENT #2: Several commenters noted that practitioners in a facility setting, psychiatrists, psychiatric hospitals, and radiologists receive lower fees but that maternity and obstetric providers are seeing fee increases as a result of this rule amendment. More specifically, they reported an approximate one percent decrease in nonmental health rates in a facility setting and a rate decrease approaching five percent for mental health providers practicing in a facility setting. These decreases in reimbursement may create or exacerbate access to service issues for Medicaid clients. The commenter's proposed remedy to this problem is to enhance the psychiatrist rate of reimbursement presently set at 125 percent.

RESPONSE #2: The department is very concerned that Medicaid clients have access to services and that providers enrolled with the department receive a reasonable level of reimbursement. As discussed in response # 1, the department sets reimbursement levels based on 53-6-125, MCA, but also must stay within the appropriation.

The department uses nationally computed RVUs as do many payers. The changes in RVUs may increase or decrease a provider's reimbursement or that of a provider's specialty. When a change has been made to increase the relative value for services of some procedures or specialties then the relative value for other procedures or specialties must be reduced to offset those increases. These annual RVU changes may impact some specialties to a greater degree than others.

This year the increases were made to maternity and obstetric providers and decreases to psychiatrists and radiologists. At this point in time, the department does not believe the SFY 2013 RBRVS fee changes will decrease Medicaid client access to the services of psychiatrists, radiologists, or services at psychiatric hospitals. Therefore, the department will not either, increase the rate paid to psychiatrists above the present rate which is 25 percent more than the rate paid to other physicians, nor will adjustments be made to the fees set for radiologists. Although the RBRVS system sets the rates for many mental health service providers, it is not a tool used to reimburse psychiatric hospitals. Therefore no

adjustment is possible for them. The department will continue to monitor the adequacy of our provider network.

COMMENT #3: At the public rule hearing, the department entered a comment concerning the mental health services conversion factor for SFY 2013 and noted that the proposed rule amendment originally requested a conversion factor of \$22.80. However, after additional modeling, the department is able to adjust the conversion factor up to \$22.81.

RESPONSE #3: The department will amend the proposed rule and set the conversion factor for mental health services in SFY 2013 at \$22.81.

COMMENT #4: A comment was received stating that the department should be more intentional in its performance of an impact analysis as part of the rulemaking process, to provide more useful information about the areas and types of providers that are impacted when rules are proposed, and questions whether the department met the Medicaid impact analysis requirement in rulemaking in both 2011 and 2012.

RESPONSE #4: The department provided necessary data to providers so that each provider could perform an analysis. Completing specific analyses for some providers without making the same analyses available to all would not be equitable. Given the large number of providers impacted by RBRVS, the department made every reasonable effort to provide data necessary for each provider to evaluate and perform an individual analysis.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.1501, 37.86.1502, and)
37.86.1506 pertaining to home)
infusion therapy program revisions)

TO: All Concerned Persons

1. On April 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-583 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 868 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 37.86.1502 and 37.86.1506 as proposed.

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

37.86.1501 HOME INFUSION THERAPY SERVICES, DEFINITIONS In ARM 37.86.1501, 37.86.1502, 37.86.1505, and 37.86.1506, the following definitions apply:

(1) remains as proposed.

(2) "Home infusion therapy services" means a comprehensive treatment program for the preparation and administration of parenteral medications or parenteral nutritional services to a recipient who is not receiving infusion therapy as a hospital inpatient or outpatient. Home infusion therapy services include all pharmacist professional services, all agency staff services and all associated medical equipment and supplies for care required at home or an ambulatory infusion suite (AIS). Home infusion therapy services do not include professional physician services or drugs. Drugs are covered under the pharmacy outpatient program.

(3) "Home Nursing Services for Infusion/Specialty Drug Administration" means high-tech registered nurse (RN) services provided by an RN with special education, training and expertise in home administration of drugs via infusion, home/AIS administration of specialty drugs, or home nursing management of disease state and care management programs. Typical services include:

(a) through (c) remain as proposed.

(d) catheter insertion/maintenance; and

(e) through (5) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

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

COMMENT #1: A commenter suggested additions to the department's proposed rule language defining "Home Infusion Therapy Services" in ARM 37.86.1501. They asked that the department consider the inclusion of the word "hospital" and add "for care required at home or an ambulatory infusion suite (AIS)" in the proposed rule. They also asked that a definition for "Alternate Treatment Site (ATS)" and "Ambulatory Infusion Suite (AIS)" be added. They proposed an ATS be defined as "a treatment location outside of an institution such as a hospital or nursing home. This includes a patient's home or an ambulatory infusion suite (AIS) of the home infusion therapy provider." The commenter's suggested definition of AIS was "a treatment location operated as part of the home infusion therapy providers operations."

RESPONSE #1: The department appreciates the comment submitted and will include "ambulatory infusion suites" as an authorized place of service in ARM 37.86.1501. The department appreciates the comment submitted asking to add the word hospital and the definitions for AIS and ATS; however, the department will not be adding that language because the Home Infusion Therapy Provider Manual clearly defines the authorized places of service.

COMMENT #2: A commenter proposed a change to the language defining "Home Nursing Services for Infusion/Specialty Drug Administration" in ARM 37.86.1501 by including the acronym "AIS." The commenter also asked that the department consider the inclusion of the wording "catheter maintenance" as a typical home infusion therapy nursing service in ARM 37.86.1501.

RESPONSE #2: The department appreciates the comment submitted and will add the suggested language to ARM 37.86.1501.

COMMENT #3: A commenter asked for clarification of the proposed rule change in ARM 37.86.1501. They interpreted the proposed change to mean the following: "A licensed certified home health agency cannot provide infusion services/visits in the home because those services have been consolidated into the Home Infusion Therapy Program. Therefore, the Home Infusion Therapy Program has to provide all the nursing services in the home." They also asked if a home infusion therapy provider was allowed to contract out that nursing therapy service/visit to a home health agency if they have the qualified registered nurses on staff, and if so, is this patient a home infusion therapy patient? Finally, the commenter asked: "If this patient has identified home health skilled needs, may this patient be open to both programs?"

RESPONSE #3: A licensed, certified Home Health Agency can provide infusion services/visits in the home as well as home nursing services as defined in ARM 37.86.1501. The home infusion nursing services must be provided by a high-tech

registered nurse (RN) who will provide typical services to include evaluation and assessment, education and training for the patient or caregiver, inspection and consultation of aseptic home environment, catheter insertion and maintenance, and patient assessment. Any services outside the scope of this definition will be considered as skilled nursing services for home health and not covered in the Home Infusion Therapy Program.

5. These rule amendments are effective July 1, 2012.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.87.733, 37.87.809,)
37.87.901, and 37.87.2233 pertaining)
to updating the Children's Mental)
Health Bureau (CMHB) fee schedule)

TO: All Concerned Persons

1. On April 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-584 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 873 of the 2012 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

4. These rule amendments are effective on July 1, 2012.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 11, 2012.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.3.706 pertaining to the)
regulation of motor carriers)

TO: All Concerned Persons

1. On April 26, 2012 the Department of Public Service Regulation published MAR Notice No. 38-3-215 pertaining to the proposed amendment of the above-stated rule at page 877 of the 2012 Montana Administrative Register, Issue Number 8.

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

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

COMMENT: The commenter recommended that the department adopt the higher federal Department of Transportation minimum liability insurance requirements of \$5 million for 16 passengers or more and \$1.5 million for 15 passengers or less. The commenter said the federal requirements have been in existence for many years and are considered the minimum amounts of insurance that should be carried by passenger motor carriers.

RESPONSE: The reason for the amendment to the existing rule is that the higher insurance levels in the existing rule have caused a few passenger motor carriers to request waivers of the rule due to financial hardship. They have demonstrated that their insurance costs will increase to such an extent that the rate increases necessary to recover those costs could affect the viability of their businesses. The commission believes it is better public policy to amend the rule to revert to the previous minimum insurance levels rather than to keep the higher insurance requirements and then routinely grant rule waivers.

/s/ DENNIS LOPACH
Dennis Lopach
Rule Reviewer

/s/ TRAVIS KAVULLA
Travis Kavulla
Chairman
Department of Public Service Regulation

Certified to the Secretary of State June 11, 2012.

LIBRARIES - The Library Board has sole discretion to determine how to use unspent funds in the library reserve;

LOCAL GOVERNMENT - The Library Board does not have the authority to require the local governing body to levy a certain number of mills in support of the library;

LOCAL GOVERNMENT - The local governing body is not required to continue levying a particular number of mills in perpetuity;

MONTANA CODE ANNOTATED - Sections 7-6-2501, -4001, -4431(3), -4035, -4036, (1)(b), (c), 15-10-420, (1)(b), 22-1-301, -304, (1), (3), (4), -308, -309, (6), -310;

MONTANA CODE ANNOTATED (1999) - Section 22-1-304;

OPINIONS OF THE ATTORNEY GENERAL - 53 Op. Att'y Gen. No. 2 (2009), 49 Op. Att'y Gen. No. 16 (2002), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
 2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
 3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

June 1, 2012

Mr. Bruce Becker
Livingston City Attorney
414 East Callender
Livingston, MT 59047

Dear Mr. Becker:

You have requested my opinion concerning several questions which I have rephrased as follows:

1. Where unspent appropriations are available, can these funds be used to reduce the tax levy, i.e., can a local governing body appropriate unspent monies (reserves) from the prior fiscal year to partially fund the Livingston/Park County library's budget request for a future fiscal year?
2. Can the Library Board require the City or County to levy an inflationary floating mill?
3. If the City or the County can be required by the Library Board to levy a particular millage, is this not an unconstitutional delegation of the legislative power to tax to the appointed Library Board?
4. Once the City of Livingston has levied a certain number of mills for the library, must the City levy that same number of mills in perpetuity, or does it have the discretion to eliminate mills in excess of those required by the interlocal agreement with Park County?

Your letter indicates that in 2001 the City of Livingston (City) and Park County (County) entered an interlocal agreement to fund a library. Although in 2001 the legislature eliminated the mill limits found in Mont. Code Ann. § 22-1-304 (1999), the interlocal agreement continued to use limitations found in the previous version of the statute, which were five mills in the county and seven in the city. Thus, in the interlocal agreement the County agreed to levy five mills, with 2.5 of those being voter-approved on all property in the County, including property in the City. The City agreed to levy seven mills. The agreement also provided that both the City and County would levy additional mills for the annual increase provided for in Mont. Code Ann. § 15-10-420. Accordingly, last fiscal year, the City levied 9.23 mills, not including the 2.5 county mills. The County levied 5.7 mills, which included the annual increase provided for in Mont. Code Ann. § 15-10-420. Of the 9.23 City mills, 7.92 represent the original 7 mill levy and the annual increases under Mont. Code Ann. § 15-10-420. The remaining 1.31 mills are in excess of the terms of the interlocal agreement.

Your letter further indicates that the interlocal agreement is currently under review. A proposal to change the agreement calls for the County to assess five mills-- .7 mills less than currently levied by the County--and the City to assess seven mills--2.3 mills less than assessed in Fiscal Year 2011-2012. Because, as you acknowledge, this would result in less tax revenue, the City is proposing to reappropriate existing unspent funds in the library reserves to meet the library's budget needs.

The Library Board objects to this proposal because it would cut the library's annual funding by \$50,000, or 12.5 percent, and would eliminate funding to cover the cost of inflation. The Library Board argues that it is the sole duty of the Library Board to

establish the library's budget needs, pursuant to Mont. Code Ann. § 22-1-309(6), which provides:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(Emphasis added.)

The Library Board also relies on this office's holding in 41 Op. Att'y Gen. No. 91 (1986), which concluded, "A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees." The Library Board also notes that opinions from this office in 1999 and 2002 further confirm that it is the exclusive duty of the Library Board to determine the library budget and set the necessary mill levies to meet that budget, provided it falls within the parameters of Mont. Code Ann. § 15-10-420.

In 48 Op. Att'y Gen. No. 3 (1999), this office considered the authority of a board of county commissioners to alter a library board's proposed budget where the library is funded under a *general* levy, as opposed to the library-specific levy provided for in Mont. Code Ann. § 22-1-304(1). In noting the expansive authority provided to library board trustees to control library expenditures and set the library budget, this office concluded that the county commission did not have statutory authority to modify the library budget, regardless of the fact that the library was funded through a general levy.

Similarly, in 49 Op. Att'y Gen. No. 16 (2002), this office considered whether the library board had the authority to require the county commission to levy a specific number of mills to fund the library budget as submitted by the library board. Although noting some changes had been made to the statutory scheme during the 2001 legislative session with the passage of the Local Government Budget Act (see Mont. Code Ann. § 7-6-4001), this office nonetheless concluded that the county commissioners were still "generally obligated" to fund the library board's budget, subject only to the limitations provided for in Mont. Code Ann. § 15-10-420.

By 2009, however, in 53 Op. Att'y Gen. No. 2, I examined the changes enacted by the Local Government Budget Act more directly, specifically by considering whether a county governing body was required to adopt the hospital trustees' proposed budget without changes. There I reached a result that appeared to conflict with the conclusion reached in 49 Op. Att'y Gen. No. 16 (2002). Specifically, I determined

that the local governing body was *not* obligated "to fund the budget proposed by the county hospital district trustees without change." My conclusion was based on the changes made to the statutory scheme by the Local Government Budget Act. It was also based on the acknowledgment that requiring a local governing body to simply adopt a local board's proposed budget would usurp the governing body's ability to set funding priorities for all government programs and would make the local board's budget, in effect, a "superior priority" at the expense of other important government functions.

Furthermore, I noted:

I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att'y Gen. No. 16 (2001) [The original opinion incorrectly cited this as a 2001 opinion. It is actually from 2002]; 48 Op. Att'y Gen. No. 3 (1999); 41 Op. Att'y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.

53 Op. Att'y Gen. No. 2, ¶ 16. Your request requires me to consider this previously unanswered question.

I.

Your first question concerns whether the City and County may reduce the tax levy (and, thereby, the library's funding) and, instead, require that the library's budget be funded through previously unspent funds in the library reserves.

A local governing body clearly has the authority to determine whether to levy taxes. See, e.g., Mont. Code Ann. § 7-6-2501. This is one of the most fundamental powers of government. Necessarily, a governing body also has the authority to determine not to tax. For example, as stated in Mont. Code Ann. § 7-6-4431(3): "An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b)." (Emphasis added.)

However, while the City and County can determine how much to levy in taxes, they cannot exercise control of the library reserve funds. Montana Code Annotated § 22-1-309 clearly provides: "The library board of trustees shall have exclusive control of the expenditure of the public library fund" (emphasis added). Montana Code Annotated §§ 22-1-304(3) and (4) further speak to the exclusive authority of the Library Board and use of funds in the library reserve:

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Therefore, while the City and County have the authority to decrease the number of levies for support of the library, they do not have the authority to direct the Library Board in how to use the library reserve fund.

II.

Your second question directly confronts the authority of local boards to require local governing bodies to fund the budget as requested. Specifically, you ask whether the Library Board, by adopting a budget, can force the City and County to levy the inflationary floating mill as provided for in Mont. Code Ann. § 15-10-420 in order to meet the Library Board's budget. The Library Board maintains the answer is yes and points to the aforementioned opinions of this office as "clearly and unambiguously" providing that the Library Board has the statutory authority over the library budget.

It should first be noted that previous opinions of this office have interpreted Mont. Code Ann. § 15-10-420 not merely to be permissive, as you indicate, but also as providing a cap on mill levies for a given year. 53 Op. Att'y Gen. No. 2, ¶ 2. That is, § 15-10-420 provides an *upper limit* on the tax revenue that may be raised in a given year, not a guaranteed minimum. This reading of § 15-10-420 is consistent with other provisions of the Montana Code. See, e.g., Mont. Code Ann. § 7-6-4431 ("The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy allowed by 15-10-420 under the following conditions" (emphasis added)).

Local government budget authority was significantly changed under the Local Government Budget Act, as well as other statutory provisions enacted during the 2001 legislative session. Prior to that, funding of public libraries was largely governed by Mont. Code Ann. § 22-1-304, which set specific limits on mill levies:

Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.

Mont. Code Ann. § 22-1-304 (1999) (emphasis added).

In 2001, the legislature removed the mill levy limits in Mont. Code Ann. § 22-1-304. The present version of the statute now provides more simply:

Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

This, however, is not the only change the 2001 legislature made that is germane to funding of public libraries. If it were, a library board's authority to demand unlimited public funds at the expense of other important government programs would be left unchecked. Instead, the legislature also enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part, "The proposed budget and mill levy for *each board, commission, or other governing entity* are subject to approval by the governing body." (Emphasis added.)

The legislature also enacted Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

Mont. Code Ann. § 7-6-4036(1)(b)-(c).

Thus, the 2001 legislature in effect upended the funding of public libraries. It went from a scheme in which library boards had complete control over the library budget, but the budget could not exceed the mill limits provided in Mont. Code Ann. § 22-1-304, to a scheme in which there were no mill limits in Mont. Code Ann. § 22-1-304, but the library board's proposed budget was subject to approval by the local governing body.

As I indicated in 53 Op. Att'y Gen. No. 2 (2009), requiring approval of a proposed budget of a local board (in that case, hospital districts) by the local governing body, as Mont. Code Ann. § 7-6-4035 does, would be a meaningless exercise if the local board could still require the governing body to approve its budget proposal without change. See 53 Op. Att'y Gen. No. 2, ¶ 12 (2009). This logic applies with equal force to library boards. And, as stated in 53 Op. Att'y Gen. No. 2, it is presumed the "legislature does not pass meaningless legislation." 53 Op. Att'y Gen. No. 2, ¶ 12 (citing Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996)).

The Library Board correctly points to previous opinions of this office which conflict with my conclusion in this matter. However, two of the three opinions relied upon by the Library Board were issued prior to the changes to local government finance enacted by the 2001 legislature. To the extent those opinions conflict with the Local Government Budget Act and other provisions of the Montana Code, they are inapplicable to this question. It is worth noting, however, that one of those opinions

acknowledged the exact concern I have expressed here and in 53 Op. Att'y Gen. No. 2 (2009), concerning the Library Board's authority to require a governing body to fund the library budget as requested without change. In 48 Op. Att'y Gen. No. 3 (1999), this office acknowledged that interpreting the statutes at issue to allow a library board to force the governing body to adopt the board's budget beyond the mill levy limit at the time, "would allow library trustees to adopt a budget that could assume the entire general fund levy."

It should also be noted that this opinion is consistent with the Montana Supreme Court's holding in Trustees of Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 Mont. 326, 221 P.3d 1175 ("BSB Public Library"), in a couple of significant respects. First, the Court in that matter was dealing largely with the question of whether the Butte-Silver Bow Public Library was, in fact, a "public library" under Mont. Code Ann. § 22-1-301. The county argued that because the library was not a "public library," the library "cannot be regulated under this statutory scheme because the Board is not a board of trustees within the meaning of § 22-1-308, MCA (2007)." BSB Public Library, ¶ 14. Accordingly, the county sought to exercise the authority found at Mont. Code Ann. § 22-1-310 to "appoint and set the compensation of the chief librarian . . ." BSB Public Library, ¶ 16 (quoting Mont. Code Ann. § 22-1-310). This authority, otherwise, belonged to the library board itself.

The Court concluded that the library met the definition of a "public library" and, in so doing, found that the "plain language" of Mont. Code Ann. § 22-1-310 "grants the Board, and not BSB, the authority to determine the salaries and compensation of Library employees. Notably, however, the opinion never touched on the question posed here of whether a library board's proposed budget is subject to approval by the local governing body as provided for in Mont. Code Ann. § 7-6-4035. Indeed, the Court never even cited to Mont. Code Ann. §§ 7-6-4035 or -4036 at all.

Thus, this opinion and the Montana Supreme Court's opinion in BSB Public Library are consistent: while this opinion holds that the library board's proposed budget is subject to approval by the local governing body, as provided for in Mont. Code Ann. § 7-6-4035, the Supreme Court's opinion in BSB Public Library holds that the details of that budget, such as fixing salaries and compensation and prescribing duties of employees, is the sole discretion of the library board, pursuant to Mont. Code Ann. § 22-1-310.

Finally, to the extent 49 Op. Att'y Gen. No. 16 (2002), failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis is incomplete and it is inapplicable to the questions presented here.

III.

Due to my disposition of your second question, your third question is rendered moot. However, it should be noted that under both Mont. Code Ann. §§ 15-10-420 and 22-1-304, it is the "governing entity" or "governing body" that levies the tax, not the

library board. Therefore no unconstitutional delegation of the legislature's taxing authority exists. This same conclusion has been reached in previous opinions of this office. See 53 Op. Att'y Gen. No. 2, ¶ 6 (2009).

IV.

Your final question is answered in the same manner as the first, by reference to Mont. Code Ann. § 7-6-4431(3) which states, "An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b)." Accordingly, the City is not obligated to continue to levy a particular number of mills in perpetuity.

THEREFORE IT IS MY OPINION:

1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

Sincerely,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/zz/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known Subject | 1. Consult ARM Topical Index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2012. This table includes those rules adopted during the period April 1, 2012, through June 30, 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 March 31, 2012, 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 2012 Montana Administrative Register.

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

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in May 2012 appear. Vacancies scheduled to appear from July 1, 2012, through September 30, 2012, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

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

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

BOARD AND COUNCIL APPOINTEES FROM MAY 2012

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Board of Hail Insurance (Agriculture) | | | |
| Ms. Trudy Laas Skari Chester | Governor | reappointed | 5/3/2012 4/18/2015 |
| Qualifications (if required): public member | | | |
| Board of Plumbers (Labor & Industry) | | | |
| Mr. Jeffrey Gruizenga Billings | Governor | reappointed | 5/4/2012 5/4/2016 |
| Qualifications (if required): professional engineer (mechanical) | | | |
| Board of Real Estate Appraisers (Labor & Industry) | | | |
| Ms. Lori Christophersen Bozeman | Governor | Gallaher | 5/1/2012 5/1/2015 |
| Qualifications (if required): public representative | | | |
| Ms. Julie Forbes Jefferson City | Governor | Ernst | 5/1/2012 5/1/2015 |
| Qualifications (if required): real estate appraiser | | | |
| Board of Realty Regulation (Labor & Industry) | | | |
| Mr. Pat Goodover Great Falls | Governor | reappointed | 5/9/2012 5/9/2016 |
| Qualifications (if required): real estate salesperson & a Republican | | | |
| Council on Developmental Disabilities (Commerce) | | | |
| Rep. Tim Furey Milltown | Governor | reappointed | 5/17/2012 1/1/2013 |
| Qualifications (if required): legislator | | | |

BOARD AND COUNCIL APPOINTEES FROM MAY 2012

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|-----------------------------------|-----------------|-----------------------------|
| Council on Developmental Disabilities (Commerce) cont. | | | |
| Ms. Marla Swanby Helena | Governor | Casey | 5/17/2012 1/1/2013 |
| Qualifications (if required): | agency representative | | |
| Ms. Diana Tavary Helena | Governor | reappointed | 5/17/2012 1/1/2013 |
| Qualifications (if required): | advocacy program representative | | |
| Dr. R. Timm Vogelsberg Missoula | Governor | reappointed | 5/17/2012 1/1/2013 |
| Qualifications (if required): | university program representative | | |
| Sen. Carol Williams Missoula | Governor | reappointed | 5/17/2012 1/1/2013 |
| Qualifications (if required): | legislator | | |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

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

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Board of Hearing Aid Dispensers (Labor and Industry) Mr. Brian Bolenbaugh, Missoula Qualifications (if required): hearing aid dispenser (no masters) | Governor | 7/1/2012 |
| Ms. Rebecca Wisnoskie, Helena Qualifications (if required): hearing aid dispenser (no masters) | Governor | 7/1/2012 |
| Board of Medical Examiners (Labor and Industry) Dr. Dean Center, Bozeman Qualifications (if required): doctor of medicine | Governor | 9/1/2012 |
| Board of Nursing (Labor and Industry) Ms. Kathy Hayden, Missoula Qualifications (if required): licensed practical nurse | Governor | 7/1/2012 |
| Ms. Heather Onstad, Helena Qualifications (if required): registered nurse/educator | Governor | 7/1/2012 |
| Board of Pharmacy (Labor and Industry) Ms. Susan Hagen, Glasgow Qualifications (if required): public representative | Governor | 7/1/2012 |
| Board of Physical Therapy Examiners (Labor and Industry) Ms. Kim Miller, Virginia City Qualifications (if required): public member | Governor | 7/1/2012 |
| Ms. Patti Jo Lane, Great Falls Qualifications (if required): physical therapy | Governor | 7/1/2012 |
| Mr. Christian Appel, Bozeman Qualifications (if required): physical therapist | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Board of Private Security (Labor and Industry) Sheriff Leo C. Dutton, Helena Qualifications (if required): county sheriff's office representative</p> | Governor | 8/1/2012 |
| <p>Mr. Daniel Taylor, Glasgow Qualifications (if required): contract security company representative</p> | Governor | 8/1/2012 |
| <p>Mr. Scott Swingley, Helena Qualifications (if required): licensed private investigator</p> | Governor | 8/1/2012 |
| <p>Mr. Ronald C. Young, Joliet Qualifications (if required): city police department representative</p> | Governor | 8/1/2012 |
| <p>Captain George Skuletich, Butte Qualifications (if required): city police department representative</p> | Governor | 8/1/2012 |
| <p>Board of Psychologists (Labor and Industry) Rep. Linda L. Holden, Valier Qualifications (if required): public representative</p> | Governor | 9/1/2012 |
| <p>Board of Public Accountants (Labor and Industry) Ms. Beatrice Rosenleaf, Anaconda Qualifications (if required): public representative</p> | Governor | 7/1/2012 |
| <p>Mr. Jack Meyer, Missoula Qualifications (if required): Certified Public Accountant</p> | Governor | 7/1/2012 |
| <p>Board of Radiologic Technologists (Labor and Industry) Ms. Kelli Bush, Butte Qualifications (if required): radiologic technician</p> | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <p>Board of Radiologic Technologists (Labor and Industry) cont. Ms. Sharlett Dale, Harlowton Qualifications (if required): radiologic technician</p> | Governor | 7/1/2012 |
| <p>Board of Sanitarians (Labor and Industry) Mr. Rodney Fink, Columbus Qualifications (if required): sanitarian</p> | Governor | 7/1/2012 |
| <p>Board of Veterans' Affairs (Military Affairs) Mr. Bruce W Knutson, Helena Qualifications (if required): representative of Senator Jon Tester</p> | Governor | 8/1/2012 |
| <p>Mr. Donald Kettner, Glendive Qualifications (if required): veteran and resident of Region 5</p> | Governor | 8/1/2012 |
| <p>Mr. Mike Waite, Helena Qualifications (if required): representative of Congressman Dennis Rehberg</p> | Governor | 8/1/2012 |
| <p>Mr. Don Slavens, Billings Qualifications (if required): representative of Senator Max Baucus</p> | Governor | 8/1/2012 |
| <p>Mr. Matthew McCombs, Helena Qualifications (if required): representative of Senator Jon Tester</p> | Governor | 8/1/2012 |
| <p>Board of Veterinary Medicine (Labor and Industry) Ms. Barbara Calm, Kila Qualifications (if required): veterinarian</p> | Governor | 7/31/2012 |
| <p>Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor</p> | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Board of Water Well Contractors (Natural Resources and Conservation) cont. | | |
| Mr. Laurence Siroky, Helena Qualifications (if required): none specified | Director | 7/1/2012 |
| Burial Preservation Board (Administration) | | |
| Mr. Conrad Fisher, Busby Qualifications (if required): representative of the Northern Cheyenne Tribe | Governor | 8/22/2012 |
| Mr. William Big Day, Crow Agency Qualifications (if required): representative of the Crow Tribe | Governor | 8/22/2012 |
| Mr. Morris Belgard, Hays Qualifications (if required): representative of the Fort Belknap Indian Community | Governor | 8/22/2012 |
| Mr. Videl Stump Sr., Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe | Governor | 8/22/2012 |
| Dr. Ruthann Knudson, Great Falls Qualifications (if required): representative of the archaeological association | Governor | 8/22/2012 |
| Mr. Terry Bullis, Hardin Qualifications (if required): representative of the coroner's association | Governor | 8/22/2012 |
| Mr. Henry Anderson, Helena Qualifications (if required): representative of the Little Shell Tribe | Governor | 8/22/2012 |
| Community Service Commission (Labor and Industry) | | |
| Ms. Nancy Matheson, Helena Qualifications (if required): agency representative | Governor | 7/1/2012 |
| Ms. Karin Olsen Billings, Helena Qualifications (if required): agency representative | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Community Service Commission (Labor and Industry) cont. | | |
| Mr. John Ilgenfritz, Helena Qualifications (if required): public representative | Governor | 7/1/2012 |
| Col. Scott Smith, Fort Harrison Qualifications (if required): agency representative | Governor | 7/1/2012 |
| Mr. Robert Nystuen, Lakeside Qualifications (if required): representative of business | Governor | 7/1/2012 |
| Economic Development Advisory Council (Commerce) | | |
| Mr. Jim Atchison, Colstrip Qualifications (if required): public representative | Governor | 7/23/2012 |
| Ms. Elizabeth Marchi, Polson Qualifications (if required): public representative | Governor | 7/23/2012 |
| Mr. Joe Menicucci, Belgrade Qualifications (if required): public representative | Governor | 7/23/2012 |
| Mr. Richard Sangrey, Box Elder Qualifications (if required): public representative | Governor | 7/23/2012 |
| Mr. Wade Sikorski, Baker Qualifications (if required): public representative | Governor | 7/23/2012 |
| Electrical Board (Labor and Industry) | | |
| Ms. Marlene Egan, Helena Qualifications (if required): public representative | Governor | 7/1/2012 |
| Mr. Keith Simendinger, Helena Qualifications (if required): public representative | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Family Education Savings Oversight Committee (Commissioner of Higher Education) Mr. Gene Jarussi, Billings Qualifications (if required): public representative | Governor | 7/1/2012 |
| Historical Society Board of Trustees (Historical Society) Mr. Steve Carney, Scobey Qualifications (if required): public member | Governor | 7/1/2012 |
| Low Income Energy Programs Policy Advisory Council (Public Health and Human Services) Mr. Hank Hudson, Helena Qualifications (if required): none specified | Director | 9/2/2012 |
| Mr. Michael Vogel, Bozeman Qualifications (if required): none specified | Director | 9/2/2012 |
| Mr. Phil Cooke, Helena Qualifications (if required): none specified | Director | 9/2/2012 |
| Mr. Phil Cooke, Helena Qualifications (if required): none specified | Director | 9/2/2012 |
| Ms. Lesa Evers, Helena Qualifications (if required): none specified | Director | 9/2/2012 |
| Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): having experience with emotionally disturbed children | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Mental Disabilities Board of Visitors (Governor) cont. | | |
| Mr. Graydon Davies Moll, Ronan Qualifications (if required): having experience with developmentally disabled adults | Governor | 7/1/2012 |
| Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals | Governor | 7/1/2012 |
| Mint Committee (Agriculture) | | |
| Mr. Clyde Fisher, Columbia Falls Qualifications (if required): representative of the mint industry research council | Governor | 7/1/2012 |
| Mr. Kirk Passmore, Kalispell Qualifications (if required): mint grower | Governor | 7/1/2012 |
| Montana Historical Society Board of Trustees (Historical Society) | | |
| Mr. Steve Lozar, Polson Qualifications (if required): public member | Governor | 7/1/2012 |
| Ms. Katherine Lee, Glendive Qualifications (if required): public member | Governor | 7/1/2012 |
| Mr. Kent Kleinkopf, Missoula Qualifications (if required): public member | Governor | 7/1/2012 |
| Montana Wheat and Barley Committee (Agriculture) | | |
| Mr. Buzz Mattelin, Culbertson Qualifications (if required): wheat and/or barley producer in District 1 | Governor | 8/20/2012 |
| Mr. Melvin Goffena, Wilsall Qualifications (if required): wheat and/or barley producer in District 6 | Governor | 8/20/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Montana Wheat and Barley Committee (Agriculture) cont. Mr. Bruce Myllymaki, Stanford Qualifications (if required): wheat and/or barley producer in District 5 | Governor | 8/20/2012 |
| Public Defender Commission (Administration) Ms. Majel Russell, Billings Qualifications (if required): member of organization advocating on behalf of racial minorities | Governor | 7/1/2012 |
| Mr. Charles Petaja, Helena Qualifications (if required): an attorney nominated by the State Bar | Governor | 7/1/2012 |
| Mr. Terry Jessee, Billings Qualifications (if required): public representative nominated by the President of the Senate | Governor | 7/1/2012 |
| Research and Commercialization Technology Board (Commerce) Mr. Major Robinson, Billings Qualifications (if required): Native American representative | Governor | 7/1/2012 |
| Mr. Tom Tanner, Arlee Qualifications (if required): Native American representative | Governor | 7/1/2012 |
| Small Business Compliance Assistance Advisory Council (Environmental Quality) Mr. Charles Homer, Helena Qualifications (if required): representative of the Department of Environmental Quality | Director | 9/29/2012 |
| Teachers' Retirement Board (Administration) Ms. Kari Peiffer, Kalispell Qualifications (if required): teacher/member | Governor | 7/1/2012 |
| Telecommunications Access Services for Person with Disabilities (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission | Governor | 7/1/2012 |

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2012 THROUGH SEPTEMBER 30, 2012

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