MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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) 438-6122.

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PROPOSAL NOTICES

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3545 pertaining to distribution to participant and 2.43.3546 pertaining to distribution upon death of participant	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 24, 2024, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board 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 Montana Public Employee Retirement Administration (MPERA) no later than 5:00 p.m. on July 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3545 DISTRIBUTION TO PARTICIPANT (1) and (2) remain the same.

(a) Distribution must start no later than April 1 of the calendar year following the later of the calendar year:

(i) ~~the calendar year~~ in which the participant reaches age 70 1/2 if born before July 1, 1949; or

(ii) in which the participant reaches age 72 if born after June 30, 1949, and before January 1, 1951; or

(iii) in which the participant reaches age 73 if born after December 31, 1950; or

~~(ii)~~(iv) ~~the calendar year~~ in which the participant retires from service in a PERS-covered position.

(b) through (4) remain the same.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-303(22), 19-2-1007, 19-3-2123, 19-3-2124, MCA

REASONABLE NECESSITY: On December 29, 2022, the United States President signed into law the Consolidated Appropriations Act, 2023, which also included the Setting Every Community Up for Retirement Enhancement Act 2.0 of 2022 (SECURE 2.0). SECURE 2.0 built upon changes enacted by SECURE 1.0 of 2019

by collecting into a single act over 90 provisions from three different retirement reform-related bills that had been circulating in Congress.

Under the Internal Revenue Code 401(a)(9) prior to the passage of SECURE 2.0, one generally had to take required minimum distributions (RMDs) from a retirement plan beginning at age 72. SECURE 2.0 removes the language "age 72" in 26 U.S.C. 401(a)(9)(C)(i)(I) and replaces it with "the applicable age," and adds a new clause to phase in extended RMD ages, starting with age 73 for individuals turning 73 in or after 2023. For anyone who will be turning 74 after 2032, the RMD adjusted age has been extended to 75 years old.

This rule amendment is necessary to comply both with the federal law changes enacted by SECURE 2.0 and to comply with 19-2-1007, MCA, which states that "benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code[.]"

2.43.3546 DISTRIBUTION UPON DEATH OF PARTICIPANT (1) through (3) remain the same.

(4) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to defer distribution until a date no later than the date the participant would have attained:

(i) age 70 1/2 if the participant was born before July 1, 1949;

(ii) age 72 if the participant was born after June 30, 1949, and before January 1, 1951; or

(iii) age 73 if the participant was born after December 31, 1950.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-3-2124, 19-3-2125, MCA

REASONABLE NECESSITY: SECURE 2.0 extends to the surviving spouse of a plan participant the irrevocable right to elect to be treated as the deceased participant for the purpose of RMDs. This change incorporates SECURE 2.0's phased-in increases to the age at which retired plan participants must commence receiving payments from retirement plans. Accordingly, this rule amendment is necessary to comply both with spousal distribution changes enacted by SECURE 2.0 and to comply with 19-2-1007, MCA, which states that "benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code[.]"

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., August 2, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they

must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., August 2, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 609 persons based on approximately 6,089 participants in the Defined Contribution Plan as of June 30, 2023.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

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

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State June 25, 2024.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 10.7.106A, 10.10.301, 10.10.301B, 10.10.301C, 10.10.301D, 10.16.3818, and 10.20.106 pertaining to school finance	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 29, 2024, at 10:00 a.m., the Office of Public Instruction (OPI) will hold an in-person public hearing at the OPI building at 1300 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. Remote participation via the ZOOM meeting platform will be available during the hearing.

Join the Zoom Meeting at https://mt-gov.zoom.us/j/85815515987?pwd=R1OMbiR6bXNd2WvUzzW12W2De9RVE9.1
Meeting ID: 858 1551 5987 Password: 721612
OR
Dial by Telephone +1 646 558 8656 Mtg ID: 858 1551 5987 Password: 721612
Find your local number: https://mt-gov.zoom.us/u/kbgF4uz53a

2. OPI 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 OPI no later than 5:00 p.m. on July 22, 2024, to advise us of the nature of the accommodation that you need. Please contact Brian O'Leary, Office of Public Instruction, 1300 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3559; fax (406) 444-2893; or e-mail brian.o'leary@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Appropriate educational opportunity" has the meaning as defined in 20-7-435, MCA.

(2) "Children's psychiatric hospital" has the meaning as defined in 20-7-436, MCA.

(3) "Eligible child" has the meaning as defined in 20-7-436, MCA.

(4) "Qualifying facility" has the meaning as defined in 20-7-436, MCA.

(5) "Residence" means an eligible child's residence, as determined by application of 20-5-322, MCA.

(6) "Residential treatment facility" has the meaning as defined in 20-7-436, MCA.

(7) "Serious emotional disturbance" means an emotional disturbance that is so severe that an eligible child has been placed in a qualifying facility for treatment, as used in 20-7-436, MCA.

(8) "Therapeutic group home" has the meaning as defined in 20-7-436, MCA.

AUTH: 20-7-419, MCA
IMP: 20-7-403, 20-7-419, 20-7-435, 20-7-436, MCA

REASON: The proposed new rule would establish definitions used in the newly proposed subchapter that would be consistent with the underlying statutory authority for the subchapter.

NEW RULE II TUITION RESPONSIBILITY (1) The Office of Public Instruction (OPI) may assume responsibility for a portion or all of the cost of an eligible child's education when the eligible child is a Montana resident and placed in a qualifying facility, which may or may not be in the eligible child's district of residence.

(2) The OPI is not responsible for any portion of the cost of a child's education if the child does not have residence in the state of Montana, except as may be specifically provided in statute.

(3) If a Montana state agency, parent, or legal guardian places a child in an out-of-state school or out-of-state facility, the placing state agency, parent, or legal guardian must negotiate and fund the care and education of the child.

(4) If a child's district of residence has the capability to provide an appropriate education for a child with a disability, but the child has been placed in a district of choice at the discretion of a parent, the tuition rate paid by districts for placement of a non-resident student applies and is calculated in accordance with 20-5-320 and 20-5-321(1)(a) through (c), MCA.

(5) Any entity receiving funding from the OPI must complete required reporting using a format determined by the OPI.

AUTH: 20-7-419, MCA
IMP: 20-7-403, 20-7-419, 20-7-435, 20-7-436, MCA

REASON: The proposed new rule would establish eligibility rules for Montana students and facilities and the associated tuition payments that are not currently in rule.

NEW RULE III QUALIFYING FACILITY REIMBURSEMENT PAYMENTS

(1) To be eligible for a reimbursement payment, a qualifying facility must provide an eligible child with an appropriate educational opportunity in a cost-effective manner and must be under contract with the Office of Public Instruction (OPI). The facility must:

(a) submit educational data for each eligible child in accordance with special education program requirements, submitted on a form prescribed by the OPI;

(b) within 60 days, submit to a requested audit;

(c) maintain accreditation and licensing as required by the OPI and the Department of Public Health and Human Services; and

(d) maintain valid and documented attendance agreements for all eligible children per 20-5-320, 20-5-321, 20-5-322, and 20-5-324, MCA, on a form prescribed by the OPI.

(2) The qualifying facility must provide information in an annual collection of financial data submitted to the OPI by December 1 each year on a form prescribed by the OPI for the prior fiscal year ending June 30. The OPI must make the final determination of the allowable costs, including calculation of the number of school days.

(a) Information to be submitted must include, but may not be limited to:

(i) all reported expenditures allocated between education and treatment;

(ii) allowable costs, which may include:

(A) the cost of salaries and benefits of necessary positions by position type;

(B) the necessary operating expenses;

(C) the average enrollment for the fiscal year;

(D) the average enrollment expected in the ensuing year; and

(E) the number of school days in the fiscal year; and

(iii) the published or management approved financial statements for the fiscal year ended June 30.

(b) Costs the qualifying facility would expend if it were not providing appropriate educational opportunities to eligible children are not allowable costs. These include, but may not be limited to, administrative costs, food and food preparation costs, human resources, information technology, and janitorial services.

(3) An eligible child and their placing state agency, parent, or legal guardian may opt out of the education program provided by the facility if the eligible child is enrolled in a qualified remote learning program or correspondence program. If the eligible child has opted out of the facility's in-house educational program, the facility will not be eligible for reimbursement by the OPI for that eligible child.

(a) Qualifying facilities must have an active attendance agreement in place for each eligible child that indicates the eligible child's election of educational opportunity. If the eligible child has opted out, the attendance agreement must indicate the current enrollment of the eligible child.

(b) Each eligible child who opts out of the facility in-house educational programs must be given adequate time during the day to complete their educational obligations.

(4) The OPI may allow an indirect cost recovery factor.

(a) Total expenditures may include the finalized expenditures plus an indirect cost recovery factor determined by the OPI.

(b) Except if the OPI approves in advance a qualifying facility's subcontracting of appropriate educational opportunities to eligible children, no other indirect cost recovery may be reimbursed.

(5) The daily rate under 20-7-435, MCA, must be calculated as follows:

(a) the total daily rate is calculated by dividing the education expenditures by enrollment and dividing by the number of school days;

(b) the rate paid by the district of residence is 40% of the tuition per average number belonging (ANB) amount divided by 180, in accordance with 20-7-435(3), MCA;

(c) the rate reimbursed by the OPI is the total daily rate minus the district of residence tuition rate; and

(d) the daily rate will be calculated and determined by the OPI.

(6) Daily rates must be based upon a minimum of a 6-hour day for eligible children in grades 4 through 12, a 4-hour day for eligible children in grades 1 through 3, and a 2-hour day for eligible children in preschool through kindergarten.

(7) The qualifying facility is responsible to invoice the district of residence by August 15 of each year. The district of residence is responsible to pay one-half of tuition owed by December 31 and the remaining amount by June 15.

(8) The qualifying facility must data enter and submit the eligible children in the MAEFAIRS system by the tenth day of each month. Weekends and holidays are included in the determination of the ten days, but if the tenth day falls on a holiday or weekend, a claim received by the OPI on the next working date will be considered timely. The OPI may review submissions for accuracy and completeness before remitting a reimbursement payment. Any additional information or clarifications requested by the OPI must be resolved by the qualifying facility before reimbursement payment may be remitted.

AUTH: 20-7-419, MCA
IMP: 20-7-403, 20-7-419, 20-7-435, 20-7-436, MCA

REASON: The proposed new rule would provide additional guidance for the In State Facilities Reimbursement program as created by HB 171 (2023), including defining dates and reporting requirements that are not currently defined in statute. HB 171 (2023) significantly altered the structure of in-state treatment facility education reimbursement payments. No rule currently exists to govern this program.

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

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) If trustees of a student's district~~s~~ of residence and attendance sign an out-of-district attendance agreement that includes transportation, either district may provide bus transportation or a pupil transportation contract under the conditions of ARM 10.7.105. ~~The student may be the eligible transportee of the district providing transportation. A waiver of tuition does not affect the eligibility of the student for transportation.~~

(a) When a student enrolls outside their district of residence, by parent request, the student is not an eligible transportee and transportation is the responsibility of the parent or guardian.

(b) When an out-of-district attendance agreement is approved by the district of residence, the district of attendance may discretionarily provide transportation to the student.

(c) Only under an agreement approved by the district of residence may a student be an eligible transportee of the district that is providing transportation as defined in 20-10-101, MCA.

(2) On-schedule costs of transporting the eligible transportee may be claimed for transportation aid in accordance with 20-10-141 and 20-10-142, MCA. ~~On-schedule costs may not be charged to any person or entity who is a party to the out-of-district attendance agreement.~~

(3) Pursuant to 20-5-323, MCA, a school district transporting a student under an out-of-district attendance agreement may charge for over-schedule costs of transportation if stated in the attendance agreement. Over-schedule costs of transporting an out-of-district ineligible student, as limited by 20-5-323(5), MCA, may be charged to the ~~entity that could be held responsible for paying tuition under an attendance agreement required~~ parents or guardians responsible for placing the child, in accordance with by 20-3-320 or 20-5-321, MCA. ~~For discretionary attendance agreements allowed by 20-5-320, MCA, the district of residence may refuse to accept responsibility for the over-schedule costs of transportation at the time the attendance agreement is signed by indicating so on the agreement form.~~

(4) through (7) remain the same.

(8) If a district agrees to provide transportation, the ~~The~~ district providing transportation must bill the party responsible for paying transportation obligations of an attendance agreement in accordance with 20-5-324, MCA.

~~(9) In accordance with 20-5-324, MCA and ARM 10.10.301B, the school district trustees may pay costs of transportation listed on an attendance agreement along with tuition due on that contract in the year of the student's attendance or, if the obligation occurs after the district's budget is adopted, in the ensuing year. Parents or guardians may be charged in the year of attendance.~~

AUTH: 20-5-323, 20-9-201, 20-10-112, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-10-141, 20-10-142, MCA

REASON: The proposed rule changes would correct the rule to reflect transportation requirements as updated in the components of HB 203 (2023).

10.10.301 CALCULATING TUITION RATES (1) Regular Tuition. The district of residence must pay the district of attendance the lower of the percentage of either school district's adopted general fund budget, not to exceed 35.3%. ~~The maximum regular education tuition rate a district may charge per student is 20% of the per ANB rate established in 20-9-306(15), MCA, for the first ANB for the year of attendance.~~ For a kindergarten student enrolled in a half-time program as provided in 20-1-301(2)(a), MCA, and a preschool child with disabilities the rate is one-half the rate for an elementary student.

(2) Tuition Rate for a Student Without Disabilities but Higher Than Average Cost. Pursuant to 20-5-323, MCA, the maximum tuition rate for a student without disabilities who has been placed in a group home or foster care, outside their district of residence, by a state agency or court may exceed the regular tuition rate calculated in (1) if:

(a) the student has unique needs that require a district to provide a program specifically designed to meet those needs; and

(b) the costs of the program can be documented and exceed the receiving school district's average general fund budget per budgeted ANB in the year preceding the year of attendance.

(3) Tuition calculated in (2) may not exceed the lesser of:

(a) $2,500; or

(b) the actual individual costs of providing that student's program minus ~~80~~ 120% of the maximum per-ANB rate established in 20-9-306(15), MCA, for the first ANB for the year of attendance.

(4) Tuition Rate for Student with Disabilities. The maximum tuition rate for a student with disabilities may exceed the regular tuition rate calculated in (1) but may not exceed the rates established in ARM 10.16.3818.

(5) All Circumstances. The calculations in this rule are the maximum tuition rates that a district may charge for a Montana resident student.

(a) Pursuant to 20-5-320 and 20-5-321, MCA, ~~the three entities that pay tuition are: parents or guardians, school districts, and the state~~ tuition cannot be waived. ~~The trustees may waive any or all of the calculated tuition amount, but any waiver must be applied equally to all students in the district's elementary or high school program, the tuition for which is required to be paid by the same type of entity. Trustees may set different tuition rates for elementary and high school programs, including programs offered by an elementary district and high school district operated under a combined board or a K-12 district.~~

(b) Regular education tuition charged for students under a group attendance arrangement for educational program offerings in accordance with 20-5-320~~(8)~~(3), MCA, must be the same rate charged for students attending under attendance agreements with other school districts but may not exceed the maximum regular education rate in (1).

~~(c) Regular education tuition charged for mandatory conditions must be the same rate charged for discretionary conditions.~~

~~(d)~~(c) Tuition amounts ~~shall~~ must be ~~adjusted~~ prorated for the portion of the year the student is enrolled~~,~~. The proration is based on the percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction days scheduled by the ~~school~~ district of attendance for ~~in~~ the year of attendance.

~~(e) If trustees charge tuition, the trustees shall charge all parents and guardians the same tuition rate, including the parent or guardian of a child with disabilities.~~

AUTH: ~~20-5-312,~~ 20-5-323, 20-9-102, 20-9-201, MCA
IMP: ~~Title 20, ch. 5, pt. 3,~~ 20-5-323, 20-6-702, MCA

REASON: The proposed rule change would correct the rule to reflect changes made by components of HB 203 (2023). Law now states that tuition cannot be waived and changed the calculation of the maximum tuition paid, so the proposed rule changes clarify the manner of proration when a student does not attend the full school year.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS

(1) remains the same.

(2) Out-of-district attendance agreements must establish the charges, if any, for both tuition and transportation, and the parties who will be responsible for payment. Tuition charges must comply with ARM 10.10.301 and Title 20, chapter 5, MCA.

(3) Discretionary out-of-district agreements must be signed by the student's parent or guardian who initiates the request, an ~~responsible~~ official of the ~~receiving~~ district of attendance, and an official of the ~~resident~~ district of residence~~, if the resident district is to be responsible for tuition or transportation costs~~.

(a) ~~The resident district is not obligated for the tuition or transportation costs if it has not agreed to the out-of-district attendance. However, it may agree to pay one of the costs without agreeing to pay the other.~~ The district of attendance is not obligated for, but may discretionarily cover, the transportation costs of an approved attendance agreement.

~~(b) If the resident district has not agreed to allow the out-of-district attendance, the receiving district may allow the student to attend, and the parent or guardian may be charged for tuition and transportation costs.~~

(4) For mandatory out-of-district attendance agreements, pursuant ~~Pursuant~~ to 20-5-321, MCA, the ~~resident~~ district of residence and the ~~receiving~~ district of attendance must accept the request for the student to attend ~~out-of-district if the mandatory conditions set out in 20-5-321, MCA, are present,~~ unless~~:~~ the exceptions in 20-5-321, MCA, apply.

~~(a) accreditation of the receiving district would be adversely affected; or~~

~~(b) the student is a student without disabilities who is a legal resident of a school district outside the state of Montana.~~

(5) The exceptions in (4) do not apply if the student is a pupil with disabilities who lives in the district where ~~he~~ they wish~~es~~ to attend. If the student is a pupil with disabilities who lives in the district ~~of attendance~~, the district of attendance must accept the request ~~for out-of-district attendance~~, regardless of the legal residence of the student.

(6) For purposes of ~~20-5-321(1)(a)~~ attendance agreements per Title 20, chapter 5, MCA, "transportation" ~~shall~~ must include, but may not be limited to, the offering or provision of:

(a) bus service;

(b) an individual transportation contract; or

(c) room and board reasonably near the school.

(7) Statutes in effect for the student's year of attendance govern the conditions of the attendance agreement. School districts must retain copies of attendance agreements and provide secure electronic copies of the agreements to the OPI. The trustees of a district must electronically submit attendance agreements to the OPI in the format determined by the OPI in accordance with Title 20, chapter 5, MCA. Agreements must be entered and submitted to the state system by June 30 of the year of attendance in order to be eligible for state reimbursement.

(8) ~~When the state is obligated to pay tuition or transportation costs for a student placed under provisions of 20-5-321(1)(d) and (e), MCA, the trustees of the district of attendance shall send a completed copy of the student's attendance~~

~~agreement to the Superintendent of Public Instruction for approval. The agreement must be submitted by December 31 following the school year of attendance to be eligible for approval.~~ Submission of agreements to the county superintendent of the schools of the county of residence and the county of attendance may be in a format agreed upon by the parties involved.

(9) remains the same.

(10) ~~The state shall be responsible for tuition and may be charged transportation costs as established under 20-5-323, MCA, for~~ For a child with a disability who has been placed outside the child's resident district by a court or by a state agency or for a child placed outside the child's ~~resident~~ district of residence in a foster care or group home licensed by the state, the state must be responsible for tuition and may be charged transportation costs as established under 20-5-323, MCA.

(11) remains the same.

(12) Tuition payments made for a child placed outside the child's ~~resident~~ district of residence by a court or state agency must be supported by a properly completed out-of-district attendance agreement signed by both the ~~receiving~~ district of attendance and by an authorized representative of the placing court or state agency. Attendance agreements for students placed in state licensed group homes by parents, guardians, or representatives of state licensed group homes must be signed by the ~~receiving~~ district of attendance and by a parent or legal guardian or an authorized representative of a state licensed group home on behalf of the parent or legal guardian.

AUTH: 20-5-323, 20-9-102, 20-9-201, MCA
IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

REASON: The proposed rule changes would correct the rule to reflect changes made by components of HB203 (2023). Tuition is required to be paid by the district of residence and parents are no longer responsible. There are limited reasons that a district can refuse an out-of-district attendance agreement, and the proposed rule changes clarify the due date for the submission of forms.

10.10.301C OUT-OF-STATE ATTENDANCE AGREEMENTS (1) remains the same.

(2) The amount of tuition paid by a Montana district for a student without disabilities who attends school in a state or province not governed by a reciprocal tuition agreement cannot exceed the annual average cost per student in the student's district of residence. If the tuition rate charged by the out-of-state ~~receiving~~ district of attendance is less than the Montana district's annual average cost per student, the tuition payment may not exceed the lesser of the two amounts.

(3) For out-of-state tuition, districts ~~Districts~~ may agree to pay tuition charges that are less than the maximum allowed rates.

(4) ~~Provided it is in an operating status, a~~ A Montana school district in operating status that is responsible for paying tuition charges for a resident student who attends an out-of-state public school may receive reimbursement from the OPI

for the amount of tuition paid, up to the state's portion of the per ANB entitlement per student for the year of attendance.

(a) Calculations will be based on the tuition reports submitted in accordance with ARM 10.10.301D.

(b) The Superintendent of Public Instruction ~~shall~~ must provide payment of the amount calculated in (4)(a), but not more than the amount of tuition paid by the district for resident students who attended school out-of-state, in the year the out-of-district attendance report is submitted~~, provided it is~~. The report must be submitted, with documentation of payment, to the Superintendent of Public Instruction by ~~December 31 following the~~ June 30 of the student's school year of attendance.

AUTH: 20-5-323, 20-9-102, 20-9-201, MCA
IMP: 20-5-314, ~~20-5-316,~~ 20-5-320, 20-5-321, 20-5-323, 20-5-324, MCA

REASON: The proposed changes would correct the rule to reflect changes made by components of HB 203 (2023) and clarify the due date for the submission of forms.

10.10.301D TUITION REPORTS (1) and (2) remain the same.

(3) To be eligible to receive state payments for tuition and tuition reimbursements under 20-5-324, MCA, the trustees of a district must submit the tuition report in (1) and the electronic data in (2) to the Superintendent of Public Instruction by ~~December 31~~ June 30 of ~~the year following~~ the student's school year of attendance.

AUTH: 20-5-323, 20-9-102, 20-9-201, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

REASON: The proposed changes would correct the rule to reflect changes made by components of HB 203 (2023), clarify the due date of district tuition report, and make wording consistent with other rules.

10.16.3818 SPECIAL EDUCATION TUITION RATES (1) To be eligible to charge tuition for special education services, a district must provide a special education program that complies with Board of Public Education policies and is approved by the Superintendent of Public Instruction.

(a) Districts may not charge a parent or guardian tuition for a student with disabilities.

(b) For discretionary out-of-district attendance agreements, districts may not discriminate on the basis of disability in the approval or disapproval per 20-5-320, MCA.

(2) remains the same.

(3) A ~~responsible~~ school official of the ~~receiving school~~ district of attendance must ~~shall~~ use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the general education tuition rate:

(a) Option A: The additional charge ~~shall~~ must be calculated by determining the number of hours during which direct special education and related services are

being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15 (7 1/2 for half-time kindergarten), tuition may not exceed the general education tuition rate. If the total hours per week are 15 (7 1/2 for half-time kindergarten) or more, the total hours will be divided by 30 (the average number of school hours per week, 15 for half-time kindergarten), and multiplied by the maximum general education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) Option B: The actual unique costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), less 120 ~~80~~% of the maximum per-ANB rate established in 20-5-323 and 20-9-306~~(10)~~(15), MCA, for the year of attendance and less the per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) the allowable special education costs for that student exceed the rate determined under Option A;

(ii) the costs are for special education and related services unique to the student, including specialized one-on-one staff, ~~and~~ specialized equipment, and supplies, and excluding:

(A) the costs for removal of architectural barriers;

(B) prorated costs of ordinary special education services such as teachers' salaries and benefits; and

(C) costs of equipment and supplies commonly used in special education programs.

(c) Option C: For specialized school district programs which provide concentrated services for significant numbers of students with low incidence disabilities, including nonresident students who enroll in the ~~host~~ district of attendance specifically to attend the program, the estimated total per-pupil cost of the program including administrative operating costs, less 120 ~~80~~% of the maximum per ANB rate established in 20-9-306(1), MCA, for the year of attendance and less the per ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301, provided:

(i) such services provided in any multidistrict program must be determined by the student's IEP team and cannot be based solely on the student's identified low incidence disability;

(ii) the ~~host~~ district of attendance has submitted a written description of the program and the Office of Public Instruction has provided written approval for the ~~host~~ district of attendance to apply the Option C special education tuition add-on rate for nonresident students of the program;

(iii) the ~~host~~ district of attendance does not pass program costs for resident students on to parties paying nonresident student tuition;

(iv) the ~~host~~ district of attendance uses any unreserved balance after operating the prior year's special education program for low incidence disabilities to defray the ensuing year's program costs used to determine the tuition rate; and

(v) the total per-pupil cost of operating the program is determined based on the estimated average number of students expected to participate in the program for the following year.

(4) The special education tuition rate calculation should be ~~adjusted~~ prorated for the portion of the year the student is enrolled in special education services in the ~~receiving school~~ district of attendance, based on the percentage found when ~~of~~ the number of days the student was enrolled is divided by 180.

~~(5) Districts may not charge a parent or guardian more than the regular education tuition rate calculated in ARM 10.10.301 for a student with disabilities.~~

~~(6) Districts may not discriminate on the basis of disability in their approval or disapproval of discretionary out-of-district attendance agreements.~~

~~(7)~~(5) When a student's IEP requires special education or related services beyond the 180-day school year, the school district of attendance providing services may initiate an attendance agreement or amend an existing agreement to provide tuition that covers the additional extended year period by prorating the actual cost on a daily or hourly basis.

AUTH: 20-5-323, 20-9-201, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA

REASON: The proposed changes would correct the rule to reflect changes made by components of HB 203 (2023) by clarifying that parents cannot be charged for tuition, that attendance agreements for students with disabilities must be accepted except for in very limited situations, and explaining out-of-district and special education tuition rates and proration.

10.20.106 STUDENTS PLACED IN DAY SCHOOL EDUCATION PROGRAMS (1) The Superintendent of Public Instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. The Superintendent of Public Instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana resident student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB, provided:

(a) the student, who otherwise qualifies for ANB, is enrolled at district expense in the district on the count date;

(b) the district retains written verification from the contractor documenting the student's participation in the education program on the count date;

(c) either:

(i) the contractor is accredited by the Montana Board of Public Education; or

(ii) the student's education program is under the direction and supervision of the district and is provided by district staff or is provided pursuant to a special education individualized education program implemented by the district, except that the trustees' placement of a resident student in a private, nonsectarian day treatment program and the state's placement of a student in a county or regional detention center are subject to (5);

(d) the contractor is a children's psychiatric hospital, a residential treatment facility, ~~center,~~ a therapeutic group home, or other program licensed by and located within the state of Montana, excluding licensed day care centers; and

(e) the student is a resident of the district or meets the attendance with mandatory approval provisions of 20-5-321(1)(d) or (1)(e), MCA.

(2) remains the same.

(3) If a student is not a resident of the district of attendance, the district of attendance must ~~may~~ charge tuition in accordance with Montana law (see ARM 10.10.301).

(4) remains the same.

(5) ~~The~~ A district may not include for purposes of calculating ANB:

(a) a student who is placed in a private, nonsectarian day treatment program. Districts may use the district tuition fund to pay for educational services and may claim an ANB reimbursement payment under provisions of 20-5-324, MCA, and ARM 10.10.301D for a student placed under an IEP in a day treatment program at a private, nonsectarian school located in or outside the child's district of residence; ~~and~~ or

(b) a student who has been placed in a county or regional detention facility per 41-5-1807, MCA, and ARM 10.10.301.~~, which is required under 41-5-1807, MCA, to provide educational programs for youth at county expense. Pursuant to 20-9-130, MCA, districts may use the district tuition fund to pay for detention center educational services charged pursuant to 41-5-1807, MCA.~~ The detention facility provides educational programs for youth at county expense. The school district's obligation must be funded pursuant to 20-9-130, MCA. Payment of detention center educational services must follow 20-9-130, MCA.

AUTH: 20-5-323, 20-7-419, 20-9-201, MCA
IMP: 20-5-321, 20-5-323, MCA

REASON: The proposed rule changes reflect the HB 203 (2023) adjusted requirements of tuition payment.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Brian O'Leary, Office of Public Instruction, 1300 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3559; fax (406) 444-2893; or e-mail brian.o'leary@mt.gov, and must be received no later than 5:00 p.m., August 2, 2024.

6. Richard E. Wootton, staff attorney at the Office of Public Instruction, has been designated to preside over and conduct this hearing.

7. OPI 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 must make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by OPI.

8. An electronic copy of this proposal notice is available through the Secretary of State's website at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 25, 2024.

10. With regard to the requirements of 2-4-111, MCA, OPI has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State June 25, 2024.

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

In the matter of the adoption of NEW RULE I pertaining to a Resident Super-Tag Hunting License	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 2, 2024, at 10:00 a.m., the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (FWP) will hold a public hearing via the ZOOM meeting platform to consider the proposed adoption of the above-stated rule. There will be no in-person hearing. Interested parties may access the telephonic public hearing by:

Dial by telephone: +1-646-558-8656
Meeting ID: 857 0202 3415
Passcode: 142082

2. The commission and FWP will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative format of this notice. If you require an accommodation, contact FWP no later than 5:00 p.m., on July 19, 2024, to advise us of the nature of the accommodation that you need. Please contact Crissy Bell, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; telephone (406) 594-8071; or e-mail cbell@mt.gov.

3. Statement of Reasonable Necessity. This new rule is being proposed to implement HB 456 as passed by the 2023 Legislature. The legislation establishes a lottery for the issuance of one "Super-Tag" license each license year for one of the following: Shiras moose, mountain sheep, or mountain goat. A resident who purchases a general deer or general elk license will be awarded one free chance in the lottery and may also still participate in the separate "Super-Tag" lottery under 87-1-271, MCA. Additionally, any resident who receives a license through the lottery is not subject to the seven-year restriction contained in 87-2-702(4), MCA.

HB 456 directs that the commission establish rules regarding the conduct of the lottery authorized by HB 456, the use of licenses issued through that lottery, and the rotation between the three species each year. It is necessary for the commission to establish this rule to comply with that statutory directive.

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

<u>NEW RULE I (ARM 12.3.623) RESIDENT SUPER-TAG HUNTING LICENSE</u>

(1) Each resident purchasing a deer or elk general license between March 1 and June 30 shall be given a single entry into a random drawing for a Shiras moose,

mountain sheep, or mountain goat super-tag, as designated by the Fish and Wildlife Commission. The department will recommend to the Fish and Wildlife Commission the species to be selected for the resident super-tag for each license year.

(2) The department will conduct a drawing to select the resident super-tag winner.

(3) A person must be a resident, as defined in 87-2-102, MCA, and must be legally eligible to be licensed for a super-tag species to receive a resident super-tag.

(4) The resident super-tag is valid for the taking of one animal of the species for which it was issued and is valid only for the current license year. A resident super-tag may be issued in any legally described hunting district with an established season for that species. The person using the resident super-tag may use it only during the hunting district's established season and is subject to all hunting regulations, including special weapons regulations, that apply to a hunting district. However, a resident super-tag is not subject to an established quota in a hunting district.

(5) A participant in the resident super-tag lottery may also apply for moose, sheep, and goat licenses under 87-2-701, MCA, and ARM 12.3.620 and participate in the super-tag lottery established in 87-1-271, MCA and ARM 12.3.622. In the event that a person is drawn for a moose, sheep, or goat license and a resident super-tag for that species in a single license year, the person must surrender that license to the department before receiving the resident super-tag. The department will refund the license fee paid by the winner of the resident super-tag. The person winning the resident super-tag shall retain any accumulated bonus points for that species.

(6) The resident super-tag is a nontransferable license. However, the successful resident super-tag holder may, prior to August 1, request to return the license and that license may be re-issued to the next entry-holder in the sequence of the original drawing.

AUTH: 87-1-275, 87-1-301, MCA
IMP: 87-1-275, MCA

REASON: This rule is being proposed for adoption to implement the framework for the resident super-tag license for either moose, sheep or goat for all residents purchasing a general deer or elk license as established by HB 456.

5. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Emily Cooper, Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email Emily.Cooper@mt.gov**,** and must be received no later than 5:00 p.m., August 2, 2024.

6. Jeff Hindoien and/or another hearing officer appointed by FWP has been designated to preside over and conduct the hearing.

7. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission. Persons who wish to have their

name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

8. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. Representative Brandon Ler was notified by email on April 24, 2024, of the commission's intention to proceed with the proposed rule adoption.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Jeffrey M. Hindoien
Jeffrey M. Hindoien
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Melissa Watson
Melissa Watson
Chief of Staff
Fish, Wildlife and Parks

Certified to the Secretary of State June 25, 2024.

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

In the matter of the adoption of NEW RULE I pertaining to electronic tagging	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 2, 2024, at 10:00 a.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing via the ZOOM platform, to consider the proposed adoption of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conference in the following manner:

Dial by telephone: 1 646 558 8656
Meeting ID: 835 7473 0724
Passcode: 941050

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 19, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 594-8071; or e-mail cbell@mt.gov.

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

NEW RULE I (ARM12.6.302) REQUIREMENT TO RETAIN AN ELECTRONIC TAG CONFIRMATION NUMBER WHILE TRANSPORTING A HARVESTED ANIMAL (1) When transporting any species for which an electronic tag is issued, the individual transporting the harvested animal's carcass must retain the confirmation number.

(2) The confirmation number must be presented to a department employee upon request.

AUTH: 87-2-119, MCA
IMP: 87-2-119, MCA

REASON: With the increase in electronic tagging, the department has recognized that there are situations where individuals are transporting animals harvested by another individual and lacks information associating the harvested animal to the individual who electronically tagged it. To avoid these situations, the department is proposing this new rule requiring the individual transporting the animal to retain the electronic tag confirmation number. This will ensure that department staff can identify the individual who harvested the animal with an electronic tag and

ensure that the individual who is transporting the harvested animal is doing so legally.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Phillip Kilbreath, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail pkilbreath@mt.gov, and must be received no later than August 5, 2024.

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

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State June 25, 2024.

BEFORE THE UNEMPLOYMENT INSURANCE APPEALS BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.7.303 pertaining to the unemployment insurance appeals board	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 2, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/87831824006
Meeting ID: 878 3182 4006, Passcode: 477101
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 878 3182 4006, Passcode: 477101

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 26, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.7.303 DEFINITIONS (1) The board incorporates by reference and adopts all definitions set forth in ARM Title 24, chapter ~~11~~ 40 and Title 39, chapter 51, MCA, unless context clearly indicates otherwise.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: The department repealed ARM Title 24, chapter 11 and adopted new rules under chapter 40. The board rule incorporating definitions of ARM Title 24, chapter 11 need to be amended to reference the new chapter.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 2, 2024.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

UNEMPLOYMENT INSURANCE APPEALS
BOARD, LAURA FIX, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.16.7556, 24.35.101, 24.35.111, 24.35.117, 24.35.133, 24.35.202, and 24.35.204 and the repeal of ARM 24.16.7520 pertaining to independent contractors	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 1, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84997651239
Meeting ID: 849 9765 1239, Passcode: 984543
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 849 9765 1239, Passcode: 984543

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 25, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.16.7556 SPECIAL CIRCUMSTANCES JUSTIFYING MAXIMUM PENALTY (1) The following conduct by the employer constitutes special circumstances that justify the imposition of the maximum penalty allowed by law:

(a) and (b) remain the same.

(c) the employer has previously violated similar wage and hour statutes within three years prior to the date of filing of the wage claim; ~~or~~

(d) the employer has issued an insufficient funds paycheck~~.~~; or

(e) the employer has incorrectly classified a worker as an independent contractor, unless it is determined by the department that 39-71-417(7)(d), MCA, applies.

(2) and (3) remain the same.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-206, MCA

REASON: There is reasonable necessity to include worker misclassification as a category justifying a maximum penalty to disincentivize the practice. Mischaracterizing a worker as an independent contractor interferes with and chills the worker's right to access benefits and employee protections. Wage and hour, workers' compensation, unemployment insurance, and human rights protections are all conditioned on employee status. When a hiring agent represents to a worker that the worker is not entitled to employment protections, the hiring agent necessarily dissuades the worker from pursuing their protections. The department therefore seeks to discourage misclassification of workers by including this practice as a basis for maximum penalty.

24.35.101 DEFINITIONS For the purposes of ARM Title 24, chapter 35, the following definitions apply:

~~(1) "Department" means the Montana Department of Labor and Industry.~~

(2) through (5) remain the same but are renumbered (1) through (4).

~~(6)~~ (5) "Independent Contractor Central Unit" or "ICCU" means ~~the unit located within the department which is~~ the individuals or group responsible for making employment status decisions for the entire department and other agencies that elect to participate in the ICCU. ~~The ICCU evaluates ICEC applications and investigates working relationships identified in complaints and referrals.~~

~~(7) "Independent Contractor Exemption Certificate" or "ICEC" means a certificate issued by the department that signifies a person meets the criteria for an exemption from the provisions of the Workers' Compensation Act for a specific trade, occupation, profession, or business.~~

~~(8) "Individual" means a person who renders service in the course of a trade, occupation, profession, or business.~~

~~(9) "Initial application" means a person's first-time application for exemption as an independent contractor for a particular trade(s), occupation(s), profession(s), or business(es).~~

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

~~(11) "Renewal application" means an application for renewal of an existing ICEC held by that person.~~

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

~~(13) "Similarly situated individuals" means people who render services for an employer under circumstances substantially the same as those under which the subject individual's services were performed.~~

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

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA
IMP: 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA

REASON: There is reasonable necessity to repeal the definition of "department" because it is unnecessary to define in rule what is defined in statute. The definition of "ICCU" is proposed to be modified to clarify that the unit is designated as those individuals or groups of individuals within the department who make employment

status determinations. The definition of "independent contractor exemption certificate" is proposed to be stricken because it is not necessary to define a term set forth in statute. The definitions of "individual," "initial application," "renewal application," and "similarly situated individuals" are proposed to be stricken because it is not necessary to define a term which has its common meaning.

24.35.111 APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) The applicant for an ICEC shall submit:

(a) a completed ICEC application on a department-approved form bearing the applicant's ~~original~~ notarized signature, as required by ARM 24.35.112.

(b) through (3) remain the same.

AUTH: 39-71-417, MCA
IMP: 39-71-417, MCA

REASON: There is reasonable necessity to amend this rule to provide that department receipt of an electronic application is sufficient to meet application requirements.

24.35.117 ICEC RENEWAL, ~~AFFIDAVIT~~ DECLARATION, AND WAIVER

(1) ~~Two months prior to the expiration date of an ICEC, the department shall mail an ICEC renewal application and waiver to the ICEC holder at the address on file with the department. The department shall prepare a renewal form for each ICEC holder that incorporates the most current information in the possession of the department regarding the ICEC holder's independent contractor status and lists the documentation on file with the department that supports independent contractor status.~~ About two months prior to its expiration, the department will remind an ICEC holder of the expiration date of their ICEC.

(2) To renew an ICEC, the ICEC holder shall submit the following:

(a) signed ~~and notarized~~ ICEC renewal application on the department-approved form that indicates any changes in independent contractor status;

(b) through (d) remain the same.

(e) an executed~~, notarized~~ waiver on the department-approved form.

(3) through (9) remain the same.

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-409, 39-71-417, MCA
IMP: 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA

REASON: There is reasonable necessity to amend this rule to provide that a notarization is not required for a renewal ICEC application. While 39-71-417, MCA, requires a statement under oath, a declaration suffices. The department intends to update its forms for that purpose with adoption of this rule.

24.35.133 NOTICE OF SUSPENSION OR REVOCATION OF INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) through (3) remain the same.

~~(4) The web site address for the department's independent contractor information is www.mtcontractor.com. The telephone number for verifying the status of an ICEC is (406) 444-9029.~~

AUTH: 39-71-203, 39-71-417, 39-71-418, MCA
IMP: 39-71-418, MCA

REASON: There is reasonable necessity to strike (4) because the web address is no longer accurate, and it is not necessary to place specific contact information in the rule. Information about ICEC status will continue to be present on the department's website.

24.35.202 DECISIONS REGARDING EMPLOYMENT STATUS (1) Subject to ARM 24.35.203, ~~when the ICCU or another unit of the department evaluates an individual's employment status,~~ the department shall apply a two-part test to determine whether an individual is an independent contractor or an employee. The department shall evaluate:

(a) and (b) remain the same.

~~(2) To determine whether a hiring agent exerts control over an individual, the department shall evaluate:~~

~~(a) direct evidence of right or exercise of control;~~

~~(b) method of payment;~~

~~(c) furnishing of equipment; and~~

~~(d) right to fire.~~

~~(3) To determine the employment status of an individual, the department may:~~

~~(a) review written contracts between the individual and the hiring agent;~~

~~(b) interview and obtain statements from the individual, co-workers, and the hiring agent;~~

~~(c) obtain statements from third parties;~~

~~(d) examine the books and records of the hiring agent;~~

~~(e) review filing status on income tax returns;~~

~~(f) perform onsite visits; and~~

~~(g) make any other investigation necessary to determine employment status.~~

~~(4) Decisions regarding employment status must comply with the criteria for an independent contractor found at 39-71-417, MCA, as well as with existing law on partnership, joint ventures, and other employment entities.~~

~~(5)~~ (2) Initial determinations regarding employment status may be issued by any unit of the department or by the Department of Revenue. ~~Initial determinations of employment status by the department are binding on the parties unless a party disputes the determination, pursuant to ARM 24.11.2407 or 24.16.7527.~~ Initial determinations are binding unless appealed to the ICCU by applicable law.

~~(6) ICCU "decisions" regarding employment must be called "decisions" and are separate and distinct from both initial determinations of the department and "orders" defined at ARM 24.29.205.~~

~~(7)~~ (3) ICCU decisions regarding employment status are binding on the department and on any other agency which elects to be included as a member of the

department's ICCU, subject to the limitations contained in ARM 24.35.205(3). This does not include any agency which is merely appearing before the ICCU as a party in an employment status case ~~(for example the state compensation insurance fund)~~, and has not elected to be included as a member of the ICCU.

~~(8) The department may apply its decisions regarding employment status to similarly situated individuals.~~

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA
IMP: 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-415, 39-71-417, 39-71-418, MCA

REASON: There is reasonable necessity to strike (2) through (4) because it is not necessary to state that the ICCU will apply applicable law to its determinations. Such is required. Sections (1) and (5) are proposed to be amended in favor of simplicity and to avoid unnecessary cross-references. Section (6) is proposed to be stricken because it is unnecessary to define a document title by rule. Section (7) is proposed to be amended to remove an unnecessary exemple of a party. Section (8) is proposed to be stricken because ICCU decisions are fact-intensive inquiries. To the extent a dispute presents similar facts, it is unnecessary to state in rule what is the fundamental purpose of the ICCU–to establish standardized decision-making for independent contractor disputes.

24.35.204 MISREPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS (1) For purposes of ~~this rule and the~~ implementation of 39-51-203(4) and 39-71-419(1)(e), MCA, and requirements in certain instances not to determine status based "solely" on the lack of an ICEC, ~~the ICCU will evaluate a worker's status pursuant to ARM 24.35.202:~~ if one or more category of 39-71-417(7)(d), MCA applies, the ICCU will evaluate the worker's status pursuant to 39-71-417(4), MCA.

~~(a) the worker applied to the department for an ICEC prior to filing the present claim for workers' compensation or unemployment insurance benefits or prior to the present audit or investigation by the department and the application for ICEC is pending determination by the department;~~

~~(b) the worker provided the hiring agent a forged ICEC;~~

~~(c) the hiring agent took affirmative steps to verify the worker's independent contractor status, verified the worker to be an independent contractor by holding an independent contractor exemption certificate, and has documentation of the same; or~~

~~(d) the ICEC expires during the working relationship which is at issue in the present claim for workers' compensation or unemployment insurance benefits or audit or investigation by the department.~~

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA
IMP: 39-51-201, 39-51-203, 39-71-419, MCA

REASON: There is reasonable necessity to amend this rule in light of changes made by Senate Bill 22 (2023) to determinations about ICEC status. The statutory provisions for applicability and meaning of the ICEC are utilized for purpose of the "not solely" determination.

4. The rule proposed to be repealed is as follows:

24.16.7520 PROCEDURE FOR ISSUING WAGE CLAIM DETERMINATIONS REGARDING EMPLOYMENT STATUS OF INDEPENDENT CONTRACTOR

AUTH: 39-3-202, 39-3-403, 39-71-417, MCA
IMP: 39-3-201, 39-3-402, 39-71-417, MCA

REASON: There is reasonable necessity to repeal this rule because it is duplicative of ARM 24.35.202 and 24.35.203 which provide that units of the department may make initial determinations of worker status as well as the procedure for final determinations of status.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 2, 2024.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on February 2, 2024, by electronic mail.

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.35.112 pertaining to independent contractor exemption certificate	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 31, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/85329058988
Meeting ID: 853 2905 8988, Passcode: 645296
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 853 2905 8988, Passcode: 645296

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 24, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.35.112 INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE APPLICATION AFFIDAVIT (1) through (2)(b)(iv) remain the same.

(v) IRS Form 1099s (miscellaneous income) from multiple hiring agents or two quarterly self-employment tax payments (IRS form 1040ES) within the past three years; ~~or~~

(vi) trucking company lease agreement~~.~~; or

(vii) certification for Indian Preference by a federally recognized Indian tribe under the laws of that tribe.

(c) through (e) remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA
IMP: 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

REASON: There is reasonable necessity to amend this rule to recognize the review and certification of businesses by Tribal Employment Rights Organizations. These

organizations certify under the laws of the tribes on which they were established the ownership and independence of businesses for the purposes of establishing tribal preference. This work in certification is similar to the review done for ICEC applications. The department therefore proposes to recognize the certification for application points.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 2, 2024.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I, the amendment of ARM 32.3.104, 32.3.108, 32.3.131, 32.3.140, 32.3.201, 32.3.207, 32.3.216, 32.3.301, 32.3.403, 32.3.411, 32.3.416, 32.3.606, 32.3.1505, and 32.3.2301, and the repeal of ARM 32.3.132, 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, 32.3.315, 32.3.402, 32.3.407, 32.3.412, 32.3.418, 32.3.440, 32.3.608, 32.3.1305, 32.3.1507, 32.3.2006, and 32.3.2303 pertaining to animal contagious disease control	)	NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock (department) proposes to adopt, amend, and repeal 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 of Livestock no later than 5:00 p.m. on July 25, 2024, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

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

NEW RULE I INDEMNITY FOR ANIMALS DESTROYED DUE TO DISEASE

(1) The owner of cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry destroyed or slaughtered due to disease as specified in 81-2-201, MCA, under the direction of the department or by order of the board may be paid indemnity for up to 100% of the appraised value of the animal, provided, however, payment for registered animals shall not exceed two times the determined value of commercial or grade animals.

(2) The indemnity shall be paid when the following conditions exist:

(a) at the time of test or condemnation, the animal for which indemnity is claimed did not belong to or was not upon the premises of any person to whom it had been sold for slaughter, shipped for slaughter, or delivered for slaughter;

(b) the animal was purchased or imported into Montana less than 120 days before the date of a test disclosing reactor animals, and the owner is a farmer or rancher buying and selling animals in the ordinary course of their farm and ranch operation. Cattle must have been branded with the owner's brand prior to the date of the test;

(c) if not already tested, the herd of origin of the reactor animal for which indemnity is claimed is made available by the claimant for an official test;

(d) the provisions of this subchapter pertaining to testing, quarantine, movement of animals under quarantine, cleaning and disinfection have been carried out; and

(e) an application claiming indemnity has been submitted.

(3) The amount of indemnity paid by the department shall be decided by the board with consideration given to any indemnity payments already paid on the animals, comparable sales receipts provided by the owner, the U.S. Department of Agriculture (USDA) indemnity calculator, USDA Agriculture Marketing Service market reports, and sales data from Montana livestock markets at the time the animal was taken.

(4) If there is a mortgage or lien recorded with the department on cattle slaughtered and indemnified in accordance with the provisions of this subchapter, the warrant paying the indemnity shall be made payable jointly to the owner of the cattle and the lien holder or mortgagee.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-201, 81-2-209, 81-2-210, MCA

REASON: This proposed rule implements 2023 amendments to Title 81, chapter 2, part 2, MCA, regarding compensation for animals ordered destroyed due to disease. The proposed rule sets forth the procedure and conditions under which compensation may be paid and replaces disease-specific indemnification rules such as ARM 32.3.418.

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

32.3.104 SUBJECT DISEASES OR CONDITIONS (1) Diseases or conditions affecting multiple species that require reporting, and quarantine when indicated, under department rules are:

(a) and (b) remain the same.

(c) Bluetongue (quarantine);

(d) through (3) remain the same.

(4) Diseases or conditions affecting equines that require reporting, and quarantine when indicated, under department rules are:

(a) through (l) remain the same.

(m) Strangles (quarantine);

(n) through (9) remain the same.

(10) Diseases and conditions affecting canids that require reporting, and quarantine when indicated, under department rules are:

(a) Brucella canis (quarantine).

(11) and (12) remain the same.

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

REASON: The proposed additions to ARM 32.3.104's list of diseases and conditions that require quarantine are necessary to allow the department to track and manage diseases of special interest to Montana's livestock industries. Quarantine authority for bluetongue is necessary in the event that detection in animals is made shortly before they are to enter market channels to avoid spread. Quarantine authority for strangles is necessary due to the existence of equine boarding facilities. Quarantine authority for *Brucella canin* is necessary due to the prevalence of canine breeding facilities.

32.3.108 QUARANTINE AND RELEASE OF QUARANTINE (1) Animals subject to quarantine shall ~~be~~, as soon as it is practicable, be quarantined separate and apart from other susceptible animals. If possible, they shall be quarantined in an inside enclosure.

~~(2) Quarantined animals shall be identified by brand, tattoo, dye mark, eartag, or other identification acceptable to the Montana Department of Livestock.~~

~~(3)~~ (2) The person who issues the quarantine shall designate the number of animals quarantined, their approximate age, breed class, species, sex, a description of the mark or brand identifying the animals, and a clear and distinct identification of the area in which they are to be quarantined. Quarantines may be issued verbally or delivered in writing in person, by email, or through registered mail with return receipt. Quarantines issued for herds associated with a positive disease detection must be delivered in writing in person or through registered mail with return receipt.

~~(4) The person issuing the quarantine shall deliver or forward through the United States mail, by registered mail return receipt requested with instructions to deliver to the addressee only, the notice of quarantine to the owner or agent of the animals quarantined.~~

~~(5)~~ (3) The person issuing the quarantine shall ~~also~~ immediately ~~deliver~~ provide notice ~~personally or by mail~~ to the state veterinarian.

(4) Quarantined livestock shall be identified with a serially numbered U.S. Department of Agriculture (USDA) tag or other form of approved official identification. Additional identification, including brand, tattoo, dye mark, eartag, or other identification acceptable to the Department of Livestock may be required by the state veterinarian to ensure that the identity of the animals will be preserved.

(5) Livestock herds designated as affected with a federal program disease shall be officially identified with USDA 840 series radio frequency identification (RFID) tags or microchips. The 840 official identification number shall be correlated to all existing forms of identification in order to reconcile the completion of all required testing.

(6) The unauthorized removal of any identification provided for under this rule is prohibited.

(7) The owner or their agent-in-charge shall report in writing to the state veterinarian the death of any quarantined animal. All man-made identification shall be salvaged and turned over to the state veterinarian.

(8) A signed affected herd management plan will be required as a condition for quarantine release for all herds and flocks confirmed to be infected with a federal program disease.

(9) Cleaning and disinfection of facilities and or vehicles will be required as a condition for quarantine release when specified in 9 CFR or disease specific uniform methods and rules.

~~(6)~~ (10) Where quarantined animals are shipped for immediate slaughter under permit from the ~~Montana~~ Department of Livestock, the veterinarian issuing the permit will use ~~the approved federal and state form~~ a form approved by the state veterinarian.

~~(7)~~ (11) Quarantine may be removed by or with the approval of the deputy state veterinarian issuing the quarantine or by any authorized quarantine agent of the Department of Livestock when ~~he is~~ they are satisfied that, according to generally accepted veterinary practice, the animals are not affected with or have not been directly exposed to a quarantinable disease.

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

REASON: The proposed amendments creating new (2) and (3) modernize the permissible communication methods and make them consistent with those currently utilized by individuals with quarantine authority under ARM 32.3.106 to both issue a quarantine and report an issued quarantine to the state veterinarian. New (4), (5), (6), and (10) make requirements consistent with current department practices. New (7) replaces ARM 32.3.608 and makes its reporting requirement applicable to all disease quarantines. New (8) replaces ARM 32.3.312 and 32.3.412 and, together with new (9), promotes consistency with the requirements of U.S. Department of Agriculture disease programs. New (11) updates the rule by implementing gender neutral language.

32.3.131 VEHICLES USED IN TRANSPORTING DISEASED LIVESTOCK TO BE CLEANED AND DISINFECTED (1) Any ~~railway,~~ transportation company~~,~~ or individual must properly clean and disinfect~~,~~ any car, truck, or conveyance which has held an animal known to be infected with an infectious, contagious disease. The required cleaning will be based upon the specific pathogen of concern and existing federal rules or regulations regarding disinfection and will be conducted under the supervision of an approved agent of the Department of Livestock or an official from the U.S. Department of Agriculture ~~authorized state livestock sanitary official or an official approved by the U.S. Department of Agriculture, any car, truck, or conveyance which has held an animal or poultry infected with an infectious, contagious disease before using such car, truck, or conveyance for the transportation or conveyance of animals into or within the state of Montana~~.

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

REASON: The proposed amendment incorporates federal standards and protocols for specific diseases and clarifies that vehicle cleaning is required when the animal is known or suspected to be infected at the time of transportation.

32.3.140 DUTIES OF DEPUTY STATE VETERINARIAN (1) A deputy state veterinarian shall:

(a) and (b) remain the same.

(c) quarantine in writing all animals exposed to a quarantinable disease upon suspicion of diagnosis in the absence of, or on the order of, the state veterinarian. Immediate notification of quarantine must be made to the ~~Montana~~ state veterinarian's office by phone~~, fax, or mail~~;

(d) report immediately all cases of quarantinable diseases (ARM 32.3.104 and 32.3.105) to the state veterinarian ~~in Helena~~, by ~~tele~~phone ~~or fax~~;

(e) through (g) remain the same.

(h) ~~file a monthly form regarding~~ report other reportable diseases (ARM 32.3.104) to the state veterinarian within 30 days of confirmed or suspected diagnosis; and

(i) mail or email weekly, all required inspection forms, test charts, certificates of veterinary inspection, and vaccination certificates made during the week.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, ~~81-2-108,~~ MCA

REASON: The proposed amendment modernizes the permissible communication methods currently utilized and makes this rule consistent with the proposed new ARM 32.3.108(3).

32.3.201 DEFINITIONS (1) In this subchapter:

(a) through (d) remain the same.

(e) "Health certificate" a certificate of veterinary inspection issued on an official health certificate form of the state of origin, an electronic certificate of veterinary inspection approved by the state of origin, or an equivalent U.S. Department of Agriculture form ~~of the U.S. Department of Agriculture~~ attesting that the animals described thereon have been visually inspected and found to meet the entry requirements of the state of Montana. In addition, the health certificate shall conform to the requirements of ARM 32.3.206.

(f) through (p) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: The majority of health certificates that are currently issued are electronic certificates of veterinary inspection, and this proposed amendment modernizes the

rule language to specifically allow for electronic certificates consistent with current industry practice.

32.3.207 PERMITS (1) Permits are issued by the ~~Montana~~ Department of Livestock. Persons applying for permits shall provide the following information: names and addresses of the consignor and consignee, number and kind of animals, origin of shipment, ~~final~~ destination, purpose of shipment, ~~method of transportation,~~ and such other information as the state veterinarian may require.

(2) Permits are valid for ~~no longer than ten days from the date of issuance~~ 30 days from the date of veterinary inspection specified on the health certificate unless otherwise specified as follows:

(a) and (b) remain the same.

~~(c) entry extended, 30 days;~~

~~(d) equine annual, yearly;~~

~~(e) NPIP poultry, yearly;~~

~~(f) re-entry, up to 30 days;~~

(g) remains the same, but is renumbered (c).

~~(h) six-month horse passport, six months.~~

(i) and (j) remain the same, but are renumbered (d) and (e).

(3) Permits will be issued provided the animals shown thereon are in compliance with these rules. However, ~~in order~~ to cope with changing disease conditions, the state veterinarian may refuse to issue a permit or make such conditions not specifically set forth in these rules for its issuance as is necessary to protect livestock health in Montana.

(4) Permits will be provided to persons requesting them immediately upon issue. To facilitate the movement of animals or items required to enter Montana by permit, if the prerequisites have been met, a permit number may be issued ~~by telephone~~ electronically or verbally. The permit number ~~so issued~~ must be affixed to the health certificate if required, waybill, brand inspection certificate, and any other official documents in this fashion: "Montana Permit No." followed by the number.

~~(5) When these rules require entry by permit, at the time the permit is issued, the department may require that an official health certificate or other approved documentation be obtained either at the point of origin, the point of destination, or some other location within Montana designated by the department.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: The types of permits proposed to be deleted from (2) are no longer used by the department. Import permits currently are valid for a shorter period of time than heath certificates, and the department seeks to ensure that import permits are valid for as long as health certificates are valid. Section (5) is proposed to be deleted because (4) includes the requirement that a health certificate accompany a permt. The remainder of the proposed amendments make the requirements consistent with current department practice.

32.3.216 HORSES, MULES, AND ASSES (1) Horses, mules, and asses, and other equidae may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211. All animals must be tested negative for Equine Infectious Anemia (EIA) within the previous 12 months ~~as a condition for obtaining the permit required by ARM 32.3.207~~.

(2) Unless otherwise specifically provided in this rule, all horses, mules, asses, and other equidae that are moved into the state of Montana shall be accompanied by an official certificate of veterinary inspection ~~or equine passport certificate~~ from the state of origin stating that the equidae are free from evidence of any communicable disease and have completed EIA test and identification requirements as defined in ARM 32.3.1401 using procedures outlined in ARM 32.3.1402.

(3) Entry of equidae into Montana shall not be allowed until the EIA test has been completed and reported negative. Equidae with tests pending are not acceptable. Equidae that test positive to EIA test shall not be permitted entry into Montana except by special written permission from the state veterinarian and must be branded and moved in conformity with the ~~USDA~~ U.S. Department of Agriculture EIA movement regulations.

(4) through (7) remain the same.

(8) Provided there is ~~a written~~ agreement between the Department of Livestock and the chief livestock sanitary official of the state of destination, Montana origin equids may be moved from Montana to other states or from other states to Montana for shows, rides, or other equine events and return on an extended duration health certificate ~~equine passport certification under a state system of equine certification~~ acceptable to the cooperating states.

(a) ~~Equine passport~~ Certificates cannot be used when equids are moved for the purposes of sale or change of ownership ~~of the equid~~, or for animal breeding activities~~, or movements that involve stays of longer than 90 days. Equids moved for these purposes must be accompanied by a certificate of veterinary inspection~~.

~~(b) Equine passport movement must involve short term travel to or from the state of Montana for participation in equine activities including but not limited to participation in equine events, shows, rodeos, roping, trail rides, and search and rescue activities.~~

~~(c)~~ (b) ~~Equine passport~~ Certificates shall be valid for only one animal and shall contain the following information:

(i) remains the same.

(ii) the ~~location at which~~ address where the animal is stabled, housed, pastured, or kept, if different from that of the owner;

(iii) through (vi) remain the same.

~~(d) No certificate or veterinary inspection or equine passport certificate shall be issued for equine to enter Montana unless it is complete in all respects with requirements of the state of Montana.~~

~~(e) Equine passport certificates must be properly completed with the required tests and certifications recorded on the certificate and a copy of the completed certificate must be submitted to and approved by the Department of Livestock~~.

~~(f)~~ (c) ~~Equine passport~~ Certificates shall be valid for no longer than six months from the date the EIA sample is collected if an EIA test is required, or six months from the date of inspection if no EIA test is required.

~~(g)~~ (d) The recipients of ~~equine passport~~ certificates shall be required to ~~submit a travel itinerary to the state veterinarian's office within ten working days following the date of expiration of the certificate~~ obtain a transport permit prior to each animal movement. The ~~travel itinerary~~ transport permit shall include ~~a listing of all travel that the equid made into and out of the state of Montana during the validity of the certificate~~ the full physical origin and destination of the upcoming animal movement.

~~(h)~~ (e) The Department of Livestock may cancel any ~~equine passport~~ extended duration health certificate in the event of serious or emergency disease situations or for certificate holder's failure to comply with the rules ~~that apply to such certificates~~. Cancellation of the certificate may be accomplished by written or verbal notice to the certificate holder. Verbal notice shall be confirmed by written notice. The canceled certificate will become invalid on the date and at the time of notification.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-103, 81-2-703, MCA

REASON: The current rule expresses the department's participation in an equine passport program that has since been permitted to sunset due to the fact that more states are instead participating in an equine extended duration health certificate program. The proposed amendments will confirm the state of Montana's participation in the extended duration health certificate program.

32.3.301 ~~DEFINITIONS~~ DISEASE CONTROL (1) ~~"Pseudorabies" is an acute, sometimes fatal disease, caused by a specific herpes virus and characterized by a variety of clinical signs, involving mainly the nervous and respiratory systems. Most species of domestic and wild animals are susceptible to infection by this viral agent, but only swine are known to become chronic carriers. Man and higher primates are resistant~~ The department adopts and incorporates by reference the federal pseudorabies disease control standards contained in Title 9 of the Code of Federal Regulations and the U.S. Department of Agriculture's *Pseudorabies Eradication State-Federal-Industry Program Standards*. The Code of Federal Regulations is available for review online at www.ecfr.gov. The *Pseudorabies Eradication State-Federal-Industry Program Standards* is available for review online at https://www.aphis.usda.gov/sites/default/files/prv_program_standards_3.pdf. A copy of both documents may be obtained from the Department of Livestock, 301 North Roberts Street, P.O. Box 202001, Helena, Montana 59620-2001.

~~(2) "Department" is the Montana department of livestock, animal health division.~~

~~(3)~~ (2) An "animal" in this subchapter means ~~is~~ any quadruped of a species which can become infected with pseudorabies.

~~(4) An "official test" is any department-approved pseudorabies test conducted by a person authorized by the department and the USDA, as specifically~~

~~qualified to conduct such test on animals or animal tissues. Official tests are designed to indicate the presence of pseudorabies infection, utilizing one or more of the following procedures: latex agglutination (LA) , serum neutralization (SN) , florescent antibody (FA) , enzyme labeled immunosorbant assay (ELISA) , or any other virus isolation test or serological procedure recognized for use in the diagnosis of pseudorabies. To be considered official, the test must be conducted in an approved facility. Interpretation of test results are to be made by an individual qualified to make such scientific judgments and who is in the employ of the department or the USDA. Interpretation and test results are to be reported on official forms of the department.~~

~~(5) An "approved reagent" is a standardized biologic product approved by USDA for use in pseudorabies testing. Use of approved reagents, which includes antigens and test serums, are restricted to official tests only.~~

~~(6) "Official vaccination" is the administration of an approved pseudorabies immunization biologic licensed by USDA. The administration will be by a deputy state veterinarian or other person approved by the state veterinarian. The vaccination will be administered only with the express permission of the state veterinarian, and all such vaccinations will be reported on forms provided by the department. Only official vaccination is permitted in Montana.~~

~~(7) An "official vaccinate" is an animal receiving an official vaccination and which is given proper permanent identification.~~

~~(8) "Proper permanent identification" means use of the official nine-character alpha-numeric eartag as provided by the department, or individual identification as otherwise prescribed by the department. Proper permanent identification is required with blood samples used for official tests.~~

~~(9) An "infected or positive animal" is any animal that discloses sufficient reaction to an official test which indicates the presence of field strain pseudorabies virus or which is found to be infected with field strain pseudorabies virus by other recognized diagnostic procedures.~~

~~(10) A "suspect animal" is an animal disclosing an equivocal result to an official test or diagnostic procedure in which there is sufficient reaction, indicating the possible presence of pseudorabies infection but is in itself insufficient to justify classification of the animal as infected. This classification ordinarily requires the use of additional laboratory testing procedures to allow classification as infected or noninfected.~~

~~(11) A "noninfected or negative animal" is an animal free of clinical signs of pseudorabies and giving a negative result to an official test designed to detect pseudorabies infection with field strain virus.~~

~~(12) An "exposed animal" is any animal that is part of a herd or the herd premises infected with pseudorabies, or an animal that has had sufficient contact anywhere with pseudorabies infection or test reactors for the transmission of pseudorabies virus to have occurred. Animals other than swine that have not had significant contact with infected pseudorabies animals within the previous 10 days are not considered exposed.~~

~~(13) A "herd" is one or more animals of the same species owned or supervised by one or more persons and that permits intermingling of animals~~

~~unhindered or in which interchange of animals without regard to health status is allowed.~~

~~(14) A "contact herd" is a herd of animals of the same species that, through epidemiological investigation, is shown to come proximal to infected or test positive animals sufficiently for the transmission of pseudorabies virus to occur. Also, a herd containing exposed animals.~~

~~(15) A "herd test" is a test of all animals six months of age and older contained as a herd. Blood samples taken at the herd test will be identified to the donor animal using proper permanent identification applied to that animal.~~

~~(16) A "random herd test" is a herd test at recognized random rates that yield significant confidence that any infection would have been detected. Recognized random rates are shown in the UM&R for pseudorabies eradication.~~

~~(17) "Offspring segregation plan" means a procedure whereby offspring of pseudorabies-infected sows are segregated from those infected sows at an age where they are passively immune to pseudorabies and by applying test and separation principles can be developed into pseudorabies-free breeding swine that serve as the foundation for a pseudorabies-free breeding herd (Reference: UM&R for pseudorabies eradication herd plan manual) .~~

~~(18) "Emergency circumstances" means events or situations which, in the opinion of the board of livestock, pose an immediate or impending economic or livestock health danger to the livestock industry.~~

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

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Pseudorabies Eradication Program to control the interstate spread and dissemination of pseudorabies and has promulgated disease control regulations accordingly in 9 CFR Part 85. The proposed amendment promotes simplicity by adopting and incorporating the federal standards and, along with the proposed repeal of ARM 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, and 32.3.315, will advance the Governor's Red Tape Relief Initiative.

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

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

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

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control

regulations accordingly in 9 CFR Part 78. The federal program no longer imposes a brucellosis vaccine import requirement.

32.3.411 PROCEDURE UPON DETECTION OF BRUCELLOSIS

(1) ~~Immediately upon quarantine of a herd for brucellosis the state veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine the specific methods and actions necessary to eradicate the disease from the herd and to determine contact herds and animals~~ The department adopts and incorporates by reference the federal brucellosis disease control standards contained in Title 9 of the Code of Federal Regulations and the U.S. Department of Agriculture's *Brucellosis Eradication: Uniform Methods and Rules*. The Code of Federal Regulations is available for review online at www.ecfr.gov. The *Brucellosis Eradication: Uniform Methods and Rules* is available for review online at https://www.aphis.usda.gov/sites/default/files/umr_bovine_bruc_0.pdf. A copy of both documents may be obtained from the Department of Livestock, 301 North Roberts Street, P.O. Box 202001, Helena, Montana 59620-2001.

(2) Upon request of the owner of ~~the~~ an infected herd, the ~~investigation~~ disease control activities provided for in (1) may be conducted with the assistance and participation of a deputy state veterinarian selected and paid for by the owner.

~~(3) An official epidemiological report must be prepared that specifies the methods necessary to eradicate the disease and includes a time table for the accomplishment of the various tasks.~~

~~(4) A person who is aggrieved by determination made pursuant to this section may appeal in writing to the state veterinarian within five days after notice of such determination. The state veterinarian may affirm, reverse or modify such determination after he has reviewed the epidemiological report and the issues involved.~~

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

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control regulations accordingly in 9 CFR Part 78. The proposed amendment promotes simplicity by adopting and incorporating the federal standards and, along with the proposed repeal of ARM 32.3.402, 32.3.407, 32.3.412, will advance the goals of the Governor's Red Tape Relief Initiative.

32.3.416 IDENTIFICATION OF TESTED, REACTOR, AND OTHER ANIMALS (1) Reactor animals must be tagged ~~in the left ear~~ with a serially numbered ~~United States~~ U.S. Department of Agriculture (USDA) ~~or department brucellosis reactor~~ tag. If in the judgment of the state veterinarian, there is concern about compliance with the provisions of quarantine or if the reactor animal is found outside of the Designated Surveillance Area, the animal may~~, and must~~ be permanently branded on the left jaw with the letter "B" not less than two inches high.

Tagging and branding of reactors must be accomplished within 15 days after the date of test on blood collected from the animal. The time allowed to tag and brand reactor animals, as specified herein, may be enlarged or extended by the state veterinarian for good cause shown.

(2) Animals which have been subjected to an official test for brucellosis must be identified with serially numbered USDA identification ear tags ~~of the United States Department of Agriculture or of the department, registration tattoos, numbered earmarks, or other definite individual animal identification mark, approved by the department, and applied under the supervision of the department~~.

(3) The ~~United States Department of Agriculture~~ USDA backtag is adopted by the Department of Livestock as an official animal identification tag for market cattle identification (MCI).

(4) remains the same.

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

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control regulations accordingly in 9 CFR Part 78, which the department proposes to explicitly adopt and incorporate in this notice. This proposed amendment gives the state veterinarian discretion over whether to permanently brand a reactor animal in addition to the federal program's identification requirements.

32.3.606 IDENTIFYING INFECTED ANIMALS (1) Tuberculosis reactors must be identified with a serially numbered U.S. Department of Agriculture tag. If, in the judgment of the state veterinarian, there is concern about compliance with the provisions of quarantine, the animal may be ~~All animals infected with tuberculosis, as determined by physical examination or tuberculin test, or otherwise, must be immediately segregated, eartagged with an official tuberculosis reactor eartag, and~~ branded with the letter "T" on either the right or left jaw.

(2) remains the same.

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

REASON: Montana is a U.S. Department of Agriculture (USDA) accredited tuberculosis-free state. (9 CFR § 77.7(a)). To qualify as a USDA accredited tuberculosis-free state, Montana must have the authority to enforce and to comply with the provisions of USDA's "Uniform Methods and Rules–Bovine Tuberculosis Eradication" and must enforce regulations that impose restrictions that are substantially the same as those in place under 9 CFR Part 77. (9 CFR § 77.1, 3, .5). The proposed amendment is consistent with the federal program's requirements and gives the state veterinarian discretion over whether to permanently brand a reactor animal in addition to the federal program's requirements.

32.3.1505 BLOOD TESTING WITH SALMONELLA ANTIGENS (1) The official pullorum-typhoid blood test is the standard tube agglutination test, the rapid serum test, or the stained-antigen, rapid, whole-blood test. The antigen used for official whole-blood tests shall be supplied by the ~~Montana~~ Department of Livestock, Animal Health Division (department).

(2) remains the same.

(3) All chickens to be used as breeders must be tested when more than ~~five~~ four months of age.

(4) and (5) remain the same.

(6) Reactors may be submitted to the ~~Montana~~ department ~~of Livestock, Animal Health Division~~ laboratory for autopsy and bacteriological examination. The number of reactors to be submitted must be designated by a representative of the ~~Montana~~ department ~~of Livestock, Animal Health Division~~. In case such bacteriological examination fails to demonstrate pullorum or typhoid infections, the flock may be classified as free from pullorum or typhoid. If other members of the Salmonella group are isolated, the ~~Montana~~ department ~~of Livestock, Animal Health Division~~ may disqualify the flock for the production of hatching eggs, or require such action as is deemed necessary with respect to the infection.

(7) The ~~Montana~~ department ~~of Livestock, Animal Health Division~~ may designate or license authorized testing agents who have demonstrated the ability to perform the duties of pullorum-typhoid testing to the satisfaction of the department.

(a) through (c) remain the same.

AUTH: 81-20-101, MCA
IMP: 81-20-101, MCA

REASON: The U.S. Department of Agriculture administers a National Poultry Improvement Plan (NPIP) through which new or existing diagnostic technology can be effectively applied to improve poultry and poultry products by controlling or eliminating specific poultry diseases. The proposed amendment makes the department's rules consistent with the NPIP standards.

32.3.2301 CONTROL OF BIOLOGICS (1) remains the same.

(2) No biologic may be brought into the state without a permit from the Department of Livestock (department) as required by 81-2-703, MCA. A long term permit may be granted upon request.

(3) No person may manufacture for sale, or sell, or offer for sale for use in the state of Montana, any biological product intended for diagnostic, immunizing or therapeutic purposes in animals unless such product is approved by and manufactured under a license issued by the U.S. Department of Agriculture, or unless upon specific permission in writing by the ~~Montana~~ department's ~~of Livestock,~~ animal health division.

(4) and (5) remain the same.

(6) All serums, viruses, and vaccines sold or offered for sale in the state of Montana for use in domestic animals shall be stored according to the manufacturer's label conditions ~~kept in a dark place at a temperature of not more than 45°F, and not~~

~~less than 35°F, until such time as they are sold, and shall not be sold after their expiration date~~. They must be sold in their original container.

AUTH: 81-2-102, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-707, 81-20-101, MCA

REASON: The amendment will defer to the manufacturer's recommended storage and handling requirements for each specific biologic rather than impose a blanket storage and handling requirement for all biologics. This will promote safety and efficacy as manufacturer's labels are vetted through their regulatory authorities and are particularized to the specific biologic in question.

5. The department proposes to repeal the following rules:

32.3.132 CLEANED AND DISINFECTED VEHICLES TO BE PLACARDED

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

REASON: This rule does not reflect the department's current practice, and thus repeal will advance the goals of the Governor's Red Tape Relief Initiative. Placarding for diseases and conditions requiring quarantine may still be addressed in the management plan provided for in the proposed new ARM 32.3.108(8) set forth in this notice.

32.3.302 REPORTING OF PSEUDORABIES

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

32.3.303 QUARANTINE OF SWINE HERDS - USE OF QUARANTINE

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

32.3.304 QUARANTINE OF EXPOSED HERDS AND ANIMALS

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

32.3.305 RELEASE OF QUARANTINE

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

32.3.307 DEPARTMENT ORDERED PSEUDORABIES TESTING

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

32.3.308 CHANGE OF PREMISES TESTING

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

32.3.309 TEST EXPENSES AND DUTIES

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

32.3.310 DISPOSAL OF DEAD ANIMALS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-101, 81-2-102, 81-2-108, MCA

32.3.311 PROCEDURE UPON DETECTION OF PSEUDORABIES

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

32.3.312 MEMORANDUM OF UNDERSTANDING

AUTH: 81-1-102, MCA
IMP: 81-2-102, MCA

32.3.313 EXTENSION OF TIME LIMITS

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

32.3.314 MOVEMENT OF SWINE THROUGH LICENSED LIVESTOCK MARKETS AND OTHER CONCENTRATION POINTS

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

32.3.315 HERD STATUS ESTABLISHMENT

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

REASON: The amendments to ARM 32.3.301 proposed in this notice will adopt and incorporate the federal disease program standards. The amendments to ARM 32.3.108 proposed in this notice will also centralize all department quarantine

procedures. Together, these amendments will render the above-listed rules unnecessary. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.402 EXTENSION OF TIME LIMITS

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

32.3.407 DEPARTMENT ORDERED BRUCELLOSIS TESTING OF ANIMALS

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

32.3.412 MEMORANDUM OF UNDERSTANDING

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

32.3.418 INDEMNITY PAID FOR REACTORS

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

32.3.440 CERTIFIED BRUCELLOSIS FREE BOVINE HERDS

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

REASON: The U.S. Department of Agriculture determines certified brucellosis-free herd status as set forth in 9 CFR § 78.1. The amendments to ARM 32.3.411 and the adoption of NEW RULE I proposed in this notice will adopt and incorporate the federal disease program standards and render the above-listed rules unnecessary. The proposed amendments to ARM 32.3.108 will also centralize all department quarantine procedures. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.608 REPORTING DEATH OF ANIMALS FROM A TUBERCULOSIS QUARANTINED HERD

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

REASON: This requirement is transferred to new ARM 32.3.108(7) as proposed to be amended in this notice. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.1305 DISCLOSURE OF INFORMATION

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

REASON: This rule simply states what is already true and correct and does not impose any requirements. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.1507 EXHIBITIONS OF POULTRY

AUTH: 81-20-101, MCA
IMP: 81-20-101, MCA

REASON: This rule has not been updated since 1972, and it is no longer consistent with current department practice. The department does not have a presence at all at poultry exhibitions in the state to ensure enforcement. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.2006 INTRASTATE MOVEMENT OF CATTLE: IDENTIFICATION

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

REASON: This rule is no longer consistent with current department practice regarding backtags, and its repeal will not increase the risk of disease or change how cattle moves within intrastate marketing channels. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.2303 DIAGNOSTIC TESTS

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

REASON: This rule is no longer consistent with current department practice and requirements. The department is retaining administrative rules regarding the reporting of test results for specific diseases that are of concern to the department.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Lindsey Simon, Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., August 5, 2024.

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

comments to Lindsey Simon at the address listed in paragraph 6 no later than 5:00 p.m., July 29, 2024.

8. 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 directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,400.

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

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply only to proposed NEW RULE I. The primary bill sponsor, Representative Joe Read, was contacted by email on June 6 and 10, 2024, at joe.read@legmt.gov, and by U.S. mail on June 10, 2024.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-stated rules will not significantly and directly impact small businesses.

/s/ Lindsey R. Simon
Lindsey R. Simon
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.301 through 42.4.303, 42.4.401 through 42.4.403, 42.4.804, 42.4.2302, 42.4.2602, 42.4.2604, 42.4.2701, 42.4.2703, 42.4.2704, 42.4.3002, and 42.4.3202, the repeal of ARM 42.4.104, 42.4.110, 42.4.404, 42.4.501, 42.4.502, 42.4.2504, 42.4.2903, 42.4.4101, 42.4.4106, 42.4.4107, 42.4.4109, 42.4.4112 and the transfer of ARM 42.4.105, 42.4.4105, 42.4.4108 and 42.4.4114 pertaining to the department's implementation of Senate Bill 399 (2021), House Bill 191 (2021), and Senate Bill 506 (2023)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On July 29, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment, repeal, and transfer of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 12, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to amend and repeal the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), House Bill 191 (2021) (HB 191), and Senate Bill 506 (2023) (SB 506).

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 4, to align with SB 399 changes to Montana's tax code. Examples of more global changes include references to 15-30-2131, MCA, which needs to be stricken and replaced

with a reference to the Internal Revenue Code (IRC); changing references from Montana adjusted gross income to Montana taxable income; striking references to married taxpayers filing separately because the filing status has been discontinued beginning with tax year 2024; removing obsolete tax credits; and changing "taxpayer" references in rule to "claimants," which is generally more applicable in tax credit administration.

Administrative rules in chapter 4, subchapter 3 were also affected by HB 191, in addition to SB 399. HB 191 increased the maximum credit amount of the elderly homeowner/renter credit from $1,000 to $1,150. The subchapter requires revision to fix outdated references and procedures including credit amounts, specific year examples, and the five-year statute of limitations which was reduced to three years by the 2015 Legislature and was not included in prior rule updates and bill implementation. The department also proposes adding language to these rules to add the same authoritative guidance that is currently provided to claimants in the calculation of household income.

The department proposes to amend chapter 4, subchapter 27, to implement SB 399 and also SB 506, which increased the maximum credit amount of the qualified endowment credit from $10,000 to $15,000 and made the credit permanent. As it relates to SB 506, many of the rules in this subchapter were written to be temporary in nature because the credit required renewal every six years by the Legislature. Because SB 506 made the credit permanent, many of the references to years can be stricken. The department sees a further need to provide more clarification about the types of organizations that qualify to hold a qualified endowment and strike some subsections that are explicitly found in 15-30-2327, MCA.

Further, during the department's review of chapter 4, the department identified several outdated references and procedures that require updates. Many of the rules use specific years in the examples (*see* ARM 42.4.303 and 42.4.403), and the department proposes a model that does not specifically reference a year. The department proposes a format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations.

There are references throughout chapter 4 that list the department's physical address and website as a means for a claimant to deliver a tax credit form to the department. Because these are both subject to change, the department proposes removing them and relying on the guidance provided on our website and form instructions.

The department proposes to update rules related to how claimants claim tax credits to match current business practice. First, the rules currently allow for a claimant to report the amount of the credit without providing a copy of the form with their tax form. The department notes this practice is outdated because tax software vendors support the ability to include a requisite form with the tax return. Additionally, auditors routinely adjust returns because tax credits were erroneously claimed. Requiring the form with the tax return prompts the claimant to provide the necessary attestations and information to obtain the credit.

The department also proposes the transfer of ARM 42.4.105, 42.4.4105, 42.4.4108, and 42.4.4114, which do not deal with tax credits, to the appropriate chapter within ARM Title 42. For example, ARM 42.4.105 relates to a corporate tax deduction. Previously, this rule was related to tax credits that were repealed under SB 399 as well as the existing corporate deduction. While the department is required to maintain the rule, per 15-32-105, MCA, the rule only applies to the corporate tax deduction under 15-32-103, MCA. As a result, the department contends the rule should be transferred to ARM Title 42, chapter 23.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments, repeals, and transfers, it is supplemented below to explain rule-specific proposals.

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

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) "Amenities" ~~are~~ mean items or conditions that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the ~~pleasure and~~ enjoyment of the occupant~~(s)~~, rather than ~~to~~ their indispensable needs. ~~For periods beginning after December 31, 2016, "a~~ Amenities~~" means~~ also includes services unrelated to the occupation of a dwelling and provided by personnel, including but not limited to meals, housekeeping, transportation, assisted living, or nursing care.

(2) "Gross household income" means the same as the term defined ~~under~~ in 15-30-2337, MCA, ~~is further defined as~~ and includes:

(a) all capital gains income transactions less return of capital;

(b) federal refundable tax credits received; and

(c) any state refundable tax credits received, including elderly homeowner/renter credit refunds~~.~~;

(d) all federal taxable and nontaxable pension, annuity, and IRA payments received during the year;

(e) qualified charitable distributions under IRC § 408(d)(8); and

(f) conversion from a traditional IRA to Roth IRA under IRC § 408A(d)(3).

(3) "Land surrounding the eligible residence for the elderly homeowner/renter credit" ~~is~~ means the one-acre farmstead or ~~primary~~ acre associated with the primary residence.

~~(a)~~ If the one-acre farmstead or ~~primary~~ acre associated with the primary residence is not separately identified on the tax bill or assessment notice from the other acreage, ~~and the ownership is less than 20 acres, the allowable credit shall be calculated as follows: total amount of property tax billed, multiplied by 80 percent or divided by the total acreage, whichever is higher, to equal the allowable amount of property tax used in the credit calculation.~~ divide the total number of acres into one; multiply the result by the amount of property tax paid on the land; and add this amount to the property tax on the dwelling.

~~(b) Land ownership of 20 acres or more that does not have the one-acre farmstead or primary acre separately identified on the tax bill or assessment notice must be submitted to the department's local office for computation of the allowable amount of property tax used in the credit calculation.~~

(4) "Rent" ~~is~~ means the amount of money charged to a tenant to occupy a dwelling. ~~"~~Rent~~"~~ does not include amenities.

AUTH: 15-30-2620, MCA
IMP: 15-30-2337, 15-30-2338, 15-30-2340, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.301 to improve definitional guidance about calculating gross household income and total property taxes when the residence is on more than one acre. The proposed amendment formats also follow current department practice.

42.4.302 COMPUTATION OF ELDERLY HOMEOWNER/RENTER TAX CREDIT (1) When ~~the taxpayer~~ a claimant owns the dwelling but rents the land or owns the land and rents the dwelling, the ~~taxpayer~~ claimant shall ~~add~~ include on the claim form the rent-equivalent tax paid on the rented property to the property tax billed on the owned property. The total shall then be reduced as provided by 15-30-2340, MCA. The ~~tax~~ credit will be the reduced amount or ~~$1,000~~ $1,150, whichever is less.

(2) To calculate the credit, an eligible claimant ~~is allowed to~~ may use property taxes billed:

(a) on property held in a revocable trust if the grantor(s) of the property or their spouse is the claimant and either or both are trustees of the revocable trust; or

(b) as rent if the property occupied by the claimant is in a name other than the claimant~~; or~~ .

~~(c) if the claimant has a living trust or a life estate.~~

(3) When a ~~taxpayer~~ claimant lives in a health, long-term, or residential care facility (facility), as defined in 50-5-101, MCA, the rent allowed in calculation of the ~~property tax~~ credit is the actual out-of-pocket ~~rent paid~~ amount paid for rent.

(a) If one spouse lives in a facility and the other lives at a different address, they ~~are allowed to~~ may report either the rent paid for the facility or the rent/property taxes billed for the other address, but not both. Married ~~taxpayers~~ couples who are living apart are entitled to file and receive only one ~~claim~~ credit per year.

~~(b) Prior to January 1, 2017, if a claimant lived in a facility that did not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed is limited to:~~

~~(i) $20 a day for periods beginning on or before December 31, 2014; or~~

~~(ii) $30 a day for periods beginning after December 31, 2014.~~

~~(c)~~ (b) ~~For claims for periods beginning after December 31, 2016, if~~ If a claimant lives in a facility, the out-of-pocket rent being claimed must exclude payments for amenities. To satisfy this obligation, the claimant must either:

(i) utilize a detailed statement provided by the facility itemizing the amount paid for rent and ~~the amount paid for~~ amenities ~~separately~~; or

(ii) determine the amount of allowable rent by deducting ~~the~~ amenities from the total amount paid as follows:

(A) 20 percent for services related to boarding such as meals, housekeeping, laundry, and transportation;

(B) 30 percent for services related to continuous care such as assisted living, medical care, paramedical care, memory care, medical supplies, and pharmacy; or

(C) 50 percent if the services in both (A) and (B) are provided.

~~(d)~~ (c) Examples of calculating the allowable rent in ~~(c)~~ (b) are as follows:

(i) Val rents a room in an independent living facility. Her $1,000 monthly payment includes utilities and parking, but no services delivered by personnel. No further calculation is needed. Val is allowed to report the full $1,000 per month as rent.

(ii) Paul rents a room in an independent living facility. In addition to utilities and cable, his $2,500 monthly payment includes boarding such as housekeeping, meals, and transportation provided by staff and contractors. The facility's year-end statement does not ~~break out~~ itemize his total amount paid. Paul deducts 20 percent ($2,500 - 20%) for the boarding services ~~to calculate~~ and may report $2,000 per month as ~~allowable rent to report~~ rent.

(iii) Ron lives in a long-term care facility and receives boarding services, assistance with daily living activities, and special memory care. The facility's year-end statement partially ~~breaks out his~~ itemizes Ron's $40,000 total payment, showing the amount charged by ~~a~~ the contractor for his memory care. ~~It~~ The statement does not list the amounts charged for boarding and care provided by staff. Ron deducts 50 percent ($40,000 - 50%) for boarding (20%) and care (30%) ~~to calculate~~ and may report $20,000 as ~~allowable rent to report for the year~~ annual rent.

(iv) George rents an apartment in an assisted living facility. The facility's year-end statement ~~breaks out~~ itemizes his $30,000 total payment as $14,400 for rent, $5,000 for boarding, and $10,600 for care. George may report the $14,400 ~~stated~~ rent ~~amount~~ or, alternately, choose to deduct 50 percent from the total ($30,000 - 50%) for boarding (20%) and care (30%) ~~to calculate~~ and may report $15,000 as ~~allowable rent to report for the year~~ annual rent.

(v) Mary rents a room in an assisted living facility for six months while recovering from a medical procedure. Her $2,000 total monthly payment includes assistance with daily living activities provided by staff, but she chose not to receive any additional services such as boarding. The facility does not itemize her payment. Mary deducts 30 percent from the monthly payment ($2,000 - 30%) for the care ~~to calculate~~ and may report $1,400 per month ~~in allowable~~ as rent. Further, Mary may report either the allowable rent paid to the facility, or the monthly rent she paid for her primary residence during the same six-month period, but not both.

AUTH: 15-30-2620, MCA
IMP: 15-30-2340, 15-30-2341, 50-5-101, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.302 to improve grammar and sentence structure of rule sections and remove the provision in (3)(b) which is a department practice that has been discontinued.

42.4.303 CLAIMING AN ELDERLY HOMEOWNER/RENTER TAX CREDIT

(1) The elderly homeowner credit may be claimed by an eligible individual or, if an eligible individual dies before making a claim, by the personal representative of their estate, and must be made on Form 2EC, Montana Elderly Homeowner/Renter Credit.

(2) The time ~~for,~~ and manner of making~~,~~ a claim for the credit depends on whether ~~or not the qualified individual (or the personal representative for them)~~ the claimant files ~~an individual income tax~~ a return for the year for which the credit is claimed.

(a) A claimant must also meet the eligibility requirements provided in 15-30-2338, MCA, to obtain the credit.

~~(a)~~ (b) If ~~an eligible individual~~ a claimant files or is required to file ~~an individual income tax~~ a return for the year for which the credit is claimed, the claim must be filed with the return on or before the due date of the return, including extensions. ARM 42.15.301 ~~sets forth~~ provides the rules for determining whether an individual is required to file a return. If a return is made by or for an eligible individual without making a claim for the credit, the credit may be claimed by filing an amended return within ~~five~~ three years after the due date of the return, not including extensions.

~~(b)~~ (c) If an eligible individual is not required to file ~~an individual income tax~~ a return, ~~no later than April 15th of the fifth year following the claim year the claim must be:~~ the claim must be submitted no later than April 15th of the fourth calendar year following the claim year.

~~(i) mailed to the department at the address set forth in ARM 42.1.101;~~

~~(ii) delivered to:~~

~~Department of Revenue~~

~~Sam W. Mitchell Building~~

~~Third floor, 125 North Roberts~~

~~Helena, Montana; or~~

~~(iii) filed electronically through the department's web site at: www.revenue.mt.gov.~~

~~(c)~~ (d) If an eligible individual is required to, but did not, file ~~an individual income tax~~ a return, the claim must be made by filing ~~an individual income tax~~ a return with completed Form 2EC as provided in (2)~~(a)~~(b).

~~(d) If the taxpayer claiming the credit files their tax return electronically, he or she represents that they have completed Form 2EC and have all the required documentation. The form and required documentation are tax records the taxpayer must retain and provide to the department on request.~~

(3) The following are examples ~~showing how this rule is applied~~ of the application of this rule:

(a) ~~Taxpayer~~ A claimant is required to file ~~an individual income tax~~ a return for ~~2011~~ 20X1 and, although eligible, neglects to claim the credit by filing Form 2EC with their ~~2011~~ 20X1 ~~individual income tax~~ return which they file April 6, ~~2012~~ 20X2. ~~Taxpayer~~ The claimant may claim the credit by filing an amended ~~2011~~ 20X1 ~~individual income~~ return with completed Form 2EC on or before April 15, ~~2017~~ 20X5.

(b) ~~Taxpayer~~ A claimant, who is not required to file ~~an individual income tax~~ a return for ~~2011~~ 20X1, dies in February ~~2012~~ 20X2. The ~~taxpayer's~~ claimant's personal representative, appointed June ~~2012~~ 20X2, may at any time before April

15, ~~2017~~ 20X5, either file a ~~2011~~ 20X1 ~~individual income tax~~ return for the ~~taxpayer~~ claimant with completed Form 2EC or file Form 2EC without filing a ~~2011~~ 20X1 return.

(c) ~~Taxpayer~~ A claimant is required to, but does not file an individual income tax return for ~~2012~~ 20X2. ~~Taxpayer~~ The claimant or~~, if the taxpayer has died, the~~ their personal representative ~~of the taxpayer's estate,~~ may claim the credit by filing a ~~2012~~ 20X2 ~~individual income~~ return with completed Form 2EC on or before April 15, ~~2018~~ 20X6.

AUTH: 15-30-2609, 15-30-2620, MCA
IMP: 15-30-2338, 15-30-2339, 15-30-2609, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.303 to improve sentence structure (i.e., unnecessary language use), remove outdated information, improve example references, include a necessary reiteration in (2)(a) of claimant eligibility conditions found in 15-30-2338, MCA, and reflect the reduction in the statute of limitations to three years by the 2015 Legislature.

Based on the addition of (2)(a), it is necessary for the department to amend the implementing citations to include 15-30-2338, MCA, to comply with 2-4-305, MCA, and organize the citations as they are presented in statute.

42.4.401 DEFINITIONS The following definitions apply to this subchapter:

(1) "Another state" or "other state" means a state of the United States other than Montana, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, and a foreign country.

(2) "Foreign income tax" means the income tax paid to another state for which the credit described in ARM 42.4.402 is claimed.

(3) "Income tax" means a tax measured by and imposed on net income and, in the case of an S corporation and partnership, includes an excise tax or franchise tax that is imposed on, and measured by, the net income of the S corporation or partnership. The term does not include any other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The term does not include penalty or interest paid in connection with an income tax.

(4) "Taxable foreign income" means the income from the other state that is included in the ~~taxpayer's~~ claimant's Montana ~~adjusted gross income~~ taxable income.

(5) "Total foreign income" means the income of the other state upon which the foreign income tax was computed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.401 to implement SB 399 as outlined in the department's general statement of

reasonable necessity.

42.4.402 CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE OR COUNTRY (1) A Montana resident is allowed a nonrefundable credit against ~~the resident's~~ their Montana income tax liability for:

(a) income taxes they paid to another state or foreign country on income which is also subject to Montana income tax;

(b) ~~the resident~~ as a shareholder~~'s~~, their pro rata share of income taxes paid by an S corporation to another state or foreign country on income that is subject to Montana income tax as provided in Title 15, chapter 30, MCA; and

(c) ~~the resident~~ as a partner~~s~~', their distributive share of income taxes paid by a partnership to another state or foreign country on income that is subject to Montana income tax as provided in Title 15, chapter 30, MCA.

(2) The credit is allowed under the following conditions and limitations:

(a) the credit is allowed only with respect to an income tax imposed by law and actually paid. An income tax is a tax measured by and imposed on net income and, in the case of an S corporation or partnership, includes an excise tax or franchise tax that is imposed on and measured by the net income of the entity. The credit is not allowed for other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The credit is not allowed for penalty or interest paid in connection with an income tax;

(b) in the case of a ~~taxpayer~~ claimant who either becomes or ceases to be a Montana resident during the tax~~able~~ year, the credit is allowed only with respect to income earned during the ~~fractional~~ part of the year the ~~taxpayer~~ claimant was a resident of this state;

(c) the credit is allowed only with respect to an income tax that the ~~taxpayer~~ claimant does not claim as a deduction in determining Montana taxable income;

(d) the credit is allowed only if the state or foreign country imposing the income tax liability does not allow the ~~taxpayer~~ claimant a credit for Montana income tax liability incurred with respect to the income derived within such state or foreign country; and

(e) the credit is allowed for taxes paid to a foreign country only to the extent the taxes paid exceed either:

(i) the amount claimed under IRC ~~section~~ § 904(a) plus any carryback and carryover amount allowed under IRC ~~section~~ § 904(c); or

(ii) the amount claimed under IRC ~~section~~ § 904(k).

(3) The credit against income taxes is claimed on ~~the Montana tax~~ a return for the same year that the ~~taxpayer~~ claimant reports the income associated with the tax paid to the other state or country. Because the ~~Montana~~ credit is nonrefundable and any unused credit may not be used in another tax year, taxes that, for federal income tax purposes, are deemed paid or accrued in a carryback or carryover year must be removed before calculating the ~~Montana foreign tax~~ credit for income taxes paid to another state or country.

(4) The credit cannot be claimed by an individual for taxes paid to another state or country by an estate or trust.

(5) If a ~~taxpayer~~ claimant amends the amount of income reported to the other state or a foreign country on which the ~~Montana~~ credit was based, the ~~taxpayer~~ claimant shall file an amended ~~Montana tax~~ return to recalculate the credit allowed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2302, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.402 to improve sentence structure (i.e., unnecessary language use) and to update terminology.

42.4.403 COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY SPECIAL APPLICATIONS (1) In determining the tax credit allowed, the computations in this rule must be made separately for each state or foreign country's income tax with respect to which a credit is claimed.

(2) If the claim for a credit does not include the ~~taxpayer's~~ claimant's share of income tax paid to another state or country by an S corporation or partnership in which the ~~taxpayer~~ claimant is a shareholder or partner:

(a) determine the amount of income taxable by the other state or foreign country that is included in Montana ~~adjusted gross income (AGI)~~ taxable income, but do not include income that is exempt in Montana;

(b) determine the amount of tax paid to the other state or foreign country on income that is not exempt in Montana by multiplying the tax paid to the other state or foreign country by a fraction:

(i) the numerator of which is the amount of income taxable by the other state or foreign country that is included in Montana ~~(AGI)~~ taxable income (excluding income exempt in Montana~~;~~); and

(ii) the denominator of which is the total amount of income taxable by the other state or foreign country (including income exempt in Montana)~~.~~;

(c) determine the proportionate amount of the Montana income tax attributable to income taxed by the other state or foreign country by multiplying the Montana income tax liability, as determined without the credit, by a fraction:

(i) the numerator of which is the ~~taxpayer's~~ claimant's income taxable by the other state or foreign country that is included in the ~~taxpayer's~~ claimant's Montana ~~(AGI)~~ taxable income; and

(ii) the denominator of which is the ~~taxpayer's~~ claimant's total Montana ~~(AGI)~~ taxable income~~.~~;

(d) the credit allowable is the lower of:

(i) the amount of income tax reported and paid to the other state or foreign country;

(ii) the amount of the income tax reported and paid to the other state or foreign country on income that is not exempt in Montana, the result of the calculation in (2)(b); or

(iii) the proportionate amount of the Montana income tax attributable to income taxed by the other state or foreign country, the result of the calculation in (2)(c).

(3) If the claim for credit does include the ~~taxpayer's~~ claimant's share of income tax paid to another state or country by an S corporation or partnership on income that is subject to Montana income tax:

(a) increase the ~~taxpayer's~~ claimant's Montana ~~(AGI)~~ taxable income for the tax year the entity deducted the income taxes by the ~~taxpayer's~~ claimant's share of the entity's deduction;

(b) calculate the Montana income tax liability taking the increase in Montana ~~(AGI)~~ taxable income into account;

(c) determine the ~~taxpayer's~~ claimant's share of the amount of net entity income that is included in Montana ~~(AGI)~~ taxable income (do not include income that is exempt in Montana);

(d) determine the ~~taxpayer's~~ claimant's share of the amount of income tax reported and paid to the other state or foreign country by the entity on income that is not exempt in Montana by multiplying the share of the amount of tax reported and paid to the other state or foreign country by the entity by a fraction:

(i) the numerator of which is the share of the amount of the entity's net income included in the Montana ~~(AGI)~~ taxable income (excluding income exempt in Montana); and

(ii) the denominator of which is the share of the total amount of the entity's net income (including income exempt in Montana)~~.~~;

(e) multiply the recalculated Montana income tax liability by a fraction, the numerator of which is the ~~taxpayer's~~ claimant's share of income of the entity included in ~~the taxpayer's~~ their Montana ~~(AGI)~~ taxable income, adjusted as provided in (3)(a), and the denominator of which is ~~the taxpayer's~~ their total Montana ~~(AGI)~~ taxable income, adjusted as provided in (3)(a);

(f) the credit allowable is the lower of:

(i) the share of the amount of income tax reported and paid by the entity to the other state or foreign country;

(ii) the share of the amount of the income tax reported and paid to the other state or foreign country by the entity on the share of income that is not exempt in Montana, the result of the calculation in (3)(d); or

(iii) the proportionate amount of the Montana income tax attributable to the share of income of the entity reported to the other state or foreign country, the result of the calculation in (3)(e).

(4) If the tax paid to the other state includes tax on income taxed under both 15-30-2103(1) and (2), MCA, separate calculations for both types of income are required. When a claimant's Montana taxable income includes net long-term capital gains taxed under 15-30-2103(2), MCA, which are also taxed in another state, the amount of credit allowed against the Montana tax on the gains shall be based only on the tax paid to the other state(s) on those gains.

~~(4)~~ (5) The following are ~~E~~examples of ~~how to calculate~~ calculating these credits paid to another state or country ~~are outlined in (a) through (c)~~:

(a) Example 1 ~~–Taxpayer~~ The claimant, a full-year Montana resident, sold real property in State X in ~~2017~~ 20X1. State X does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In ~~2018~~ 20X2, the ~~taxpayer~~ claimant was legally required to, and did, file a ~~2017~~ 20X1 State X income tax return reporting the transaction and paying State X an income tax of $700.

The ~~taxpayer's~~ claimant's $5,000 gain on the sale of the State X property was included in the taxable income reported on the ~~2017~~ 20X1 Montana income tax return. The ~~taxpayer's~~ claimant's ~~2017~~ 20X1 Montana income tax liability was $3,400. The ~~taxpayer's~~ claimant's total ~~2017~~ 20X1 Montana ~~AGI~~ taxable income was $23,000, which included the $5,000 gain on the sale of property in State X. The amount of credit the ~~taxpayer~~ claimant may claim against the ~~2017~~ 20X1 Montana income tax liability is $700, the smaller of the amounts in (i) through (iii):

(i) The amount of income tax paid to State X is $700;

(ii) The amount of income tax paid to State X on income that is not exempt in Montana is $700. This amount is determined by multiplying the tax paid to State X ($700) by a fraction, the numerator of which is the amount of income from State X that is included in Montana ~~AGI~~ taxable income ($5,000), and the denominator of which is the total amount of income from State X, including any income that is exempt in Montana. The calculation is $700 x ($5,000/$5,000) = $700;

(iii) The proportionate amount of the Montana income tax attributable to income taxed by State X is $739. This amount is determined by multiplying the Montana income tax liability without the credit ($3,400) by a fraction, the numerator of which is the income from State X included in Montana ~~AGI~~ taxable income ($5,000), and the denominator of which is total Montana ~~AGI~~ taxable income ($23,000). The calculation is $3,400 x ($5,000/$23,000) = $739.

(b) Example 2 – ~~Taxpayer~~ The claimant, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in ~~2017~~ 20X1. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a ~~2017~~ 20X1 income tax return with State X in ~~2018~~ 20X2 and paid a tax measured by its net income of $132,000, $121,000 by estimated payments made in ~~2017~~ 20X1 and the balance of $11,000 in ~~2018~~ 20X2 when it filed its ~~2017~~ 20X1 return;

(ii) The S corporation paid $15,000 tax to State X for tax year ~~2016~~ 20X0 when it filed its ~~2016~~ 20X0 return in ~~2017~~ 20X1. The S corporation's non-separately stated and separately stated items for tax year ~~2017~~ 20X1 were as follows, of which the Montana resident shareholder's share was 10 percent:

(A) An ordinary income of $2,000,000 from banking business includes a deduction of $136,000 for State X taxes paid in ~~2017~~ 20X1, $121,000 for estimated payments in ~~2017~~ 20X1, and $15,000 for ~~2016~~ 20X0 taxes paid in ~~2017~~ 20X1;

Tax exempt interest income	$1,200,000
Ordinary dividends	300,000

(B) The ~~taxpayer's~~ claimant's total ~~2017~~ 20X1 Montana ~~AGI~~ taxable income was $500,000, which included 10 percent of the S corporation's ordinary dividends, or $30,000, and 10 percent of the ordinary income from its banking business, or $200,000;

(C) The shareholder's $200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for $136,000 income taxes paid to State X in ~~2017~~ 20X1, or by $13,600

(had the shareholder paid the shareholder's 10 percent share of the State X's taxes rather than the S corporation, the shareholder's 10 percent pro rata share of the S corporation's ordinary income for ~~2017~~ 20X1 would have been $213,600);

(D) The shareholder's 10 percent share of the S corporation's tax-exempt interest, or $120,000, is exempt from Montana individual income tax but is subject to tax by State X; and

(E) Assume the ~~taxpayer's~~ claimant's ~~2017~~ 20X1 Montana tax liability would be $50,000 if the credit were not claimed;

(iii) The ~~taxpayer~~ claimant calculates the Montana income tax liability and the amount of credit the ~~taxpayer~~ claimant may claim against the ~~2017~~ 20X1 income tax liability as follows:

(A) The ~~taxpayer's~~ claimant's Montana taxable income is increased by the pro rata share of the S corporation's deduction for State X taxes paid for which the ~~taxpayer~~ claimant claims the credit;

Montana ~~AGI~~ taxable income:	$500,000
Reverse deduction:	$13,600
Adjusted ~~MT AGI~~ Montana taxable income:	$513,600

(B) The ~~taxpayer's~~ claimant's pro rata share of the tax reported and paid to State X by the S corporation for ~~2017~~ 20X1 ($13,200) is multiplied by the proportion of the ~~taxpayer's~~ claimant's pro rata share of the S corporation income taxed in State X that is not exempt in Montana ($230,000) to the ~~taxpayer's~~ claimant's pro rata share of the amount of income that is taxable in State X, including income that is exempt in Montana ($350,000):

Ordinary income from banking operations	$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

~~Taxpayer's~~ The claimant's share of income tax reported and paid to State X on income that is not exempt in Montana:

$13,200 x $230,000 / $350,000 = $8,674

(C) The ~~taxpayer's~~ claimant's Montana income tax liability is recalculated. Tax on adjusted Montana ~~AGI~~ taxable income of $513,600: $56,500 (assumed result). The recalculated Montana income tax liability ($56,500) is multiplied by the ratio of S corporation net income included in Montana ~~AGI~~ taxable income, increased by the pro rata share of the S corporation deduction for the income taxes paid ($200,000 + $30,000 + $13,600 = $243,600) to the ~~taxpayer's~~ claimant's total Montana ~~AGI~~ taxable income, increased by the pro rata share of the S corporation deduction for income taxes paid ($513,600).

Montana income tax attributable to income that is taxed in both states:
$56,500 x $243,600 / $513,600 = $26,798

(D) The allowable credit is $8,674, the lower of:

(I) pro rata share of the income tax reported and paid by the S corporation, $13,200;

(II) pro rata share of the amount of the income tax reported and paid to the other state or foreign country by the S corporation on their pro rata share of income that is not exempt in Montana, $8,674; and

(III) proportionate amount of the Montana income tax attributable to their pro rata share of income of the S corporation reported to the other state or foreign country, $26,798.

(c) Example 3 – A full-year Montana resident pays $1,000 in income taxes to a foreign country. For federal income tax purposes, the ~~taxpayer~~ claimant elects to claim the federal foreign credit for those taxes rather than a deduction. The amount of the foreign federal tax credit is $800, $500 of which the ~~taxpayer~~ claimant claims currently and $300 of which is allowed to be carried back and forward under ~~IRS~~ IRC § 904(c). In calculating the Montana credit for taxes paid to the foreign country, the ~~taxpayer~~ claimant must use $200 rather than $1,000 as the amount of taxes paid to the foreign country.

AUTH: 15-30-2620, MCA
IMP: 15-30-124, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.403 to improve sentence structure (i.e., unnecessary language use), improve example references, and provide special applications guidance in the catchphrase and in the rule for the calculation of the credit when net long-term capital gains are reported.

Also, House Bill 221 (2023) created separate tax rates for some capital gains. The department's proposed amendments implement the legislation via the calculation referenced in (4) and provide accuracy when applying the credit to the Montana tax on those gains.

42.4.804 CREDIT LIMITATIONS AND CLAIMS (1) A ~~taxpayer~~ claimant may claim a credit for contributions made in cash to a school district provided ~~for~~ in 20-9-901, MCA, and/or a student scholarship organization (SSO), provided ~~for~~ in 15-30-3110, MCA. For the purpose of this rule, cash includes:

(a) U.S. currency;

(b) a personal check;

(c) cashier's check;

(d) money order;

(e) bank draft;

(f) an electronic bank account transfer (e.g., wire transfer, ACH draft);

(g) a credit card transaction (less any transaction surcharges or fees); or

(h) traveler's check.

(2) The maximum credit that may be claimed in a tax year by an individual ~~taxpayer~~ claimant or a corporation for allowable contributions to:

(a) a school district is $200,000; and

(b) an SSO is $200,000.

~~(3) In the case of a married couple that makes a joint contribution, unless specifically allocated by the taxpayers, the contribution will be split equally between each spouse. If each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount.~~

~~(4)~~ (3) An allowable contribution from:

(a) an S corporation passes to its shareholders based on their ownership percentage; and

(b) a partnership or limited liability company taxed as a partnership passes to their partners and owners based on their share of profits and losses as reported for Montana income tax purposes.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.804 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.2302 CLAIMING THE UNLOCKING PUBLIC LANDS TAX CREDIT

(1) To claim the unlocking public lands tax credit, a ~~taxpayer shall~~ claimant who is a landowner and has met the cooperative agreement (agreement) requirements of 87-1-294, MCA, must file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or Form CIT for C corporations), regardless of whether ~~or not~~ they are ~~otherwise~~ required to file a ~~tax~~ return for the year the credit is being claimed.

(2) A ~~taxpayer~~ claimant who files a ~~tax~~ return on a calendar year basis shall claim the credit for the tax year in which the agreement applied.

(3) A ~~taxpayer~~ claimant who files a ~~tax~~ return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by the Montana Department of Fish, Wildlife and Parks.

(4) ~~The taxpayer~~ A claimant shall include copies of all tax certification numbers, agreements, and supporting documents when filing their return. ~~If the return is filed electronically using software that does not support attachments, the taxpayer shall retain the information and provide it to the department upon request.~~

(5) When reviewing a claim for the credit, the department may request additional information to determine a ~~taxpayer's~~ claimant's eligibility for the allocation of the credit being claimed. This information may include, but is not limited to:

(a) documentation establishing ownership and ownership percentage of the parcel(s);

(b) a Montana Schedule K-1 issued by a partnership, S corporation, or fiduciary indicating the partner, shareholder, or beneficiary's share of the credit; or

(c) a return filed by a partnership, S corporation, or fiduciary including information showing the owners of the entity.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2302 to improve sentence structure (i.e., unnecessary language use) and improve cross referencing of the program and its requirements.

42.4.2602 ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals, and partnerships, may take an additional 10 percent deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain recycled material at a level consistent with industry standards and/or standards established by the ~~Federal~~ United States Environmental Protection Agency when such standards exist. The department may request the assistance of the Montana Department of Environmental Quality to determine if the product qualifies as a recycled product. Due to continuing technological advances in the recycling industry, the standards will be subject to constant change. The industry standards to be used will be those in effect at the time the product was purchased.

(2) For a ~~taxpayer~~ claimant paying individual income tax, the deduction is an adjustment to federal ~~adjusted gross income~~ taxable income for individual income tax.

(3) For a corporation paying the corporate income tax/alternative corporate income tax, the deduction is an adjustment to federal taxable income for the corporate income tax/alternative corporate income tax.

(4) A shareholder of an S corporation may claim a share of the allowable deduction for expenditures that the S corporation incurred for purchase of qualified recycled material based on the shareholder's pro rata share of their ownership in the S corporation. A partner of a partnership may claim a share of the allowable deduction for expenditures the partnership incurred for the purchase of qualified recycled material in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

(5) Any deductions claimed are subject to review by the department. The responsibility to maintain accurate records to substantiate deductions remains with ~~the taxpayer~~ a claimant.

AUTH: 15-32-609, 15-32-611, MCA
IMP: 15-32-603, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2602 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.2604 CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS, OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL, OR PROCESS SOILS CONTAMINATED BY HAZARDOUS WASTES (1) The credit is subject to the limitations outlined in 15-32-602, MCA, and is available only for the acquisition of machinery and/or equipment that is depreciable, as defined in IRC ~~Section~~ §167 ~~of the IRC~~. The machinery and/or equipment must be used in Montana primarily for the collection or

processing of reclaimable material, or ~~in the~~ to manufacture ~~of~~ finished products from reclaimed material.

(2) The basis for the credit is generally the cost of the ~~property~~ machinery and/or equipment before consideration of trade-in equipment~~. An exception to this is that~~ but the basis shall be reduced by any trade-in machinery and/or equipment which ~~has~~ had previously received this credit ~~previously taken on it. This includes~~ against the purchase price, transportation cost (if paid by the purchaser), and the installation cost before depreciation or other reductions. This credit does not increase or decrease the basis for tax purposes. Leased equipment is restricted to capital leases, and the credit is calculated on the amount capitalized for balance sheet purposes under generally accepted accounting principles.

(3) ~~Recycling~~ The machinery and/or equipment must be located and operating in Montana on the last day of the tax~~able~~ year for which the credit is claimed. The machinery or equipment must be used to:

(a) collect;
(b) process;
(c) separate;
(d) modify;
(e) convert; or
(f) treat solid waste into a product that can be used in place of a raw material for productive use or treat soil that has been contaminated by hazardous wastes.

(4) Examples ~~may~~ of such machinery and/or equipment include, but are not limited to:

(a) balers;
(b) bobcats;
(c) briquetters;
(d) compactors;
(e) containers;
(f) conveyors;
(g) conveyor systems;
(h) cranes with grapple hooks or magnets;
(i) crushers;
(j) end loaders;
(k) exhaust fans;
(l) fork lifts;
(m) granulators;
(n) lift-gates;
(o) magnetic separators;
(p) pallet jacks;
(q) perforators;
(r) pumps;
(s) scales;
(t) screeners;
(u) shears;
(v) shredders;
(w) two-wheel carts; and
(x) vacuum systems.

(5) ~~This~~ The list in (4) does not include transportation equipment, unless ~~it~~ the equipment is specialized ~~to the point that it can only be used~~ solely to collect and process reclaimable material or treat soil that has been contaminated by hazardous wastes.

(6) In the instance of the specialized mobile equipment that does qualify and is used both within and outside of Montana, the credit must be prorated using the following calculation:

$$\frac{D}{T} \times C \times E = \text{Credit allowed}$$

C = credit % in 15-32-602, MCA
D = days used in Montana
E = cost of equipment
T = total days used

(7) Absent a specific agreement to the contrary, the owners of a small business corporation, partnership, or sole proprietorship must prorate the credit in the same proportion as their ownership in the business.

(8) Only a ~~taxpayer~~ claimant that owns an interest, either directly or through a pass-through entity such as a partnership or S corporation, and is operating the equipment as the primary user on the last business day of the year, may claim the credit.

(9) The credit is limited to the amount of ~~the taxpayer's~~ a claimant's income tax liability or corporation tax liability. Any excess credit is not refundable, nor can it be carried back or forward to other tax years.

(10) The department may disallow a credit resulting from a sale or lease of machinery and/or equipment when the ~~overriding~~ purpose of the transaction ~~is~~ does not use the machinery and/or equipment primarily to collect or process reclaimable material, or manufacture a product from reclaimed material.

AUTH: 15-32-611, MCA
IMP: 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2604 to improve sentence structure (i.e., unnecessary language use), use consistent terminology, and improve example references.

42.4.2701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Allowable contribution," for the purposes of the qualified endowment credit, ~~is~~ means a charitable gift made to a qualified endowment. The contribution from an individual to a qualified endowment must be by means of a planned gift, as defined in 15-30-2327, MCA. A contribution from a corporation, small business corporation, estate, trust, partnership, or limited liability company may be made by means of a planned gift or may be made directly to a qualified endowment.

(2) "Donor" means an individual, corporation, estate, or trust that contributes to a qualified charitable endowment either directly or indirectly through a small business corporation or partnership, as required by 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, and 15-31-162, MCA.

(3) "Paid-up life insurance policies" ~~are~~ mean life insurance policies in which all the premiums have been paid prior to the policies being contributed to a qualified endowment. The donor must make the tax-exempt organization the owner and beneficiary of the policy. ~~The~~ A paid-up life insurance policy does not have to be on the life of the donor.

~~(4) "Permanent irrevocable fund" means a fund comprised of one or more assets that are invested and appropriated pursuant to the Uniform Prudent Management of Institutional Funds Act provided for in Title 72, chapter 30, MCA. Investment assets may include cash, securities, mutual funds, or other investment assets. A "building fund" or other fund that is used to accumulate contributions that will be expended is not a permanent irrevocable fund. A fund from which contributions are expended directly for constructing, renovating, or purchasing operational assets, such as buildings or equipment, is not a permanent irrevocable fund.~~

~~(5)~~ (4) "Present value of the charitable gift portion of a planned gift" ~~is~~ means the allowable amount of the charitable contribution, as defined in 15-30-2131, and 15-30-2152, MCA, or for corporations, as defined in 15-31-114, MCA, prior to any percentage limitations.

~~(6) "Qualified endowment" means a permanent irrevocable fund established for a specific charitable, religious, educational, or eleemosynary purpose by an organization qualified to hold it as provided in ARM 42.4.2703.~~

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2131, 15-30-2152, 15-30-2327, 15-30-2328, 15-30-2329, 15-31-114, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2701 to improve sentence structure and remove definitions which are now provided for in 15-30-2327, MCA.

42.4.2703 ELIGIBILITY REQUIREMENTS TO HOLD A QUALIFIED ENDOWMENT (1) To hold a qualified endowment under 15-30-2327(1)(c), MCA, an organization must be:

(a) incorporated or otherwise formed under the laws of Montana and exempt from federal income tax under 26 USC 501(c)(3); or

(b) a Montana chartered bank or trust company, as defined in 15-30-2327, MCA, holding an endowment fund on behalf of a Montana or a Montana-based affiliate of a foreign 26 USC 501(c)(3) organization.

(2) A qualifying gift to an institution ~~meeting the definition~~ in (1)(b) at the time of the gift remains a qualifying gift even if subsequent changes ~~to the institution mean it no longer meets the definition of an entity eligible to hold a qualified endowment~~ affect the institution's prior qualification. For example, a qualifying gift to

a Montana chartered bank remains a qualifying gift ~~even~~ if the bank is subsequently acquired ~~and absorbed~~ by a nationally chartered bank.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2327, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2703 to improve sentence structure (i.e., unnecessary language use) and improve internal references for consistency.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) The credit allowed ~~the~~ a corporation, estate, trust, or individual against its tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution, as defined in ARM 42.4.2701. The credit allowed against the tax liability of the corporation, estate, or trust for a direct contribution is equal to 20 percent of the charitable contribution. The maximum credit that may be claimed in one year is ~~$10,000~~ $15,000 per donor. A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities

~~Planned Gift Date~~	Percent of Present Value	Used to Calculate Maximum Credit	Maximum Credit Per Year
~~7/1/03 - 12/31/19~~	40%	~~$25,000~~ $37,500	~~$10,000~~ $15,000

(2) The credit allowed against ~~the~~ a corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution, as defined in ARM 42.4.2701.

~~Unplanned~~ Outright Gifts by Eligible Entities

~~Qualified Charitable Gift Date~~	Percent of Allowable Contribution	Allowable Contribution Used to Calculate Maximum Credit	Maximum Credit Per Year
~~7/1/03 - 12/31/19~~	20%	~~$50,000~~ $75,000	~~$10,000~~ $15,000

(3) ~~The balance of the allowable contributions not used in the credit~~

~~calculation may be used as a deduction subject to the limitations and carryover provisions found in 15-30-2131, MCA, or for corporations, the limitations and carryover provisions found in 15-31-114, MCA.~~

~~(a) Example of an allowable deduction when a planned gift is used for the Qualified Endowment Credit:~~

~~Time Period~~	~~Present Value~~	~~Maximum Credit~~	~~Credit Percentage~~	~~Allowable Deduction~~
~~7/1/03 - 12/31/19~~	~~$50,000 -~~	~~($10,000 / .40) =~~		~~$25,000~~

~~(b) Example of an allowable deduction when an outright gift is used for the Qualified Endowment Credit:~~

~~Time Period~~	~~Market Value~~	~~Maximum Credit~~	~~Credit Percentage~~	~~Allowable Deduction~~
~~7/1/03 - 12/31/19~~	~~$55,000 -~~	~~($10,000 / .20) =~~		~~$5,000~~

Any amount taken as a deduction from federal taxable income that was used to calculate the tax credit must be added back when determining Montana taxable income. The following examples are provided for illustrative purposes only:

(a) An individual makes an eligible planned gift of $20,000. The individual takes a federal itemized deduction for $20,000. The individual's Montana tax liability is $5,000. The tax credit is equal to $5,000. The individual must add back $12,500 to federal taxable income to claim the credit. Forty percent of $12,500 is the amount used to calculate a credit of $5,000.

(b) A trust makes an eligible planned gift of $100,000 and takes a federal deduction in this amount. The trust's tax liability is $30,000. The trust is eligible to claim the maximum amount of credit, $15,000. The trust must add back $37,500 to federal taxable income, which is the amount used to calculate the maximum amount of the tax credit.

(c) A corporation makes an outright gift of $30,000. The corporation's tax liability is $50,000. The tax credit is equal to $6,000. The corporation must add back $30,000 to federal taxable income, which is the amount used to calculate the tax credit.

(4) A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company qualifies for the credit only if the entity carried on a trade or business or rental activity during the tax year the contribution was made.

(5) The contribution to a qualified endowment from a small business corporation, partnership, or limited liability company is passed through to the shareholders, partners, or members in the same proportion as their distributive share of the entity's income or loss for Montana income tax purposes. The proportionate share of the contribution passed through to each shareholder, partner, or member becomes an allowable contribution for that donor for that year, and the credit allowed and the excess contribution deduction allowed are calculated as set

forth in (1) and (2). The credit maximums apply at the corporation and individual levels, and not at the pass-through entity's level for partnerships, small business corporations, and limited liability companies.

(6) Deductions and credit limitations for an estate or trust are as follows:

(a) if an estate or trust claims a credit based on the computation of the full amount of the contribution, there is no credit available to beneficiaries;

(b) any portion of a contribution not used in the calculation of credit for the estate may be passed through to the beneficiaries, in the same proportion as their distributive share of the estate's or trust's income or loss for Montana income tax purposes; however, beneficiaries may deduct only that portion of allowable contributions not used toward the credit or deduction claimed by the estate or trust; or

(c) if the estate or trust has deducted the full amount of the contribution, the credit may not be claimed by either the estate, trust, or the individual beneficiaries.

(7) The rate a beneficiary will use to calculate their credit for an allowable contribution passed to them by an estate will be based on the nature of the gift made by the estate. For example, if an estate makes an outright gift to a qualified endowment ~~on July 17, 2017~~, and the contribution is passed to a beneficiary, the beneficiary will calculate their credit using the 20 percent rate.

~~(8) At no time can a corporation, small business corporation, partnership, limited liability company, estate, trust, or individual be allowed to receive the benefit of both a contribution deduction and a credit from the same portion of a contribution.~~

~~(9) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).~~

~~(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, 2017. The allowable contribution made by the couple is $30,000. That couple is eligible to take a credit of up to $12,000, with each claiming a credit of $6,000.~~

~~(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, 2017, which result in an allowable contribution of $20,000 for each person. They each would be eligible to take a credit of up to $8,000.~~

~~(10)~~ (8) A donor may, at a later date, name or substitute the Montana qualified endowment, as defined in 15-30-2327, MCA, to receive the planned gift provided that the original trust or gift document reserves in the donor the right to do so.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2704 to improve sentence structure (i.e., unnecessary language use) and remove outdated examples given SB 506 increased the maximum amount of the

qualified endowment credit and made the credit permanent.

42.4.3002 WHO MAY CLAIM THE INFRASTRUCTURE USER FEE CREDIT

(1) A ~~taxpayer~~ claimant may claim a credit for the infrastructure user fee paid to a local government for an "infrastructure loan." The "infrastructure loan," as defined under ARM 8.97.1301, is a loan to the local government from the Montana ~~Department of Commerce~~ Board of Investments. The Montana ~~Department of Commerce~~ Board of Investments will determine if such loan qualifies for this credit.

(2) A ~~taxpayer~~ claimant claiming the credit must follow both of the following criteria:

(a) the ~~taxpayer~~ claimant must meet the provisions set forth in 17-6-309, MCA; and

(b) the ~~taxpayer~~ claimant must pay the infrastructure user fee.

AUTH: 15-1-201, MCA
IMP: 17-6-309, 17-6-316, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3002 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.3202 CREDIT FOR INCREASING RESEARCH ACTIVITIES (1) A credit for increases in qualified research expenses and basic research payments that occurred prior to January 1, 2011, is allowed to a qualified corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company. Except as specifically limited by ~~Montana law,~~ 15-31-150, MCA, (2017) this credit is determined in accordance with 26 USC 41 as that section read on July 1, 1996.

(2) For tax years beginning after December 31, 2010, no current year credit may be claimed. Only unused amounts available as a carry forward under 15-31-150, MCA, may be claimed for the 15 succeeding tax years. The credit can be claimed by including a detailed schedule of the credit carryforward when the return is filed.

~~(3) A taxpayer must file Form RSCH providing information as prescribed on the form, which includes a copy of the form filed with the IRS to claim the federal credit for increasing research activities. If amounts paid or incurred do not apply to the federal credit after a termination date provided in 26 USC 41, a taxpayer whose expenses qualify for the Montana credit after the termination date must submit with Form RSCH the information required on the federal form for the tax year immediately preceding the tax year in which the termination occurred.~~

~~(4) Form RSCH may be obtained from the department upon request or is available on the department's web site under the downloadable forms at revenue.mt.gov.~~

~~(5) Form RSCH must be filed with the tax return.~~

~~(a) For individual taxpayers, including single member limited liability companies that are owned by an individual and are disregarded for income tax purposes, if the tax return is filed by paper, the return and Form RSCH must be mailed to:~~

~~Department of Revenue~~
~~P.O. Box 5805~~
~~Helena, Montana 59604-5805~~
~~(b) For corporations, partnerships, and entities taxed as corporations or partnerships, if the tax return is filed by paper, the return and Form RSCH must be mailed to:~~
~~Department of Revenue~~
~~P.O. Box 8021~~
~~Helena, Montana 59604-8021~~
~~(c) If the tax return is filed electronically, Form RSCH must be kept in the taxpayer's records and a copy provided to the department upon request.~~

AUTH: 15-30-2620, 15-31-150, 15-31-501, MCA
IMP: 15-30-2358, 15-31-150, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.3202 to remove unnecessary language and outdated information and form references because House Bill 723 (2019) repealed the generation of any new credits but permitted the carryforward of any excess credit generated prior to 2011 through tax year 2025.

5. The department proposes to repeal the following rules:

42.4.104 ENERGY GENERATING SYSTEMS

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA
IMP: 15-6-224, 15-6-225, 15-32-102, 15-32-105, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.110 DEFINITIONS

AUTH: 15-1-201, 15-32-203, MCA
IMP: 15-32-102, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.404 DEDUCTIONS NOT ALLOWED WHEN CREDIT CLAIMED

History: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.4.501 DEFINITIONS

AUTH: 15-30-2618, MCA
IMP: 15-30-2103, 15-30-2104, 15-30-2301, MCA

42.4.502 CAPITAL GAIN CREDIT

AUTH: 15-30-2618, MCA
IMP: 15-30-2104, 15-30-2106, 15-30-2301, MCA

42.4.2504 CARRYOVER AND RECAPTURE OF BIODIESEL BLENDING AND STORAGE TAX CREDIT

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-32-703, MCA

42.4.2903 COMPUTATION OF TAX CREDIT FOR PRESERVATION OF HISTORIC PROPERTY FOR MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2342, 15-31-151, MCA

42.4.4101 ALTERNATIVE ENERGY PRODUCTION CREDIT DEFINITIONS

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, MCA

42.4.4106 APPEAL RIGHTS

AUTH: 15-1-201, MCA
IMP: 15-1-211, 15-2-302, 15-31-501, MCA

42.4.4107 COMMERCIAL USE AND OTHER REQUIREMENTS FOR COMMERCIAL AND NET METERING SYSTEMS ELIGIBLE FOR THE INCOME TAX CREDIT

AUTH: 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, 15-32-406, MCA

42.4.4109 ALTERNATIVE ENERGY INCOME TAX CREDITS FOR GENERATION FACILITIES LOCATED WITHIN EXTERIOR BOUNDARIES OF A MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, MCA

42.4.4112 RECORDS REQUIRED - AUDIT

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, 15-32-405, 15-32-406, MCA

6. The department proposes to transfer the following rules:

42.4.105 (42.23.420) STANDARD COMPONENTS AND PASSIVE SOLAR SYSTEMS

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA
IMP: 15-6-201, 15-32-102, 15-32-105, 15-32-201, 15-32-202, MCA

42.4.4105 (42.19.1105) ALTERNATE RENEWABLE ENERGY GENERATION FACILITIES PROPERTY TAX EXEMPTION - LESS THAN ONE MEGAWATT

AUTH: 15-1-201, 15-1-217, MCA
IMP: 15-6-225, MCA

42.4.4108 (42.19.1106) PROPERTY TAX EXEMPTION – NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT

AUTH: 15-1-201, MCA
IMP: 15-6-225, 75-2-211, 75-2-215, MCA

42.4.4114 (42.22.1318) ENERGY PRODUCTION OR DEVELOPMENT - PROPERTY TAX ABATEMENT ELIGIBILITY FOR NEW INVESTMENT IN THE CONVERSION, TRANSPORT, MANUFACTURE, RESEARCH, AND DEVELOPMENT OF RENEWABLE ENERGY, CLEAN COAL ENERGY, AND CARBON DIOXIDE EQUIPMENT AND FACILITIES

AUTH: 15-24-3116, MCA
IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. August 5, 2024.

8. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in

number 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 399 and SB 506, Senator Hertz, was contacted by email on June 10 and on June 21, 2024. The primary bill sponsor for HB 191, Representative Hopkins, was notified by email on June 21, 2024.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, repeal, or transfer of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Scott Mendenhall
Todd Olson	Scott Mendenhall
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to local government public meeting recordings	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2024, the Department of Administration published MAR Notice No. 2-12-646 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 781 of the 2024 Montana Administrative Register, Issue Number 8.

2. On May 21, 2024, a public hearing was held on the proposed adoption of the above-stated rule in person, by videoconference, and by telephone. Testimony was provided at the public hearing and comments were received by the deadline.

3. The department has adopted NEW RULE I (ARM 2.12.208) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (2.12.208) LOCAL GOVERNMENT PUBLIC MEETING RECORDINGS (1) and (2) remain as proposed.

(3) How should we record video during a meeting?

(a) To record video, you will need cameras. Ensure the camera setup adequately covers ~~all meeting participants~~ the governing body and persons communicating with the body ~~adequately~~. Cameras should have a minimum resolution of 720 pixels (HD) and a minimum frame rate of 30 frames per second (fps) for smooth video.

(4) through (7) remain as proposed.

AUTH: 2-17-518, MCA
IMP: 2-3-214, MCA

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

Comment 1: A comment suggested clarifying the guidance in (3)(a) to indicate the camera should cover the governing body and anyone who interacts with the body rather than all participants in the meeting. The proposed "all participants" language could be interpreted to include people in attendance who are only observing the meeting.

Response 1: The department appreciates this comment and has amended (3)(a) to clarify that the focus of the camera should be on the governing body and persons communicating with the body.

Comment 2: A comment was submitted seeking clarification regarding the retention requirements for meeting recordings, as outlined in (7)(a). The commenter noted when a meeting recording is not designated as the official record of the meeting, pursuant to 2-3-214(3), MCA, effective July 1, 2024, the recording may be destroyed after being kept for one year.

Response 2: The department appreciates the comment but does not believe amendment is necessary. The statute describes when and how long recordings may need to be stored online and where recordings must be made available to the public. The rule does not address any of those statutory requirements. Instead, (7)(a) is intended to recommend best practices regarding the manner of storing recordings when recordings are required to be kept. Cloud storage accessible by more than one person is the practice recommended by the department.

/s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

/s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 25, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3502 pertaining to the Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement and ARM 2.43.5102 pertaining to the 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement	))))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 26, 2024, the Public Employees' Retirement Board published MAR Notice No. 2-43-647 pertaining to the proposed amendment of the above-stated rules at page 784 of the 2024 Montana Administrative Register, Issue Number 8.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State June 25, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.2105 pertaining to the basic period of service, ARM 2.43.2109 pertaining to receipt of service credit on or after termination of employment, and ARM 2.43.2110 pertaining to calculation of highest average compensation or final average compensation	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 26, 2024, the Public Employees' Retirement Board published MAR Notice No. 2-43-648 pertaining to the proposed amendment of the above-stated rules at page 787 of the 2024 Montana Administrative Register, Issue Number 8.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State June 25, 2024.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.102.4003 pertaining to state aid to public libraries	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 10, 2024, the Montana State Library published MAR Notice No. 10-102-2303 pertaining to the proposed amendment of the above-stated rule at page 984 of the 2024 Montana Administrative Register, Issue Number 9.

2. The State Library has amended the following rule as proposed, with the following change from the original proposal:

10.102.4003 DIRECT STATE AID TO PUBLIC LIBRARIES FOR PER CAPITA AND FOR PER SQUARE MILE SERVED (1) through (4) remain as proposed.

(5) remains the same.

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

3. Section (5) was inadvertently omitted from the proposal notice. No amendments are being made to (5). It is included in this notice to indicate that it remains the same.

4. The State Library commission reviewed and considered one public comment in support of the amendment.

5. The effective date of this rulemaking is July 6, 2024.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Robyn Scribner
Robyn Scribner
Commission Chair
Montana State Library

Certified to the Secretary of State June 25, 2024.

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

In the matter of the repeal of ARM 12.9.101 Big Game Management Policy	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On March 22, 2024, the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-626 pertaining to the public hearing on the proposed repeal of the above-stated rule at page 502 of the 2024 Montana Administrative Register, Issue Number 6.

2. On April 19, 2024, a public hearing was held on the proposed repeal of the above-stated rule, via Zoom. FWP and the commission received both written and oral testimony comments by April 22, 2024.

3. FWP and the commission have repealed ARM 12.9.101 as proposed.

4. FWP and the commission have thoroughly considered the comments and testimony received. A summary of the comments received, and FWP's and the commission's responses are as follows:

COMMENT 1: A commenter supported the repeal of this policy and thanked the commission for the continued great work with Montana's big game animals.

RESPONSE 1: The commission appreciates the public's participation in this process and has taken this comment into consideration.

COMMENT 2: A commenter expressed confusion over why ARM 12.9.101 was proposed for repeal, and believes the intent of the repeal is to reconcile the rule's requirements to current management preferences and practices. The commenter asserted FWP wants to repeal the rule because it can no longer maintain a maximum breeding stock of big game animals due to high wolf populations. The commenter expressed concern over FWP's survey and data collection methods and lamented the decrease in ungulate populations in northwest Montana. The commenter believes this decrease is caused by FWP's prioritization of wolves.

RESPONSE 2: Elk management practices are reflected in FWP's elk management plan. The commission has a statutory obligation to reduce the wolf population and has complied by increasing harvest opportunities.

COMMENT 3: A commenter supports the elimination of the Big Game Management Policy as it is now obsolete. The commenter thanks the commission for the great work with the citizen notice and participation with the Big Game regulations process.

Additionally, the commenter would like the commission to consider raising the awareness of the waterfowl regulations and season making processes.

RESPONSE 3: The commission appreciates the public's participation in this process and has taken this comment into consideration.

COMMENT 4: The Montana Wildlife Federation (MWF) opposes the repeal of the big game rule. There are several elements of ARM 12.9.101 that are not covered by species specific management plans that MWF thinks should remain in the rule.

RESPONSE 4: Without knowing which elements of ARM 12.9.101 the commenter would like to stay in rule, the commission cannot substantively respond.

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.508, 17.30.517, 17.30.702, 17.30.715, 17.30.716, and 17.30.718 pertaining to ground water mixing zones, nondegradation of water quality, criteria for determining nonsignificant changes in water quality, criteria for nutrient reduction from subsurface wastewater treatment systems, and amendments to Circular DEQ-20, source specific well isolation zones	)))))))))))	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On March 8, 2024, the Department of Environmental Quality published MAR Notice No. 17-439 pertaining to the proposed amendment of the above-stated rules at page 361 of the 2024 Montana Administrative Register, Issue Number 5.

2. The department has amended ARM 17.30.508 as proposed.

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

17.30.517 STANDARD MIXING ZONES FOR GROUND WATER (1) The following criteria apply to determine which discharges qualify for a standard ground water mixing zone:

(a) through (c) remain as proposed.

(d) The estimation required in (c) must be based on a calculation of the volume of water moving through a standard cross-section of aquifer. The calculated volume of water moving through the aquifer cross-section is hypothetically mixed with the known volume and concentration of the discharge to determine the resulting concentration at the boundary of the mixing zone. The recommended method to determine the resulting concentration at the boundary of a standard ground water mixing zone is described below:

(i) through (v) remain as proposed.

(vi) For total nitrogen in residential strength wastewater discharged from a wastewater treatment system that uses absorption system pressure distribution in accordance with Department Circular DEQ-4 and does not require ~~an~~ a Montana Pollutant Discharge Elimination System (MPDES) or Montana Ground Water Pollution Control System (MGWPCS) permit, the waste load as described in (vii)(B) may be reduced in the vadose zone and saturated zone to account for natural

attenuation using Montana's Septic Trading Method in Appendix A of Department Circular DEQ-13.

(vii) through (2) remain as proposed.

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

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

(1) through (8) remain as proposed.

(9) "Level 1a treatment" means a wastewater treatment system that:

(a) removes at least 50 percent, but less than 60 percent, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 24 mg/L, but not greater than 30 mg/L. The term does not include treatment systems for industrial waste. A level 1a designation allows the use of 30 mg/L nitrate (as N) as the nitrate effluent concentration for mixing zone calculations.

(10) "Level 1b treatment" means a wastewater treatment system that:

(a) removes at least 34 percent, but less than 50 percent, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 30 mg/L, but not greater than 40 mg/L. The term does not include treatment systems for industrial waste. A level 1b designation allows the use of 40 mg/L nitrate (as N) as the nitrate effluent concentration for mixing zone calculations.

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

~~(10) "Level 3 treatment" means a wastewater treatment system that:~~

~~(a) removes at least 75 percent of total nitrogen as measured from the raw wastewater load to the system; or~~

~~(b) discharges a total nitrogen effluent concentration of 15 mg/L or less. The term does not include treatment systems for industrial waste.~~

~~(11) "Level 4 treatment" means a wastewater treatment system that:~~

~~(a) removes at least 87.5 percent of total nitrogen as measured from the raw wastewater load to the system; or~~

~~(b) discharges a total nitrogen effluent concentration of 7.5 mg/L or less. The term does not include treatment systems for industrial waste.~~

(12) through (28) remain as proposed.

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

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the

length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) through (c) remain as proposed.

(d) changes in the concentration of nitrate in ground water which will not cause degradation of surface water if the sum of the predicted concentrations of nitrate at the boundary of any applicable mixing zone will not exceed the following values:

(i) and (ii) remain as proposed.

(iii) 7.5 mg/L for domestic sewage effluent discharged from a wastewater treatment system using level 2~~, level 3, or level 4 treatment~~, as defined in ARM 17.30.702; or

(iv) through (5) remain as proposed.

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

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) and (2) remain as proposed.

(3) The wastewater treatment system, including primary and replacement absorption systems, must meet the following criteria:

(a) remains as proposed.

(b) the wastewater treatment systems on a lot must have a combined design flow of 600 gallons per day or less, or a combined design flow of 800 gallons per day or less if all the wastewater treatment systems on the lot are level 2~~, level 3, or level 4 treatment systems~~;

(c) through (4)(b) remain as proposed.

(c)

Table 1

	Requirement	Category[1]								
		1	2	3	4	5	~~6~~	~~7~~	~~8~~ 6	~~9~~ 7
(i)	Minimum lot size (acres)	2	2	1	2	1	~~2~~	~~2~~	2	20

(ii)	Maximum number of lots in common developments or phases of a subdivision	N/A	N/A	5	N/A	5	~~N/A~~	~~N/A~~	N/A	N/A
(iii)	Background ground water nitrate (as N) concentration (mg/L) (2)	2	2	2	2	2	~~3~~	~~N/A~~	2	4
(iv)	Pressure distribution required for the absorption system	Yes	Yes	Yes	Yes	Yes	~~Yes~~	~~Yes~~	Yes	N/A
(v)	Soil profile has at least 6 feet of natural soil below absorption system that is fine sandy loam, loam, or finer (3)	Yes	N/A	N/A	N/A	N/A	~~N/A~~	~~N/A~~	N/A	N/A
(vi)	Soil profile has at least 6 feet of natural soil below absorption system that is medium sand, sandy loam, or finer (3)	N/A	Yes	Yes	N/A	Yes	~~Yes~~	~~Yes~~	Yes	N/A

(vii)	Soil profile has at least 6 feet of natural soil below absorption system that is medium sand, sandy loam, or finer [3], or discharge is to an elevated sand mound	N/A	N/A	N/A	N/A	N/A	~~N/A~~	~~N/A~~	N/A	Yes
(viii)	Minimum depth below natural ground surface to limiting layer in soil profile (feet)	8	10	10	6	8	~~8~~	~~8~~	N/A	N/A
(ix)	Minimum depth below natural ground surface to bedrock and ground water (feet) [4]	N/A	N/A	50	N/A	N/A	~~N/A~~	~~N/A~~	N/A	N/A
(x)	Minimum distance from proposed subdivision boundary to any existing or approved wastewater treatment systems outside the subdivision boundaries (feet)	N/A	N/A	500	N/A	N/A	~~N/A~~	~~N/A~~	N/A	N/A

(xi)	Level 2 wastewater treatment system	N/A	N/A	N/A	Yes	Yes	~~N/A~~	~~N/A~~	N/A	N/A
~~(xii)~~	~~Level 3 wastewater treatment system~~	~~N/A~~	~~N/A~~	~~N/A~~	~~Yes~~	~~Yes~~	~~Yes~~	~~N/A~~	~~N/A~~	~~N/A~~
~~(xiii)~~	~~Level 4 wastewater treatment system~~	~~N/A~~	~~N/A~~	~~N/A~~	~~Yes~~	~~Yes~~	~~Yes~~	~~Yes~~	~~N/A~~	~~N/A~~
~~(xiv)~~(xii)	Maximum depth of absorption system below natural ground surface (inches) (5)	24	24	24	24~~18~~	24~~18~~	~~18~~	~~18~~	24	24
~~(xv)~~ (xiii)	Gray water in waste segregation systems (6)	N/A	N/A	N/A	N/A	N/A	~~N/A~~	~~N/A~~	Yes	N/A

Table 1, Footnote (1) and (2) remain as proposed.

Table 1, Footnote (3) Soil profiles must be conducted in accordance with site evaluation requirements in Department Circular DEQ-4. Soils that contain 60% or more of a rock fragment (gravel, cobble, stone or boulder) and are considered extremely gravelly, extremely cobbly, extremely stoney or extremely bouldery as defined in Appendix B of Department Circular DEQ-4 will not meet this requirement. All soil profiles for a wastewater treatment system absorption system must meet these soil requirements. The six foot thickness of the specified soil type may be a continuous soil layer or a combination of multiple layers.

Table 1, Footnote (4) through (6) remain as proposed.

(5) through (7) remain as proposed.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, 75-5-317, MCA

17.30.718 CRITERIA FOR NUTRIENT REDUCTION FROM WASTEWATER TREATMENT SYSTEMS (1) This rule describes the information that must be submitted to obtain a department classification of a wastewater treatment system as

level 1a, level 1b, or level 2, ~~level 3, or level 4 treatment,~~ as those terms are defined in ARM 17.30.702. The nitrogen treatment level that a wastewater treatment system is granted under this rule may be used as the effluent concentration in mixing zone calculations.

(2) A person seeking classification of a wastewater treatment system as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ must submit the following background information to the department regarding the wastewater treatment system, in addition to any other information the department determines is necessary to verify the long-term treatment capabilities of the system:

(a) through (f) remain as proposed.

(3) A person seeking classification of a wastewater treatment system as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ must submit monitoring information as provided in this section. The department may require additional information (particularly for technologies not included in Department Circular DEQ-4) if necessary to verify the long-term reliable treatment capabilities of the system.

(a) remains as proposed.

(b) For a wastewater treatment system that uses the effluent total nitrogen concentration to determine treatment efficiency, the monitoring must be from at least six systems ~~for approval as a level 2 or level 3 treatment system and from at least 12 systems for approval as a level 4 treatment system~~. For a wastewater treatment system that uses the percent total nitrogen removed from measured raw wastewater to determine treatment efficiency, the monitoring must be from at least three systems ~~for approval as a level 2 or level 3 treatment system and from at least six systems for approval as a level 4 treatment system~~.

(c) remains as proposed.

(d) ~~For level 2 or level 3 treatment approval, each~~ Each wastewater treatment system must be monitored for one year. At~~, and at~~ least one wastewater treatment system must be monitored for at least two years. ~~For level 4 treatment approval, each wastewater treatment system must be monitored for one year, and at least two wastewater treatment systems must be monitored for at least two years.~~

(e) through (j) remain as proposed.

(k) All influent and effluent data collected from all installed systems that meet the climate requirements in (3)(g) and analysis requirements in (3)(i) must be submitted to the department as part of an application for approval as level 1a, level 1b, or level 2 wastewater treatment system.

(4) The data from a wastewater treatment system that is tested under the NSF International/American National Standards Institute 245, 2022 version (NSF/ANSI 245) certification, or testing by an independent third party following the NSF/ANSI 245 2022 protocols, may be used to demonstrate compliance with the requirements in (3), except that NSF/ANSI 245, or independent third party testing following the NSF/ANSI 245 2022 protocols, data may only be used to replace one-third of the systems required in (3)(b). The NSF/ANSI 245 report (or equivalent report from independent third party) and all monitoring data collected during the testing must be submitted to the department and evaluated by the department as part of its review.

(5) In response to a request for classification of a wastewater treatment system as level 1a, level 1b, or level 2, ~~level 3, or level 4 treatment,~~ the department may, after evaluating the wastewater treatment system under the criteria in this rule:

(a) through (d) remain as proposed.

(6) If a wastewater treatment system that is classified as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ is modified, and the modification may have negative effects on the amount of total nitrogen reduction, the department may require that the wastewater treatment system be re-evaluated under the criteria in this rule.

(7) If subsequent data indicate that a wastewater treatment system classified ~~as level 2, level 3, or level 4 treatment~~ under this rule is not reliable or cannot meet required nutrient reductions, the department may rescind the classification.

(8) All wastewater treatment systems classified as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ must have an operation and maintenance (O&M) contract in perpetuity for each system installed. The O&M contract will be required in the subdivision approval, or as a deed restriction if a subdivision plat approval is not required for the property. O&M must be conducted by the system manufacturer, an approved vendor, or other qualified personnel. The wastewater treatment system vendor or manufacturer must offer an O&M plan that meets the requirements of this section and the requirements in Department Circular DEQ-4. At a minimum, the O&M contract must include:

(a) an on-site inspection of all the major components of the wastewater treatment system. Inspection items must include verifying proper operation of the visual/audible alarm system required in (9) and determining whether any water treatment devices have been added, modified, or removed from the water system that discharges to the wastewater treatment system. The initial start-up/installation and each subsequent inspection must include any necessary adjustments to provide adequate oxygen concentrations to the system to account for the systems elevation. Inspections must be made according to the following schedules:

(i) through (b) remain as proposed.

(9) All wastewater treatment systems classified as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ must have the following features:

(a) and (b) remain as proposed.

~~(10) A manufacturer of a wastewater treatment system that has been previously approved for level 2 treatment may request approval from the department as a level 3 or level 4 treatment system without submission of additional information if the original level 2 approval includes a total nitrogen concentration or reduction percentage that meets the definition of level 3 or level 4 treatment in ARM 17.30.702.~~

~~(11)~~ (10) All level 1a, level 1b, or level 2~~, level 3, or level 4 treatment systems~~, regardless of approval date under this rule, must comply with the requirements in (8).

~~(12)~~ (11) An approval as level 1a, level 1b, or level 2~~, level 3, or level 4 treatment~~ under this rule does not constitute approval under Department Circulars DEQ-2 (2018) or DEQ-4 (2023) and does not constitute approval for any specific project or application of that technology.

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

General Rule Comments

COMMENT 1: The commenter requested the department re-evaluate the scientific basis for the proposed rule revisions and delay rule making.

RESPONSE 1: The scientific basis for the rules is described in the notice of proposed rulemaking and these responses. Portions of the proposed rules are necessary to implement Senate Bill (SB) 285, which directed the department to adopt criteria to determine when discharges from septic systems that are not subject to ground water discharge permit requirements result in nonsignificant changes to surface water quality. These criteria must consider nitrogen attenuation at the drainfield (absorption system) and riparian zone based on soil type and the distance from the absorption system to the end of the ground water mixing zone or the surface water as applicable. The department cannot delay this rulemaking, as suggested by the commenter, as the legislature set a deadline of July 1, 2024, for compliance with SB 285.

COMMENT 2: The commenter stated that the proposed rules are counter to the constitutional requirements of a clean and healthful environment and should be abandoned.

RESPONSE 2: For the statutory basis for the proposed rules, please see the department's response to comment 1. For the scientific basis of the proposed rules, please see the department's notice of proposed rulemaking and these responses to comments.

COMMENT 3: The commenter stated that neither the MEANSS document, which can be found on the department's website at: https://deq.mt.gov/water/Programs/eng, Department Circular DEQ-13, or the proposed rulemaking reflect any cohesive or accurate scientific framework for understanding nutrient fate and transport in shallow alluvium, nor is there any sound science documenting how the proposed rulemaking criteria is capable of proving that wastewater discharges determined nonsignificant will not, nonetheless, cause or contribute to degradation or violations of water quality standards in hydrologically connected, downgradient surface water.

RESPONSE 3: The department disagrees. SB 285 provided specific requirements for evaluating nitrogen attenuation, which the statute referred to as nitrogen credits. The department met those requirements by utilizing the existing method (Montana's Septic Trading Method) in Department Circular DEQ-13, which is referred to as the

Method for Estimating Attenuation of Nutrients from Septic Systems (MEANSS) in the department's responses. Potential methods of estimating nutrient attenuation were discussed with stakeholders during meetings with the Subdivision Advisory Task Force (SATF). The options other than MEANSS that were presented to the stakeholders included STUMOD (Geza, Lowe and McCray, 2013) and ArcNLET (Rios, et al.); however, those did not meet the specific requirements of SB 285. For nutrient reduction, SB 285 required the proposed rules to account for distance between the discharge and surface water, conditions at the drainfield (absorption system) and riparian conditions. MEANSS is the only method identified that meets the requirements of SB 285. MEANSS is documented in a validation study (DEQ, 2024) that provides numerous scientific and regulatory citations to studies supporting the criteria used in MEANSS. The development of MEANSS began in 2007 within the department to provide estimates of nutrient (nitrogen and phosphorus) migration from wastewater treatment systems to surface waters. MEANSS was developed by researching existing studies and published literature to determine the environmental conditions that supported nutrient attenuation. The department developed MEANSS as an empirical model and spent several years adjusting the nutrient attenuation values to better match measured nutrient attenuation from multiple published studies and a department modeling study as documented by the department (DEQ, 2024). MEANSS was adopted into Department Circular DEQ-13 (December 2012) and beginning in 2013 was used in U.S. Environmental Protection Agency (EPA) approved TMDL plans. In 2016, the Chesapeake Bay Onsite Wastewater Nutrient Attenuation Expert Review Panel prepared a document for EPA regarding nutrient attenuation of wastewater discharged from wastewater treatment systems (Tetra Tech, 2016). That document used similar criteria as MEANSS, which includes the soil zone beneath absorption systems and ground water zones, to estimate nitrogen reduction as wastewater migrates from the absorption system to surface water. The document also acknowledged the role riparian areas can have in nitrogen attenuation, but the authors were waiting for additional research to address the riparian zone. Additional information and citations providing scientific evidence to support MEANSS are provided in response to Comments 11, 12, 14, 15, 18, 19, 22, 26, and 27. Accounting for the nitrogen attenuation that is extensively documented in scientific literature (Geza, Lowe, and McCray, 2013; Robertson et al., 2012; McCray et al., 2010; Heatwole and McCray, 2006; Gold and Sims, 2000; Tesoriero and Voss, 1997; and Korom, 1992) will provide more accurate estimation of nitrogen loading to state waters. The department's review process will continue to evaluate the potential impacts to state waters from septic systems and protect state waters from degradation. Please also see the response to Comment 1.

COMMENT 4: The commenter requested that the department's "How to Perform a Nondegradation Analysis for Subsurface Wastewater Treatment Systems (SWTS) under the Subdivision Review Process" (DEQ, 2015) be updated and converted into a department circular.

RESPONSE 4: This comment is outside the scope of this rulemaking, but the department agrees and is preparing to begin stakeholder meetings this year to convert the referenced document into a department circular.

ARM 17.30.508(2)

COMMENT 5: The commenter wants the department to clarify the term "zone of influence" regarding ground water wells that is in the current rule because it is confusing with a similar term "well isolation zone" that is used in subdivision and public water supply rules.

RESPONSE 5: This comment is outside the scope of this rulemaking because that term was not proposed to be changed. However, the discrepancy in the two terms is noted and will be considered in future rulemaking.

COMMENT 6: The commenter supports the proposed rule revision.

RESPONSE 6: The department appreciates the comment.

ARM 17.30.517(1)(b)

COMMENT 7: The commenter stated the term "drainfield" should not be replaced by "absorption system" in this rule section and others in the proposed rules. The commenter stated that "absorption" implies that pollutants in wastewater are absorbed by ground water and will not improve public understanding of the proposed rules.

RESPONSE 7: The department does not agree that the term "absorption system" implies any degree of pollutant reduction. "Absorption system" is defined in Department Circular DEQ-4. That definition does not state or imply that pollutants are absorbed or attenuated. Providing common terms in circulars and rules improves the public's ability to understand regulations. Therefore, the department has left the rule as proposed.

ARM 17.30.517(1)(d)(vi)

COMMENT 8: Two commenters oppose the addition of this new rule section because they believe the method provided for evaluating attenuation of nutrients (nitrogen) after discharging from a wastewater treatment system is not peer-reviewed, unscientific, based on inaccurate assumptions, and will result in degradation of state waters.

RESPONSE 8: Please see response to Comment 3.

COMMENT 9: The commenter stated the use of MEANSS will mischaracterize high-risk sites and, thus, allow the use of conventional wastewater treatment instead of the advanced treatment that is necessary to protect the environment.

RESPONSE 9: Please see response to Comments 11, 12, 14, 15, 16, 18, 19, 22 and 26.

COMMENT 10: The commenter stated neither the United States Geological Survey (USGS) or EPA have approved MEANSS or its suitability or accuracy.

RESPONSE 10: The USGS conducted both an informal and a colleague review of the MEANSS validation study. Both reviews provided editorial and technical comments to clarify issues, and suggestions for adding more information on issues such as uncertainty and soil carbon concentrations that were addressed by the department (DEQ, 2024). The proposed rule applies to discharges not regulated by federal authority under the Clean Water Act. However, the EPA has reviewed several documents and permits issued by the department that use the DEQ-13 Septic Trading Method. Those include six EPA-approved total maximum daily load (TMDL) documents that used MEANSS to estimate the portion of the total in-stream nutrient load attributable to septic systems, and three Montana Pollutant Discharge Elimination System (MPDES) permits where the EPA did not object to those permits that used MEANSS to estimate nitrogen trading credits pursuant to DEQ-13. These documents are available upon request. As described in response to Comment 3, MEANSS is based on years of research and validation.

COMMENT 11: The commenter stated MEANSS assumes fully nitrified effluent is discharged to the environment from wastewater treatment systems. The commenter stated the department has never credited full nitrification in any prior review approach.

RESPONSE 11: The current department nondegradation guideline for wastewater treatment systems that do not require a MPDES or MGWPCS permit (DEQ, 2015) does assume complete nitrification of the effluent. Complete nitrification of wastewater within or beneath the absorption system is typical of properly operating wastewater treatment systems (Lowe et al., 2009; Heatwole and McCray, 2006). In addition, estimations of complete denitrification in the absorption system are used in other studies evaluating attenuation of nitrogen discharged from wastewater treatment systems (Tetra Tech, 2016; Geza, Lowe, and McCray 2013; Toor et al., 2011).

COMMENT 12: Two commenters stated MEANSS uses the following invalid assumptions and therefore is inadequate to estimate nitrogen attenuation: (1) The effluent is fully nitrified which is incorrect because most septic systems including those designed to reduce nitrogen do not nitrify effluent; (2) MEANSS does not account for soil pH and changes in soil pH; (3) MEANSS does not account for soil and aquifer alkalinity that may be depleted over time by continued wastewater disposal; and (4) MEANSS does not account for uneven distribution of wastewater which occurs in absorption systems that do not provide a reliable method for even distribution of the effluent and is one of the most common causes of premature absorption system failure.

RESPONSE 12: With regard to whether wastewater is fully nitrified, please see response to Comment 11. In response to comments (2) and (3), regarding accounting for soil pH, changes in soil pH, and accounting for alkalinity of the aquifer, MEANNS is an empirical model and does not provide the specific mechanics of nitrogen attenuation like a mechanistic model would (Geza, Lowe, and McCray, 2013). Rather, MEANSS provides estimations of nitrogen attenuation using correlations to measured rates of nitrogen attenuation (DEQ, 2024). If soil pH or alkalinity levels are a control on denitrification rates those effects are accounted for in the measured denitrification rates in the sites used to validate MEANSS. Therefore, MEANSS intrinsically accounts for soil pH and alkalinity levels (DEQ, 2024). In response to comment (4), regarding uneven distribution of wastewater in the absorption system, the department agrees that uneven distribution of wastewater can reduce treatment efficiency of multiple wastewater constituents. Gravity flow application of wastewater can provide even distribution of the wastewater but is more prone to uneven distribution due to "trickle flow" (Department Circular DEQ-4, section 1.1.2). Pressure distribution is more effective at providing reliable even distribution (Department Circular DEQ-4, section 1.1.2). Proper and even effluent distribution provides improved nitrogen attenuation through improved aeration for nitrification, improved soil distribution, and improved ground water distribution. Since pressure distribution will improve the accuracy of MEANSS by ensuring the wastewater is properly applied to the soils, which provides the best conditions for nitrogen attenuation after discharging from the absorption system, the department has amended the rule in response to this comment to require that the use of MEANSS to estimate nitrogen attenuation only be used for systems with pressure distribution that comply with the requirements in Department Circular DEQ-4.

COMMENT 13: The commenter stated the MEANSS model does not account for variability of multiple factors that affect the rate of nitrogen attenuation including oxygen concentrations, changes in soil pH, lack of carbon content in many soils (including clay), or temperature.

RESPONSE 13: The department disagrees that MEANSS does not account for the factors described in the comment. Please see responses to Comments 12, 18, and 19.

COMMENT 14: The commenter stated that use of the Natural Resources Conservation Service (NRCS) hydrologic soil group (HSG), which is relevant to runoff, percolation potential, and soil saturation is not relevant to its use in the proposed rules to estimate nitrogen attenuation.

RESPONSE 14: MEANSS uses the soil HSG because it is correlated to soil texture (Mueller et al., 1995). Soil texture has been correlated to nitrate attenuation and specifically denitrification (Tetra Tech, 2016; Geza et al., 2013; Tucholke et al., 2007; Tesoriero and Voss, 1997). The department considered using soil texture instead of HSG but determined that the use of HSG from the NRCS Soil Survey Geographic Database (SSURGO) was a more efficient and consistent method to

represent a soil profile for the purposes of applying MEANSS. This is because there is typically more than one soil texture in soil profiles which makes it more difficult to assign a representative soil texture for use in MEANSS.

COMMENT 15: The commenter stated MEANSS assumes that clay in soil is equivalent to organic material, which is incorrect because clay is not an organic material and therefore does not provide the necessary organic carbon source for denitrification.

RESPONSE 15: MEANSS does not assume that clay particles are equivalent to organic carbon (DEQ, 2024). MEANSS uses the soil HSG rating (please also see response to Comment 14) to estimate the relative percentage of clay in the soil. The HSG rating is dependent on soil type and, particularly, the amount of clay in the soil (NRCS, 2007). The relative amount of soil organic carbon has been correlated to the amount of silt and clay in soils (Brady, 1990, and Magdoff and Van Es, 2021). MEANSS uses that relationship to estimate the overall potential of a soil (including the organic carbon content) to denitrify wastewater effluent; soil texture has been used similarly in the Chesapeake Bay watershed to estimate nitrogen attenuation of wastewater effluent (Tetra Tech, 2016).

COMMENT 16: The commenter stated field studies show that natural denitrification rates can range over three orders of magnitude. Therefore, the results from MEANSS could be incorrect by more than three orders of magnitude, which could result in degradation of state waters.

RESPONSE 16: The department disagrees that MEANSS will produce errors that are over three orders of magnitude. All hydrological parameters have uncertainty, and MEANSS uses site-specific information to greatly reduce the uncertainty associated with nitrogen attenuation (Tucholke et al., 2007; McCray et al., 2005). Uncertainty of parameter estimation for mixing zones is not unique to estimating nitrogen attenuation. *See, e.g.*, ARM 17.30.505(1)(e).

COMMENT 17: The commenter stated MEANSS incorrectly uses the soil HSG category to determine organic carbon content. A soils HSG category does not provide organic carbon content of the soil.

RESPONSE 17: The department disagrees that HSG is used incorrectly. Please see response to Comments 14 and 15.

COMMENT 18: The commenter stated MEANSS provides for denitrification in ground water even though aquifers do not contain organic carbon. The commenter stated if an aquifer did contain sufficient organic carbon to allow denitrification it would be unsuitable for human consumption. Therefore, the commenter stated, MEANSS does not accurately estimate denitrification in ground water.

RESPONSE 18: Potable ground water commonly contains organic carbon at low levels (McDonough et al., 2020; Regan, Hynds and Flynn, 2017; Harden and Spruill,

2008). The concentrations of organic carbon may be low in some ground waters, but based on soil studies, denitrification occurs even at low levels of organic carbon (Heatwole and McCray, 2006). The aquifer materials may also contain organic carbon that is available for denitrification reactions (DEQ, 2008; Korom; 1992). Denitrification does occur in ground water which is consistent with published literature (Regan, Hynds and Flynn, 2017; Tetra Tech, 2016; Korom, 1992).

COMMENT 19: The commenter stated MEANSS provides for denitrification in ground water even though the proper oxygen conditions do not exist in ground water to support denitrification. The commenter stated that data from Boer (2002) shows that out of 116 ground water wells sampled, only five wells had dissolved oxygen concentrations less than 1 mg/L and no wells were below 0.5 mg/L, which is defined by the USGS as anoxic conditions. The commenter stated the data from Boer (2002) also shows ground water temperatures below the temperature required for denitrification. The commenter stated that based on that information, MEANSS does not accurately estimate denitrification in ground water.

RESPONSE 19: Regarding dissolved oxygen, bulk measurements of dissolved oxygen are not always representative of dissolved oxygen concentrations that are low enough to support denitrification. For example, microsites have been identified as environments that support denitrification in areas where the bulk dissolved oxygen is not conducive to denitrification (Geza, Lowe, and McCray, 2013; Gold and Sims, 2000; Jacinthe et al., 1998; Parkin, 1987; Umari et al., 1993). That demonstrates the higher dissolved oxygen concentrations in the study referenced (Boer, 2002) in this comment do not preclude denitrification in ground water.

Regarding temperature, the MEANSS validation study (DEQ, 2024) discusses the suitable temperature for denitrification as 50°F or higher, but it also recognizes that denitrification still occurs at lower rates at lower temperatures. Studies confirm that denitrification occurs at temperatures below 50°F (Harrison et. al., 2011; Pfenning and McMahon, 1996; and Dawson and Murphy, 1972). These three studies showed denitrification occurs at temperatures as low as 43.3, 39.2, and 41°F. A mechanistic model also provides that denitrification occurs at 40.1°F in frigid/cryic temperature zones (McCray et al., 2010; Geza, Lowe, and McCray, 2013). The ground water temperature data in Boer (2002) referenced in this comment shows that out of 152 ground water samples, nearly half–73–were at or above 50°F. The remaining 79 samples were above 39.9°F, which is above the lowest temperatures identified in the four studies listed above where denitrification can occur. This information demonstrates that denitrification can occur in ground water at the study location in Montana (Boer, 2002) and other locations with ground water temperatures below 50 °F. The MEANSS validation study (DEQ, 2024) primarily relied on studies in cold-weather climates (including sites in Montana) as validation sites to ensure the results are applicable to Montana's climate.

COMMENT 20: The commenter stated that one of the citations (Rosen, Kropf, and Thomas, 2006) used for the MEANSS validation study (DEQ, 2024), proposed that any nitrogen attenuation was complete within six feet of the absorption system, and

no additional nitrogen attenuation occurred past that depth in the aquifer (Rosen, Kropf, and Thomas, 2006). The commenter stated that the assumptions in that citation are contrary to MEANSS, which estimates nitrogen attenuation in ground water, and that aquifers are not suitable environments for denitrification.

RESPONSE 20: The study referenced in the comments (Rosen, Kropf, and Thomas, 2006) used lysimeters placed above the ground water table (i.e., above the aquifer) to study nitrogen delivery from wastewater treatment systems to the soils and eventually to the aquifer beneath each treatment system in the study. The study only focused on the fate of nitrogen in the soils beneath the absorption systems– using lysimeters to determine the amount of nitrogen attenuation in the soils and estimating that the remaining nitrogen measured in the lysimeters would then migrate to the aquifer. The study did not investigate the migration or fate of nitrogen beyond the lysimeters, including the aquifer, and did not provide any data or conclusions regarding the attenuation of nitrogen migrating through the aquifer. Because this study only evaluated the nitrogen fate in the soils beneath the absorption system, it was used to validate only the portion of MEANSS that estimates nitrogen removal in those same soils (DEQ, 2024). The amount of nitrogen attenuation in the ground water was not estimated in the study nor compared to MEANSS estimates of nitrogen attenuation in ground water. Additional information on the nitrate attenuation in ground water is provided in the MEANSS validation study (DEQ, 2024) and in response to Comments 18, 19, and 27.

COMMENT 21: The commenter stated a USGS study (Hydrology and Water Chemistry of Shallow Aquifers Along the Upper Clark Fork, Western Montana by David A. Nimick, U.S. Geological Survey Water-Resources Investigations Report 93-4052) shows that vast majority of ground water wells sampled had dissolved oxygen concentrations above 2 mg/L, which is greater than the USGS definition for anoxic conditions, 0.5 mg/L. The commenter stated that MEANSS acknowledges denitrification requires an anoxic environment, which is not commonly present in the referenced study results.

RESPONSE 21: Please see the response to Comment 19.

COMMENT 22: The commenter stated residential wastewater systems routinely produce water in excess of what the department defines as residential strength wastewater (see proposed ARM 17.30.718(3)(c)). The commenter stated using the department's definition of residential strength wastewater further undermines the reliability of the MEANSS model because the model uses those underestimated effluent concentrations.

RESPONSE 22: Existing literature is consistent with the department's estimation of average total nitrogen concentrations in raw wastewater (McCray et. al., 2005; Lowe et. al., 2007; Toor, Lusk and Obreza, 2011; Geza, Lowe, and McCray, 2013; EPA, 2002). Based on the available information cited, the raw wastewater total nitrogen concentration of 60 mg/L is an accurate value to assess wastewater systems impacts to ground waters and surface waters.

COMMENT 23: The commenter stated the department has not provided documentation of the expertise, education, or experience of the MEANSS developer as it relates to nitrification/denitrification in unsaturated and/or saturated porous media, or in the area of vadose/denitrification zone hydrology.

RESPONSE 23: The scientific bases of the proposed rules are set out in the notice of proposed rulemaking and these responses, especially in response to Comments 3, 11, 12, 14, 15, 18, 19, 22, 26, and 27.

COMMENT 24: The commenter stated that despite requests from the commenter, the department has not provided corroboration, peer review, or expert literature citations supporting the MEANSS model and its outcomes.

RESPONSE 24: The department conducted four meetings in 2023 with stakeholders, which addressed their comments, and comments from the USGS, on draft versions of the MEANSS validation study (DEQ, 2024). The MEANSS validation study (DEQ, 2024) includes over 60 references, which provide the literature corroboration requested. Please also see responses to Comments 3 and 10. The modeling used to demonstrate reduction of nitrogen in the vadose zone and saturated zone uses a model that is the basis for Montana's Septic Trading Method in Appendix A of Department Circular DEQ-13 (2012), which has been reviewed by stakeholders and the public.

COMMENT 25: The commenter stated the MEANSS model has not been reviewed or evaluated by independent experts to ensure it is a reliable and accurate method to be used for evaluating environmental impacts.

RESPONSE 25: Please see responses to Comments 3, 10, and 24.

COMMENT 26: The commenter stated a separate department document (Technical Guidance General Field Data Needs for Fate and Transport Modeling (September 2008) Montana Department of Environmental Quality Remediation Division Site Response Section) does not include using the HSG (as is used in MEANSS) as a method to determine organic carbon content in soils.

RESPONSE 26: MEANSS utilizes HSG as way to estimate the relative carbon content in soils with respect to supporting denitrification. The method used in MEANSS to determine relative soil organic carbon content is appropriate for estimating nutrient reductions as discussed in more detail in response to Comments 14 and 15. The DEQ Remediation Division Guidance Document for Fate and Transport Modeling was developed for a different application related to remediation of contaminated soil and ground water, not for estimating nitrogen attenuation in wastewater discharged from wastewater treatment systems.

COMMENT 27: The commenter stated that based on the lack of a suitable environment (as related to temperature, organic carbon source, and oxygenation) for

denitrification in ground water, MEANSS overestimates nitrogen attenuation in ground water because it predicts there is nitrogen attenuation in ground water.

RESPONSE 27: The department disagrees that aquifers and ground water do not provide a suitable environment for denitrification. MEANSS does not overpredict denitrification simply because it estimates there is denitrification in that environment. Ground water is a suitable environment for nitrogen attenuation as discussed in response to Comments 18 and 19. It should also be noted that as an empirical model MEANNS does not provide the specific mechanics of nitrogen attenuation. Rather, it provides estimations of nitrogen attenuation using correlations to measured rates of nitrogen attenuation (DEQ, 2024). The primary method of nitrogen attenuation is often assumed to be heterotrophic denitrification, but other forms of nitrogen reduction that require different conditions than denitrification may also be contributing to measured nitrogen reduction. For example, anaerobic ammonium oxidation (anammox) is one process that may contribute to nitrogen attenuation of wastewater effluent (Robertson et al., 2012).

COMMENT 28: The commenter stated that members serving on the non-degradation work group were generally silent with regard to the scientific validity of paper at the meetings, other than to express surprise over the fact that MEANSS had not been subject to a bona fide third-party peer review, as most members naturally had assumed based on the manner in which MEANSS was presented as an established, credible and fully vetted analysis model. The commenter stated that he expressed his concerns to the group because the results presented contradict well established and documented mechanisms of nitrification and denitrification. The commenter stated that he assumes that consultants in the work group were concerned with souring their relationship with, or perhaps even experiencing subtle retaliation from, the department, if they openly questioned the paper the department was so assertively trying to weave into the regulations.

RESPONSE 28: The scientific basis for the MEANSS model is discussed in more detail in response to Comments 3, 11, 12, 14, 15, 18, 19, 22, 26, and 27. The remainder of this this comment is outside the scope of this rulemaking.

COMMENT 29: The commenter stated the department did not provide electronic copies of all references used in the draft MEANSS validation study (DEQ, 2024) when requested. The commenter stated the department also did not provide more precise citations so the commenter could better review the information.

RESPONSE 29: DEQ provided the commenter with the reference materials in September 2023, along with standard scientific citations to the cited reference materials. The remainder of this comment is outside the scope of this proposed rulemaking.

COMMENT 30: The commenter stated support for the department modifying its review approach to avoid imposition of unnecessary treatment standards to low-risk sites. However, the commenter believes that the MEANSS model will, in certain

circumstances, yield unreliable or otherwise indefensible results which could increase the risk of site mischaracterization on both sides (low risk identified as high risk and high risk identified as low risk). The commenter stated at minimum, this is an issue that requires further discussion and expert input, and should not be adopted as proposed under the current rulemaking notice.

RESPONSE 30: The department disagrees with the comment that use of MEANSS will result in unreliable or indefensible results. Please see response to Comments 1, 3, 11, 12, 14, 15, 16, 18, 19, 22, 26, and 27.

COMMENT 31: The commenter requested the proposed rule should limit credits for natural attenuation to areas that are not currently impaired by nitrogen pollution.

RESPONSE 31: The department does not have pre-defined ground water zones that require additional protections as requested by the comment, but rather addresses elevated ground water nitrate concentrations on a site-specific basis. Existing statutory and regulatory requirements provide additional restrictions for new wastewater discharges when the site-specific ground water nitrate (as N) concentrations exceed 5 mg/L and further restrictions when it exceeds 7.5 mg/L. The protections include requiring level 2 wastewater treatment systems in many situations when the site-specific ground water nitrate (as N) concentrations are between 5 and 7.5 mg/L. When site-specific groundwater nitrate (as N) concentrations exceed 7.5 mg/L, the wastewater treatment system must treat nitrogen to a concentration that does not result in an increase at the end of the ground water mixing zone above the existing ground water nitrate (as N) concentration. For surface waters the department has a total maximum daily load (TMDL) program that separately addresses nutrient impairments of surface water.

ARM 17.30.517(1)(d)(ix)(A), (B), and (C)

COMMENT 32: The commenter stated there is no scientific basis for allowing up to a fivefold increase in the length of standard mixing zones in ground water in (A), including how it protects beneficial uses, how it exacerbates cumulative pollutant loading to surface waters, and, thus, can cause degradation with other pollution sources.

RESPONSE 32: As discussed in the notice of proposed rulemaking, the amendments to ARM 17.30.517 are necessary to provide scientific consistency for mixing zone lengths by evaluating the use and wastewater flow instead of factors like lot size, subdivision size, and type of water system. The department anticipates that the rule as proposed will lead to shorter mixing zones because unnecessarily long standard ground water mixing zones reduce the area available to place drinking water wells under the setbacks in ARM 17.36.323 and the prohibition, in most cases, that ground water mixing zones remain within the lot boundaries in ARM 17.36.122. The rule amendments will not diminish any existing protections for ground water or surface water because the mixing zone length does not affect the cumulative effects

analysis of multiple wastewater systems, nor does it affect water quality limits in either ground water or surface water.

COMMENT 33: The commenter stated the department cannot delegate the authority to subdivision applicants to determine the length of a standard ground water mixing zone. The commenter stated this allows the applicant to select the absorption system size with little criteria for the department to deny such requests and allows exponentially larger absorption systems. The commenter requested that instead of the proposed revisions the department should add specific criteria for each mixing zone length.

RESPONSE 33: The department disagrees with the commenter's characterization of the proposed rule. The proposed rule allows subdivision applicants to propose shorter mixing zones based on site-specific conditions rather than the one-size-fits-all standard mixing zone in the existing rule. The proposed rule makes no changes to the department's ability to review or deny a mixing zone. The department has adopted the rule as proposed.

COMMENT 34: The commenter stated the use of 800 gallons per day (gpd) as a discharge limit in (B) and (C) is arbitrary and capricious and lacks any scientific basis.

RESPONSE 34: The department disagrees. The limit applies to multiple-user, commercial, and public wastewater systems and is based on the equivalent design flow for a typical shared wastewater system (consisting of two five-bedroom homes) in Department Circular DEQ-4 (section 3.1.2.A). Because a shared wastewater system with design flows of 800 gpd or less are provided a 100- to 500-foot-long standard ground water mixing zone in (A), it is consistent to provide the same standard ground water mixing zone length in (C) for other discharges with the same discharge rate and similar residential strength wastewater. When the design flow exceeds 800 gpd, the standard ground water mixing zone between 200- and 500-feet long (in (B)) only applies to multiple-user wastewater systems, not to commercial or public systems. Commercial and public systems with design flows over 800 gpd maintain the same 500-foot-long standard ground water mixing zone length (in (D)) consistent with the current rule. The minimum standard ground water mixing zone length in (B) for multiple-user wastewater systems is increased to 200 feet to account for the higher design discharge rates and thus provide additional setback distances to nearby drinking water wells for unregulated parameters that may potentially be discharged or pathogenic organisms that are discharged from wastewater systems.

COMMENT 35: The commenter stated the proposed change to (A) to allow mixing zones as short as 100 feet for systems that currently require longer lengths is a good change to the proposed rule.

RESPONSE 35: The department appreciates the comment.

ARM 17.30.517(1)(d)(x)

COMMENT 36: The commenter noted that no changes were proposed to the ground water monitoring requirements of ARM 17.30.517(1)(d), so this comment is outside the scope of this rulemaking. However, the commenter stated the department reviews proposed systems by conducting a detailed site-specific analysis during its review to ensure that the discharge does not cause degradation. The commenter suggested that, as part of that review, the department maintains authority to require monitoring at the downgradient boundary of the mixing zone if necessary based on the site-specific conditions.

RESPONSE 36: No substantive changes to ground water monitoring were proposed in the initial rule notice. The department maintains authority to require monitoring at the downgradient boundary of a mixing zone based on site conditions.

ARM 17.30.517(2)

COMMENT 37: The commenter opposes the incorporation by reference of Department Circular DEQ-13 because the Septic Trading Method in that circular (which is referenced in proposed ARM 17.30.517(1)(d)(vi)) is not a working model that only provides gross estimates for alleged denitrification.

RESPONSE 37: The department disagrees with the comment. The scientific basis for the rule is explained in the notice of proposed rulemaking and the responses to Comments 3, 11, 12, 14, 15, 16, 18, 19, 22, 26, and 27. The department also disagrees that MEANSS is not a working model; as described in response to Comment 10, the EPA has approved its use in six TMDLs and did not object to its use, pursuant to 40 CFR 123.44, in three MPDES permits issued by the department.

COMMENT 38: The commenter supports the incorporation of Department Circular DEQ-13 and use of the septic trading method (MEANSS) in that circular. The commenter requests that the department provide guidance on how to use this method.

RESPONSE 38: The department intends to provide training to assist stakeholders and reviewers to consistently apply the nutrient attenuation method in Department Circular DEQ-13 as incorporated by reference in proposed amendments to ARM 17.30.517.

ARM 17.30.702(9)

COMMENT 39: The commenter stated that this section of the proposed rule, which identifies the maximum nitrogen effluent concentration, was removed. The commenter suggested that it should be added back in to maintain consistency to the requirements for level 3 and 4 wastewater treatment systems.

RESPONSE 39: Subsection (9)(b) was not removed from the proposed rule. Subsection (9)(b) is not printed in the proposed rule notice because it is not being changed from the existing rule. The current level 2 wastewater treatment system definition does have a maximum nitrogen effluent concentration requirement. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 40: The commenter requested that the 60% reduction required for level 2 wastewater treatment systems should be changed in the proposed rules to 50% and to add NSF/ANSI 245 or NSF/ANSI 245 equivalents for verification of level 2 wastewater treatment systems. The commenter stated that for level 3 and 4 wastewater treatment systems the proposed rules should require NSF/ANSI 245 approval but also include field verification requirements to further define treatment levels 3 and 4 wastewater treatment systems.

RESPONSE 40: The use of NSF International/American National Standards Institute 245 (NSF/ANSI 245) testing results is addressed in proposed ARM 17.30.718(4). That rule section states "data" from NSF/ANSI 245 testing can be used to demonstrate whether a system meets the 60% removal requirement in ARM 17.30.702(9)(a). Meeting the NSF/ANSI 245 criteria for 50% removal would not meet Montana's requirement for 60% removal. Therefore, the proposed rule has not been amended as requested.

For level 3 and level 4 wastewater treatment systems, the proposed rule has been modified to remove reference to level 3 and level 4 wastewater treatment systems. Please also see the response to Comment 42.

With regard to allowing testing equivalent to NSF/ANSI 245, please see the response to Comment 89.

ARM 17.30.702(11)

COMMENT 41: The commenter stated very few systems can achieve level 4 wastewater treatment and that long-term data does not exist for those systems. The commenter requested that the department should ensure that the data set is statistically significant if the agency went forward with the level 4 classification.

RESPONSE 41: The proposed rule has been modified to remove reference to level 3 and level 4 wastewater treatment systems. Please also see the response to Comment 42.

ARM 17.30.702(9), (10), and (11)

COMMENT 42: The commenter stated that the discrete percentages and values for nitrogen removal defined in level 2, level 3, and level 4 wastewater treatment systems should be removed and that the treatment level should be changed to a continuum.

RESPONSE 42: Based on this comment, the department will revisit the proposed changes to the existing classification system and therefore will remove all references to level 3 and level 4 wastewater treatment systems in the proposed rule and proposed ARM 17.30.715, 17.30.716, and 17.30.718. Subsequently, the level 1a and level 1b wastewater treatment systems in the existing rules will not be removed as proposed as part of this rulemaking.

COMMENT 43: The commenter requested the department renumber level 2, 3, and 4 wastewater treatment systems as levels A, B, and C because starting the nomenclature at level 2 is not good rulemaking.

RESPONSE 43: The "level two" designation is included in 75-5-301(5)(d), MCA, so the department has retained that same designation to be consistent with statute. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 44: The commenter opposes using an effluent concentration in the definitions of level 2, 3, and 4 wastewater treatment systems because influent concentrations vary frequently. The commenter stated an acceptable effluent concentration may be due to dilute influent and not due to adequate treatment; therefore, mass loading or percent reduction are the best indicators of adequate performance.

RESPONSE 44: While percent reduction is generally considered a better indication of treatment performance, it is not typically feasible to measure it from an operating (field-verified) system. Due to the mixing of raw and partially treated wastewater in level 1a, 1b, and 2 wastewater treatment systems, collecting representative influent data is typically not feasible without shutting the system down for an extended period, which is not normally practical for field-verified sites. To maintain field-verified sites in the proposed rules, the definitions of level 1a, 1b, and 2 wastewater treatment systems must, for practical purposes as described above, include effluent total nitrogen concentration as one of the available criteria to demonstrate adequate treatment. To address the variation of influent total nitrogen concentration the proposed rules (ARM 17.30.718(3)(c)) requires each field verification site to provide the total nitrogen concentration from at least one representative raw wastewater sample. The proposed rules require the sample(s) must have a total nitrogen concentration (or average concentration for multiple samples) greater than 40 mg/L. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

ARM 17.30.715

COMMENT 45: The commenter objects to the expansion of new categorical exclusions in the proposed rule for entire types of subsurface wastewater pollution because these new exclusions are not narrowly tailored to a compelling state

interest, congruent with unambiguous statutory imperatives, nor defensible based on substantial evidence.

RESPONSE 45: The proposed rule amendments to ARM 17.30.715 do not expand or create categorical exclusions. The statutory and scientific bases for the rules are set forth in the notice of proposed rulemaking and in these responses to comments. Please also see the department's responses to Comments 1, 51, and 55.

COMMENT 46: The new nonsignificant categories would not be subject to public participation requirements. The commenter references generally and specifically that DEQ is required by the Public Participation in Government Act and the imperatives of the Montana Constitution to afford the public both knowledge of its decision-making, and an opportunity to provide meaningful comment in that decision-making process before a decision is rendered.

RESPONSE 46: For the statutory basis for the department's rulemaking, please see SB 285 and the department's response to Comment 1. The proposed rule does not alter any obligation for public participation that is otherwise established by statute or the Montana Constitution.

ARM 17.30.715(1)(g)

COMMENT 47: The commenter opposes the proposed deletion of a portion of this rule section because the department provides no explanation for its removal. The commenter stated the existing criteria should not be removed from rule without suitable replacement criterion.

RESPONSE 47: The basis for the proposed deletion of the rule text was discussed in the notice of proposed rulemaking on pages 368 and 369 of MAR Notice No. 17-439. SB 358 (2021 Montana legislature) required the repeal of DEQ-12A. The rule at (1)(g) applies to groundwater discharges from septic systems that do not require a MPDES or a MGWPCS permit. The existing rule provides two criteria for applicants to demonstrate when such discharges will result in nonsignificant changes to existing water quality. The first criterion uses trigger values in Department Circular DEQ-7, which remains in the proposed rule. The second criterion (which is deleted in the proposed rule) uses a percentage of the nutrient standard; that nutrient standard was included in DEQ-12A, which is being repealed pursuant to SB 358. By removing the second criterion, the proposed rule is more protective of state waters because the activities described above have to meet the existing trigger value criteria to be considered nonsignificant, without the additional option to use the second criterion if the trigger value indicates an activity will cause degradation.

COMMENT 48: The commenter stated the revised rule would require exceedance of trigger-value criteria in Department Circular DEQ-7 to occur before determining a subsurface wastewater discharge "significant," which allows potential degradation to occur before any meaningful permitting or regulatory review.

RESPONSE 48: The proposed rule does not change the current rule regarding the trigger values in DEQ-7. The proposed rule is actually more protective than the current rule, which included a second criteria to be met if the trigger value in DEQ-7 is exceeded. Please also see the response to Comment 47. The remaining DEQ-7 trigger value criterion in (1)(g) protects state waters from degradation by setting a limit below the standard.

ARM 17.30.715(4)

COMMENT 49: The commenter requested the department begin discussions with stakeholders regarding evaluating surface water quality impacts to irrigation ditches under the proposed rule. Assessing impacts to irrigation ditches is not necessary because all irrigation ditches are probably losing water to ground water and cannot be physically impacted by wastewater treatment systems.

RESPONSE 49: State waters are defined in 75-5-103, MCA, and include irrigation and drainage systems. While this comment is outside the scope of this rulemaking, the department notes that it intends on holding stakeholder meetings in the coming year to begin work on a new department circular regarding nondegradation review for subdivision applications where this topic could be explored as discussed above in the response to Comment 4.

COMMENT 50: The commenter stated ARM 17.30.715(1)(g) was not included in the proposed rule notice.

RESPONSE 50: ARM 17.30.715(1)(g) was included in the proposed rule notice. Subsection (1)(g) is on page 367 of the 2024 Montana Administrative Register.

ARM 17.30.715(4)(a)

COMMENT 51: The commenter opposes this new rule section because the commenter believes there is a lack of scientific basis for the proposed criteria, including the 1/4-mile and 1/2-mile distances to surface water, soil type, mixing, and comparative elevation of the discharge and downgradient state surface water within 1/2 mile of the absorption system. The commenter stated the proposed rule fails to provide peer-reviewed evidence that the proposed rule requirements will not cause an exceedance of standards in hydrologically connected, downgradient surface water and is thus arbitrary and capricious.

RESPONSE 51: As discussed in the notice of rulemaking, the criteria involving the 1/4- and 1/2-mile distances, soil type, mixing, nitrogen attenuation, distance between discharges and state surface water, and the comparative elevation of the discharge and downgradient state surface water are all criteria that the department is required to implement in the proposed rules under the statutory requirements of SB 285. Please also see the department's response to Comment 1. The distances between the proposed discharges and surface waters are used in the proposed rule to evaluate nonsignificant impacts and provide protection of state surface waters using

relative time of travel between the absorption systems and state surface waters. Increased distance between absorption systems and surface waters is correlated to additional travel time and thus increased protection. For absorption systems that are greater than 1/4 mile but less than 1/2 mile from state surface water, the time of travel may be insufficient to protect state surface waters without additional analysis of site soil conditions. The soil conditions used in the proposed rule include wastewater application rate (which is directly related to soil texture in Department Circular DEQ-4); depth of available soil (related to the limiting layer); and soil texture modifiers (extremely cobbly, stony, or bouldery), which affects the ability of soil to effectively treat wastewater. If these site-specific soil conditions are insufficient to protect state waters, the trigger value analysis described in ARM 17.30.715(1)(g) is required. For systems less than 1/4 mile from state surface waters, the time of travel is considered insufficient regardless of the site soil texture and soil conditions, and the analysis in ARM 17.30.715(1)(g) is required. The department has used similar criteria for determining impacts to state surface waters since 2015 in reviewing nondegradation applications for systems not required to obtain an MPDES or MGWPCS permit (DEQ, 2015). Using time of travel is accepted for assessing ground water vulnerability (Focazio et al., 2002), assessing surface water vulnerability (River Design Group, 2022), and assessing vulnerability of drinking water sources (DEQ, PWS-6). EPA has also recognized distance as a factor in applying trading credits due to the additional potential for natural attenuation as the distance between the source and surface water increases (USEPA, 2009). As for elevation, the proposed rule limits the analysis of water quality impacts to state surface waters that are equal to or lower in elevation than the wastewater system absorption trench. Such analyses are unnecessary because wastewater discharged to the ground water at lower elevation than a surface water cannot impact the surface water.

ARM 17.30.715(4)(b)

COMMENT 52: The commenter stated the proposed rule lacks any scientific basis for determining wastewater disposal systems located less than 1/2 mile from a state surface water, or systems with an absorption trench lower in elevation than all downgradient surface water within 1/2 mile of the system, will not cause or contribute to violations of water quality standards or cause degradation in hydrologically connected surface waters.

RESPONSE 52: Please see the response to Comment 51.

ARM 17.30.715(4)(c)

COMMENT 53: The commenter stated the proposed rule does not provide a scientific basis for the methods used to measure distance to surface water.

RESPONSE 53: The proposed rule uses two methods to measure distance to surface water, which are based on established physical properties of ground water or based on the most conservative distance to protect state waters. The first is

based on advection and the measured ground water flow direction (hydraulic gradient) at sites where the ground water flow direction is known from site-specific data. This is the best method to determine where the wastewater will enter state surface waters. Wastewater discharged to ground water will follow the ground water flow direction via advection (Fetter, 1994). The wastewater will also be affected by dispersion (Fetter, 1994), which is accounted for in the proposed rule by including the 5 degrees expansion of the ground water effluent plume pursuant to current rule, ARM 17.30.517(1)(d)(iii)(B). The second method is provided as an alternative to the first method in sites where the hydraulic gradient is not measured. Without that hydraulic gradient data, the most conservative and environmentally protective hydraulic gradient is assumed for the direction and distance to ground water (except that the receiving state surface water cannot be higher in elevation than the bottom of the absorption system per proposed ARM 17.30.715(4)(b). This method provides an alternative to either finding existing wells to monitor or installing new wells to measure the hydraulic gradient, but due to the conservative assumptions provides increased protection of state surface waters compared to the first method. These two methods are the same methods currently used by the department (DEQ, 2015).

ARM 17.30.715(4)(d)

COMMENT 54: The commenter stated the metrics proposed for determining dilution and nitrogen attenuation in the proposed rule are highly specious.

RESPONSE 54: The metrics for nitrate attenuation are well documented and validated in the MEANSS validation study (DEQ, 2024). Please see also the responses to Comments 3, 11, 12, 14, 15, 18, 19, 22, 26, and 27. The metrics for dilution are general requirements for applicable computer models calibrated to site-specific data, which will be reviewed by the department for applicability and accuracy.

ARM 17.30.715(4)(e)

COMMENT 55: The commenter stated this rule section proposes to eliminate the department's authority to determine a proposed discharge satisfying criteria under ARM 17.30.715(1) that constitutes degradation based upon certain unscientific criteria derived from Senate Bill 285. The commenter stated the proposed rule and Senate Bill 285's directives are unlawful and unconstitutional as it proposes to eliminate DEQ's mechanism (ARM 17.30.715(2)) to re-evaluate the propriety of new pollution discharge and the public's participation without legislative authority to do so.

RESPONSE 55: The department is required to follow state statutes unless the statute has been overturned by a Montana court. SB 285 is clear that if the nonsignificance criteria are met, no further analysis under law or rule is required. SB 285 does not provide a blanket exception to nondegradation review. Rather, SB 285 provides criteria that the department must consider to determine when discharges from wastewater treatment systems that are not required to have discharge permits

result in nonsignificant changes to surface water quality. *See Mont. Envtl. Info. Ctr. v. Dept. Envtl. Qual.*, 1999 MT 248, 80.

ARM 17.30.716

COMMENT 56: The commenter stated the proposed rule revisions lack any scientific basis for demonstrating the activities are nonsignificant degradation pursuant to 75-5-303, MCA.

RESPONSE 56: The nonsignificant categories are based on criteria that contribute to attenuation of nutrients either by design of the wastewater treatment system or naturally as identified via MEANSS and as explained in the reasonable necessity statement. These factors include: density of existing and proposed wastewater discharges; volume of wastewater discharges; pressure dosed absorption systems; distance to surface water; wastewater strength; soil texture; soil depth and soil thickness below absorption system; depth to ground water; and nitrogen-reducing wastewater treatment systems. The proposed rule includes maximum limits for background ground water nitrate concentrations to ensure the nonsignificant criteria are not applicable to areas with elevated concentrations. The description of each criteria listed and how it protects state waters from degradation are included in the reasonable necessity statement in the notice of proposed rulemaking. Soil texture is a key component of the site-specific criteria in the categories because adequate soil texture is an important factor in nutrient attenuation (DEQ, 2024). Please also see the responses to Comments 57 and 58.

ARM 17.30.716(3)(a)

COMMENT 57: The commenter stated the setbacks to surface water in this section are arbitrary, capricious, and diminish the department's ability to protect state waters.

RESPONSE 57: The setback distances to surface water for wastewater treatment systems with pressure distribution in the proposed rule (200 and 500 feet) are not being changed from the existing rule. Distance and time of travel between the discharge location and any sensitive receptor (e.g., state surface water) provide time for dilution and natural attenuation of wastewater parameters. EPA has also recognized distance as a factor in applying trading credits due to the additional potential for natural attenuation as the distance between the source and surface water increases (USEPA, 2009). The 500-foot distance is also the maximum distance allowed in SB 285. The 200-foot distance is reduced from the SB 285-required distance for specific situations where the potential for degradation of state surface waters is greatly reduced by the other requirements of the nonsignificant criteria. The 200-foot distance only applies to wastewater treatment systems in low-growth counties ((3)(b) of the proposed rule) where reduced setbacks do not present a threat to degradation of state waters due to the minimal development (less than 150 subdivision lots) over the past ten fiscal years as required in the proposed rule. In addition, the proposed rule restricts this category to lots that are more than one

mile from an incorporated city or town with a current population greater than 500 to avoid areas of high development in otherwise low-development counties. Low-development rates limit the number of wastewater systems near surface water and minimize the potential for degradation of state waters. The 200- and 500-foot distances were based on contributions from stakeholder meetings prior to the original adoption of the 200-foot criteria in rule in 2003.

ARM 17.30.716(3)(b)

COMMENT 58: The commenter stated the volumetric limits in this proposed rule section are arbitrary and lack scientific basis demonstrating their relationship to prevent degradation or violations of water quality standards.

RESPONSE 58: The proposed rule provides increased protection to prevent degradation by providing a volumetric limit that does not exist in the current rule. Under the current rules, the nonsignificant criteria apply for up to two individual wastewater systems without a volumetric limit, which could allow homes with an unlimited number of bedrooms to qualify for the nonsignificance criteria. The current rule was based on contributions from stakeholder meetings prior to its original adoption in 2003. A limit of two individual wastewater systems was chosen in 2003 to restrict the size of wastewater discharges because higher volumes of wastewater discharges associated with multiple-user or public systems present a greater chance to degrade ground water and surface water sources and require additional analysis beyond the nonsignificance criteria in the proposed rule. This tiered approach to water quality and human health protection is consistent with existing regulations that for example require permits and long-term monitoring for larger wastewater systems pursuant to ARM 17.30.1022.

The proposed rule limits the design discharge rate to 800 gpd. The 800 gpd limit is proposed because it is the equivalent design flow from two individual wastewater systems serving a commonly sized single-family home of five bedrooms (DEQ-4 Table 2.1-1). The proposed 800 gpd limit is reduced from the current rule, which limited discharges to "two single-family residences" and did not limit the maximum design flow for any site meeting one of the proposed rule categories. Additionally, the 800 gpd limit only applies to level 2 wastewater treatment systems that reduce effluent nitrogen by 60 percent compared to conventional wastewater systems that provide additional protection compared to the current rule. The proposed rule also allows a 25 percent smaller design flow (600 gpd) limit for conventional wastewater systems, which provides a maximum design flow limit equivalent to two three-bedroom homes. The proposed rule also requires all discharges to be residential-strength wastewater (as defined in DEQ-4), which is an additional restriction to protect state waters that is not in the current rule. This restriction does not allow high-strength wastewater that is more difficult to treat and presents a greater chance to degrade ground water and surface water.

Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

ARM 17.30.716(4)(a) Table 1, Footnote (3)

COMMENT 59: The commenter stated the term "extremely" should be replaced with percentages that correspond to that nomenclature. The commenter also stated that the sizes for the rock fragments of gravel, cobble, stone, and boulder should be listed in the proposed rule.

RESPONSE 59: The department agrees the specific percentages and grain sizes are important to the proposed rule. Therefore, the proposed rule has been amended to refer to where that information is provided in Appendix B of Department Circular DEQ-4, which will make it easier for applicants to use the correct soil textures.

ARM 17.30.716(4)(a)(xiv)

COMMENT 60: The commenter opposes the maximum depth limitation (either 18 or 24 inches) for absorption systems because it creates freezing issues and difficulties in installing the system. The commenter stated it also provides questionable nutrient attenuation benefits that are difficult to quantify, and requested the proposed rule be revised to allow trench depths up to 36 inches.

RESPONSE 60: While the level of nutrient attenuation cannot be exactly quantified across soil textures, shallower soils tend to have higher organic matter, which provides better treatment than deeper soil horizons. The issues of freezing and installation have merit particularly for the 18-inch requirements in categories 4 through 7. Trench depths at 24 inches (the shallowest depth for a standard absorption trench depth per Department Circular DEQ-4, section 6.1.3.5) should not have any freezing or installation issues. However, the department agrees that freezing issues may reduce effectiveness of wastewater treatment and has amended the proposed rule and changed the absorption system maximum depth for categories 4 through 7 from 18 inches to 24 inches. Without this change, some systems may experience freezing issues that would reduce the effectiveness of wastewater treatment until or if the necessary repairs are made.

ARM 17.30.718

COMMENT 61: The commenter requested the proposed rule add an "S" to "SYSTEM in the proposed rule title.

RESPONSE 61: The department agrees the title has a typographical error. Therefore, the proposed rule will be amended.

ARM 17.30.718(3)(b), (d), and (e)

COMMENT 62: The commenter requested reorganizing the proposed rule to make it easier to understand by combining the requirements in (3)(b), (d), and (e) into a table in the proposed rule.

RESPONSE 62: While a table of requirements has benefits, the proposed rule builds on the current rule organization, and replacing that organization could make the rule more difficult to understand. Additionally, the proposed rule has been modified to remove the proposed level 3 and level 4 wastewater treatment system classifications. See also the response to Comment 42.

ARM 17.30.718(3)(b)

COMMENT 63: For the required number of field-verified sites and number of samples from each of those sites, the commenter questioned the scientific justification for monitoring from 6 systems and 84 samples or 12 systems and 168 samples.

RESPONSE 63: The number of field verification sites and sampling frequency for level 2 wastewater treatment systems was based on contributions from stakeholder meetings prior to original adoption of the current rule in 2004. The monitoring requirements in the proposed rule, in addition to the long-term monitoring requirements of systems installed in Montana (per (8) of the proposed rule), provide data for level 1a, 1b, and 2 wastewater treatment systems without requiring a large and statistically significant data set in the initial review and approval of nutrient-reducing wastewater treatment systems. With regards to level 3 and level 4 wastewater treatment systems, please see the response to Comment 42.

ARM 17.30.718(3)(c)

COMMENT 64: The commenter stated that commercial wastewater systems should not be used to determine how a residential system will perform because the treatment process needed for commercial effluent cannot be compared to residential systems.

RESPONSE 64: The proposed rules require the raw wastewater from the field-verified systems to be residential strength, which is defined in Department Circular DEQ-4. DEQ-4 is adopted and incorporated by reference in ARM 17.30.702(27)(c). Restricting effluent data from commercial establishments is not necessary because the proposed rule requires the raw wastewater to be residential-strength. Therefore, the department has adopted the rule as proposed.

ARM 17.30.718(3)(f)

COMMENT 65: The commenter stated the requirement to collect representative influent samples is nearly impossible unless there is no recirculation in the septic tank; otherwise, multiple samples would need to be collected during the start-up of the system.

RESPONSE 65: The department agrees the requirement for influent sampling is difficult for field-verified sites (also see the response to Comment 44). However, at

least one influent sample is necessary for each field-verified site to ensure the wastewater quality is residential strength and meets the minimum total nitrogen concentration in (3)(c). The methods for collecting a representative sample are not prescribed in the proposed rule because of the proprietary variations in level 1a, 1b, and 2 wastewater treatment systems. The manufacturer determines the best way to collect a representative sample for each system. Additionally, using the percent total nitrogen reduction instead of effluent total nitrogen concentration is not required but is an option provided to system manufacturers. Because the proposed rule provides the effluent total nitrogen concentration option, a manufacturer using the effluent total nitrogen concentration is not required to collect simultaneous influent and effluent samples as required in the proposed rule for field-verified systems using the percent total nitrogen reduction. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

ARM 17.30.718(3)(g)

COMMENT 66: The commenter stated that testing systems in climates and elevations different than in Montana is not a negligible difference, and the department's historic dismissive treatment of the requirement that vendors provide data from climates similar to Montana if they were not tested in Montana has been a disservice to Montana's environment.

RESPONSE 66: The rule as proposed requires that field-verified sites be located in cold climates similar to Montana, and provide a maximum annual average air temperature (50ºF) to ensure the testing locations are similar to climate conditions encountered in Montana. With regards to testing requirements in (4) of the proposed rule, please see the responses to Comments 67, 68, and 79. With regards to the elevation of test sites, please see the response to Comment 77.

ARM 17.30.718(4)

COMMENT 67: The commenter stated the NSF/ANSI 245 testing should not be included in the proposed rules because it does not include data from stress test periods, even though the department is aware that stress conditions occur pervasively in Montana.

RESPONSE 67: Per the NSF/ANSI testing standards for standard 245 (ANSI/NSF, 2022) the minimum 26 week-long testing includes four stress tests. Those stress tests simulate washday, working-parent, power/equipment failure, and vacation stresses. One week of design flow operation separates the four stress periods. Per the testing procedures (ANSI/NSF, 2022), wastewater effluent samples are not collected during the stress weeks but are collected in all other weeks of testing under design flow (including the week after each stress period). These testing protocols are adequate to test system performance because effluent is tested the week after each stress test (to determine how quickly the system recovers from the stress) and because the stress periods are run consecutively separated by a week,

which is likely a higher concentration of stress periods than occurs in a typical household. By contrast, the other proposed testing requirements in ARM 17.30.718(3) utilize systems installed by the manufacturer (field-verified systems) and serve typical uses where the wastewater stress periods are unknown, and samples are collected on random dates with no requirement that they be collected during or after any particular stress period. Both the NSF/ANSI 245 testing and the field system testing have strengths and weaknesses. The NSF/ANSI 245 is a standard test to determine and compare different systems under similar conditions with similar stresses but does not necessarily simulate the more random fluctuations and strength of wastewater that can vary in a field-verified system and is not typically conducted in a climate similar to Montana. The field-verified systems provide results with more variable wastewater quality and quantity and are in climates similar to Montana, but the proposed rule testing requirements do not require collection of the effluent samples to coincide with any stress period. Allowing the option of combined testing by the NSF/ANSI 245 (ARM 17.30.715(4)) and field-verified systems (ARM 17.30.715(3)) provides a good balance between controlled/comparable testing environments with defined stress periods and field-verified systems with varying wastewater influent quality and stresses. Therefore, the department has adopted the rule as proposed. See also the response to Comment 75.

COMMENT 68: The commenter stated the NSF/ANSI 245 testing is conducted at locations in warmer climates and lower elevations than occur in Montana and, therefore, the results are not applicable to Montana and should not be used to approve level 2, 3, or 4 wastewater treatment systems in Montana.

RESPONSE 68: The department agrees the NSF/ANSI 245 testing is conducted in warmer climates and lower elevations than occur in Montana. However, the NSF/ANSI 245 testing in the proposed rule does not replace all the required field-verification sites in (3)(b) of the proposed rule. It can only replace a portion of the field-verified sites needed for level 1a, 1b, or 2 wastewater treatment system approval. As discussed in the response to Comment 67, the NSF/ANSI 245 testing is conducted at more optimal conditions in some respects (including maintaining the influent wastewater quality and temperature within predefined limits) than field-verified sites ((3) of the proposed rule). However, NSF/ANSI 245 testing also provides data the week after less-than-optimal conditions (stress testing) that is not required as part of the field verification sites, and all the influent and effluent nitrogen samples are 24-hour composite samples that provide a better representation of the wastewater conditions than non-composite or grab samples commonly used for field-verified sites. Providing the option in the proposed rule of combining third-party independent testing (NSF/ANSI 245) and field verification sites allows testing of systems at a variety of conditions that are not available through field verification alone.

Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 69: The commenter stated the NSF/ANSI 245 testing should not be included in the proposed rules because the testing protocols require manipulation of the quality of the influent wastewater within predefined limits by adding sodium bicarbonate, urea, and methanol to maintain those predefined limits. The commenter stated when a wastewater treatment system is installed to serve an actual facility in Montana, whether it is a home or business, it will not have the benefit of scientists collecting samples every day, analyzing those samples, and feeding the system chemicals in precisely calculated and measured proportions to artificially force the incoming/treated wastewater to match a hypothetical standard. The commenter stated that if the goal of NSF/ANSI 245 testing is to provide an accurate representation of actual field performance in order to make decisions directed at environmental resource protection, then the highly controlled NSF/ANSI 245 testing protocol fails miserably because the simulated test does not even approximate actual conditions under which the system will be required to function. During actual NSF/ANSI 245 testing, alkalinity may be adequate, or it may not be. The commenter stated it is up to the designer of the system to figure out a means of dealing with this reality. The commenter stated if it is necessary that homeowners mimic NSF/ANSI 245 testing by being required to add alkalinity, the system will fail to meet Montana standards. The commenter stated that operators of systems installed in Montana will not have the same ability to adjust influent characteristics as is done in the NSF/ANSI 245 testing, thus invalidating the NSF/ANSI 245 testing results as an indicator of field-verified results.

RESPONSE 69: The controlled conditions associated with the NSF/ANSI 245 testing do not invalidate the results. Please see the responses to Comments 67, 68, and 79. For the reasons discussed in those responses to comments, the department has adopted the rule as proposed.

COMMENT 70: The commenter stated the NSF/ANSI 245 testing should not be included in the proposed rules because the testing is stopped if the influent wastewater drops below 50°F. The commenter stated that ambient and wastewater temperature is an important factor impacting wastewater treatment. Due to the cold climate in Montana, existing data shows wastewater is often below 50°F. The commenter stated that temperatures below 50°F negatively impact wastewater treatment.

RESPONSE 70: Please see the responses to Comments 67, 68, and 79.

COMMENT 71: The commenter stated the NSF/ANSI 245 testing should not be included in the proposed rules because the testing locations are typically in warm climates and at low elevations, such as Waco, Texas or Baton Rouge, Louisiana, which are not consistent with the temperature and elevation conditions in Montana. The commenter stated that both temperature and elevation are important factors impacting wastewater treatment. Colder temperatures and high elevations with lower oxygen saturation levels negatively impact wastewater treatment.

RESPONSE 71: Please see the responses to Comments 67, 68, and 79.

COMMENT 72: The commenter stated that allowing NSF/ANSI 245 testing procedures in the proposed rule will open the floodgates to fast track approval using a testing protocol that is inadequate for Montana.

RESPONSE 72: Approval of level 1a, 1b, and 2 wastewater treatment systems in the proposed rules requires field verification of a specified number of systems in proposed (3)(b) and use of NSF/ANSI testing data can replace only one-third of those systems. The length of time for the remaining two-thirds of the systems in proposed (3)(b) must still be tested for the one-year and two-year requirements in proposed (3)(d). Therefore, whether NSF/ANSI 245 test data is used or not, a minimum of two years of data collection is required, and there is no potential for fast tracking a systems approval as level 1a, 1b, or 2 wastewater treatment.

Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 73: The commenter stated the number of actual test systems DEQ has chosen to replace with NSF/ANSI 245 test systems is totally arbitrary with no basis, study, or reason provided by DEQ beyond DEQ's admission that NSF/ANSI 245 testing does not meet Montana's requirements.

RESPONSE 73: The existing rule allows independent third-party testing to replace all of the field verified sites in (3)(b) of the current rule. Due to stakeholder comments and climate conditions at the NSF/ANSI 245 testing facilities that are not similar to Montana conditions, the proposed rule only allows the NSF/ANSI 245 results to replace one-third of the field verification sites. This ensures that the majority of the data used to approve level 1a, 1b, and 2 wastewater treatment systems is collected from sites in climatic conditions similar to Montana conditions. As described in the responses to Comments 67, 68, and 79, the continued use of independent third-party testing provides useful data that is not available via field-verified sites. The department disagrees that NSF/ANSI 245 testing does not meet Montana's requirements because the third-party testing requirements in (4) of the current and proposed rule do not have the same requirements for field-verified sites that are in (3) of the current and proposed rule.

Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 74: The commenter stated that a manufacturer that tests all the systems required in ARM 17.30.718(3) is penalized because it requires up to eight times the testing effort compared to the NSF/ANSI 245 testing.

RESPONSE 74: The department disagrees because the rules allow flexibility for all manufacturers to choose the best combination of testing that meets their needs because the proposed rules allow the option of using NSF/ANSI 245 testing with reduced field verification sites or the option of using only field-verified sites. In

addition, use of ARM 17.30.718(3) requires a minimum of nine samples from each of the field-verified sites while the NSF/ANSI 245 testing protocol requires a minimum of 55 samples from a single system. Because the NSF/ANSI 245 can only replace one-third of the field verified systems in ARM 17.30.718(3), the number of required samples is less for manufacturers that only test the systems required in ARM 17.30.718(3). Please also see the response to Comment 42.

COMMENT 75: The commenter requested that if the department maintains NSF/ANSI 245 testing in the proposed rules, it must require that stress test data be submitted to the department.

RESPONSE 75: The required testing in the NSF/ANSI 245 protocols provides for effluent testing the week after each stress test period but does not require stress test data as requested in the comment (this response assumes the stress test data requested in the comment is effluent wastewater characteristic data as the commenter did not specify). For the reasons provided below, the department will not require additional stress test effluent data monitoring that is not required in the NSF/ANSI 245 testing protocols, as requested in the comment.

The effluent data collected after each stress test provides information on how well the system treats nitrogen the week after a stress period, which is valuable information. Please also see the response to Comment 67. The NSF/ANSI 245 testing protocol does not use the data from the week after each stress period in the final calculation of treatment capabilities but does include that data in the final report. The proposed rules state the "data" from the NSF/ANSI 245 testing will be used in the department analysis, which is to distinguish the data from the NSF/ANSI 245 approval. The NSF/ANSI 245 approval criteria (50% nitrogen removal) does not meet Montana's level 2 wastewater treatment system requirement (60% total nitrogen removal), which is why the proposed rule requires the "data" to be used for the department's review. To avoid confusion between the data collected and the subset of that data used in the NSF report for determining treatment efficiency, the department will amend the proposed rule to require that all data collected during the NSF/ANSI 245 testing is submitted to the department, not just the data used by NSF to determine nitrogen reductions. Without this amendment requiring all the data, the department could potentially not receive the complete data set to use in its review and decisions.

COMMENT 76: The commenter stated the NSF/ANSI 245 reports do not include the stress test period data. Manufacturers do not want the stress period data included while public health officials and academics thought it was important to include that data in the NSF/ANSI 245 analysis and protocols. The commenter suggested that omitting stress test data would be a mistake because it is more of a daily norm than an exception.

RESPONSE 76: The data collected the week after each stress period in the NSF/ANSI 245 testing will be required to be submitted to the department. Please see the response to Comment 75.

COMMENT 77: The commenter requested that if the department maintains NSF/ANSI 245 testing in the proposed rules, it must require the manufacturer to supply information describing how a system tested in a warmer climate than Montana and lower elevations than Montana will be able to meet the same level of treatment in the climate and elevations of Montana.

RESPONSE 77: With regards to the issue of ambient temperature for testing via NSF/ANSI 245 protocols, please see the responses to Comments 67, 68, and 79. Regarding the elevation of tested systems, wastewater systems in Montana have been installed at elevations between approximately 2,000 and 9,000 feet above mean sea level (amsl). Even if a level 1a, 1b, or 2 wastewater treatment system is tested in Montana to meet the requirements of (3) in the proposed rule, it could be tested at an elevation that is nearly 7,000 feet lower than a location where it might be used. Therefore, the issue of different elevations between testing locations and future installations is not limited only to systems tested under NSF/ANSI 245 protocols and locations near sea level but is also an issue for field-verified sites even if they are tested in Montana. Manufacturers of level 1a, 1b, and 2 wastewater treatment systems should be aware of the need to adjust their systems to provide the proper air flow and oxygen levels to support the biological processes necessary for proper treatment of the wastewater to maintain the necessary level of treatment.

However, to ensure those adjustments are made by manufacturers and operation and maintenance providers, the department has amended (8)(a) of the proposed rule to require that necessary adjustments are made to account for local elevation and associate oxygen levels during installation and during each required system inspection. Without this change, it is possible that some level 1a, 1b, or 2 wastewater treatment system providers may not adjust their systems to account for the elevation of the system.

Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications

COMMENT 78: The commenter stated the NSF/ANSI 245 testing should only be used to allow a wastewater treatment system to enter the field-verification testing requirements in (3) of the proposed rules without any reduction of the requirements of (3) as a result of the NSF/ANSI 245 testing.

RESPONSE 78: As described in responses to Comments 67, 68, and 79, using the results of NSF/ANSI 245 to replace one-third of the field-verified systems in (3) of the proposed rule has benefits for evaluating wastewater treatment systems for level 1a, 1b, or 2 approval. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 79: The commenter stated that wastewater at NSF test centers is delivered to the treatment system in pre-determined, published, timed volumes

known in advance of the test. The commenter stated that naturally, manufacturers would design their test system to function under the defined, timed volume additions of the NSF/ANSI 245 testing protocols. The commenter stated that DEQ currently has no clear means of verifying that systems installed in Montana are actually the same systems that were subject to the NSF/ANSI 245 testing.

RESPONSE 79: The department disagrees that pre-defined testing protocols invalidate the results of the NSF/ANSI 245 testing. Rather, those protocols provide a consistent method for testing and evaluating different wastewater treatment systems without imparting bias to the results due to varying wastewater or use conditions. Those benefits are not available with testing at the field verification sites required in (3) of the proposed rule.

COMMENT 80: One commenter asked, with regard to NSF/ANSI 245 testing, why the department was proposing to allow substitution of systems that do not meet Montana requirements for ones that do. The commenter questioned why the agency is giving systems that do not, by the agency's own admission, meet Montana's standards a gift of this proportion, particularly when Montana currently has two advanced treatment system manufacturers in residence, both of which proved their technologies through third-party test organizations.

RESPONSE 80: The department disagrees that the NSF/ANSI 245 does not meet department standards. The rationale for using the NSF/ANSI 245 testing in the proposed rules is provided in the notice of proposed rulemaking and in responses to Comments 67, 68, and 79.

COMMENT 81: The commenter stated that the department's level 2 wastewater treatment system approval for ECOPOD-N systems appears to be an attempt to render moot the fact that these systems have not been subjected to any testing in Montana and were approved on the basis of one system, tested for 26 weeks starting in August in Baton Rouge, Louisiana. The commenter stated that even under the favorable, yet unrealistic conditions of alkalinity addition, methanol addition, sea level elevation, and a sub-tropical temperature regime, the system only reports a 53% nitrogen removal (Montana Level 2 wastewater treatment systems requires a minimum of 60% removal), and this is with the data from the NSF/ANSI 245 stress testing portion of the test omitted from the average nitrogen removal percentage. The commenter stated that the data in the 53% removal average is for an 18.5-week duration and apparently with stress testing omitted from the average. According to the commenter, the department has stated that other data had been considered during the approval of that system. The commenter also states that no such data that meets Montana requirements has been provided and the department approval statement makes no mention of additional data and only references NSF/ANSI 245 as the sole basis for approval.

RESPONSE 81: The comment relates to the approval of a specific technology pursuant to the current rules. It is not a comment on the proposed rules and is therefore outside the scope of this rulemaking.

COMMENT 82: The commenter states that NSF/ANSI 245 certifies a specific design, configuration, and operation of a system. The commenter believes that a system manufacturer could use the NSF/ANSI 245 certification to gain approval of the system for installation in Montana but will not install the system following the NSF/ANSI 245 certified configuration. The commenter stated that the switch from a certified system to an uncertified system creates an unfair situation where cheaper untested systems can flood the market.

RESPONSE 82: The proposed rule does not use the NSF/ANSI 245 certification to approve systems but rather requires that the full data set produced during the entire NSF/ANSI 245 testing protocol be provided for review to ensure compliance with the required treatment standard. Please also see the response to Comment 75. It is important to note that the data set used by NSF/ANSI 245 to certify a system is only a subset of the full data set produced during the system testing. Further, under ARM 17.30.718(4), the NSF/ANSI 245 data may only be used to substitute data for one-third of the field-verified systems required under ARM 17.30.718(3). Please also see the department's responses to Comments 67, 68, 69, and 78. Under ARM 17.30.718(6), systems approved by the department through the combination of NSF/ANSI 245 testing and field-verification or field-verification alone may not be modified if the modification has the potential to reduce the system's nitrogen treatment capabilities, and the department may re-evaluate the system if it feels the modification may have a negative effect on the amount of total nitrogen reduction. The remaining comments are outside the scope of this rulemaking.

COMMENT 83: NSF/ANSI 245 testing does not mimic the conditions found in Montana because the total nitrogen concentration and temperature conditions found in the NSF testing facilities are nothing like the conditions found in Montana.

RESPONSE 83: Please see responses to Comments 67, 68, and 79.

COMMENT 84: The commenter stated NSF/ANSI 245 testing does not mimic the conditions found in Montana because NSF/ANSI 245 tested systems frequently receive wastewater that is less than the required 40 mg/l and if the wastewater temperature drops to 50°F, testing is suspended until the temperature of the wastewater increases.

RESPONSE 84: Please see responses to Comments 67, 68, and 79.

COMMENT 85: The commenter stated NSF/ANSI 245 testing does not mimic the conditions in Montana. NSF/ANSI 245 tested systems should go through the full testing in Montana. The commenter requested that the department not allow one-third of the required testing to be foregone if a system has NSF/ANSI 245 approval.

RESPONSE 85: Please see responses to Comments 67, 68, 73, and 79.

COMMENT 86: The commenter stated that the NSF/ANSI 245 does not accurately predict system performance in the field because NSF/ANSI 245 does not even consider the temperature range. The commenter also stated companies seeking product certification can test in the warmer months and then operate in any temperature range that they choose.

RESPONSE 86: Please see responses to Comments 67 and 68.

COMMENT 87: The commenter stated NSF/ANSI 245 does not accurately predict system performance in the field because for NSF/ANSI 245 testing nitrogen influent is typically below 50 ppm. The commenter stated in the real world nitrogen is typically 80 ppm and above.

RESPONSE 87: Please see responses to Comments 22, 67, and 68.

COMMENT 88: The commenter stated that NSF/ANSI 245 does not accurately predict system performance in the field because the NSF/ANSI 245 test is six months long. The commenter stated six months is a very short time for a test of this importance, especially when the test conveniently occurs during the warmest six months.

RESPONSE 88: Please see responses to Comments 67, 68, and 79.

COMMENT 89: The commenter stated that unlike DEQ-4, the proposed rule language does not allow for testing equivalent to NSF/ANSI 245. The commenter stated the failure to provide for equivalent testing or certification by organizations other than NSF creates a monopoly for NSF and associated test centers over the approval of systems in Montana. The commenter also stated such limitation precludes other test centers or standards organizations from certifying wastewater treatment systems, meeting the exact same criteria, from receiving recognition of that testing in Montana.

RESPONSE 89: The department agrees with the comment. Allowing other entities to conduct testing using the same protocols as NSF/ANSI 245 is also consistent with requirements in DEQ-4 for NSF/ANSI 40 testing and the reasons identified in response to Comment 80. The rule has been amended to allow other third-party independent entities to conduct testing equivalent to NSF/ANSI 245 (2022) protocols.

COMMENT 90: The commenter stated that Montana should be concerned about handing its regulatory authority to an outside, non-government entity. The commenter stated that NSF standards, including NSF/ANSI 245, are constantly changing and being modified. The commenter stated the proposed rule does not reference which version of NSF/ANSI 245 is applicable or how future changes to NSF/ANSI 245 impact the regulation. The commenter stated that this opens the door to confusion or even litigation because Montana will not have final authority over any changes to NSF/ANSI 245 standards.

RESPONSE 90: The department agrees that a defined version of the NSF/ANSI 245 testing protocols should be specified in the proposed rules. The rule has been amended to define the NSF/ANSI 245 testing protocols as the 2022 version. Without this change, the NSF/ANSI 245 protocols could be changed after adoption of the proposed rules and potentially not be consistent with the proposed rules and the department's use of the data collected during the testing.

COMMENT 91: The commenter stated NSF claims to play a role in creating so-called industry standards. However, NSF functions as an industry lobbying group and does not adopt standards, at least in the field of onsite wastewater treatment, based on scientific criteria, but instead, based on the commercial interests of its paying customers, product manufacturers. The commenter stated NSF is a lobbying organization that uses its power to influence government action in order to support its preferred/lucrative customers.

RESPONSE 91: As discussed in response to Comment 82, the proposed rule would not use the NSF/ANSI 245 certification to approve systems but would allow the full data set produced during that testing to be used to substitute data for one-third of the field-verified systems required under ARM 17.30.718(3). The use of such data is appropriate for the reasons stated in the notice of proposed rulemaking and in the responses to comments. The remainder of this comment is outside the scope of this rulemaking.

COMMENT 92: The commenter requested that NSF/ANSI 245 or equivalent testing should be used to approve level 2 wastewater treatment systems, and then require further field testing verification for approval of level 3 and 4 wastewater treatment systems.

RESPONSE 92: The department believes the combination of NSF/ANSI 245 testing and field-verification sites for all three wastewater treatment system classifications (levels 1a, 1b, and 2) in the proposed rule is appropriate based on the reasons in the notice of proposed rulemaking and the responses to Comments 67, 68, and 79. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 93: The commenter requested that if a manufacturer uses NSF/ANSI 245 testing as part of the application for level 2, 3, or 4 wastewater treatment system approval, they should submit the NSF/ANSI 245 final report for that system to the department.

RESPONSE 93: The proposed rule requires that the data from the NSF/ANSI 245 be used for the review but does not require submittal of the NSF/ANSI 245 report. The department agrees that the NSF/ANSI 245 report is an important part of the review process and has amended the rule in response to this comment to require applicants to submit the NSF/ANSI 245 report for level 1a, 1b, and 2 wastewater treatment system approvals. Please also see the response to Comment 42

regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications.

COMMENT 94: The commenter stated that using the NSF/ANSI 245 in the proposed rule transfers the department's rulemaking authority or legislative authority to an outside organization, NSF, because the state would be subject to any future changes made by NSF to the NSF/ANSI 245 standards. Therefore, the commenter requests that the NSF/ANSI 245 testing protocols be removed from the proposed rule.

RESPONSE 94: The department recognizes the importance of defining the applicable NSF/ANSI 245 standards as described in its use of the 2022 version in response to Comment 90. The department maintains full rulemaking authority regarding this standard, and this proposed rule does not have an impact on the legislature's authority.

COMMENT 95: The commenter stated the reason statement for this rule section implies that the ETV testing is being replaced by NSF/ANSI 245. The commenter stated the reason statement for this rule section gives the impression that one test was substituted for another equivalent test. The commenter stated the ETV test duration was one full year, but the NSF/ANSI 245 test is one-half the duration of the ETV test. The commenter contended that the department is so unfamiliar with NSF standards that it erred by calling it the "National Science Foundation" and that the agency continues to surrender significant decisions that should be made in Montana to a poorly understood lobbying organization in Michigan.

RESPONSE 95: The ETV program was a joint program between the EPA and NSF to test nutrient reducing systems. This program no longer exists, so references to it had to be removed from rule. Maintaining an optional independent third-party testing process in the proposed rules provides data not available through field-verified sites (see responses to Comments 67, 68, and 79). The NSF/ANSI 245 process is included in the proposed rule to provide that independent third-party testing process, and, as discussed in the response to Comment 89, the department has amended the rule to allow equivalent testing by another independent third-party entity. Finally, as proposed by the department, the typographical error in the current rule is being corrected with this rule package.

COMMENT 96: The commenter stated a possible reason the department is working to get NSF/ANSI 245 certification codified is to remedy a significant permitting error. The commenter stated that the department refuses to acknowledge the mistake and allows unrestricted widespread installation of a wastewater system that does not meet Montana regulations.

RESPONSE 96: This comment was not specific enough for the department to respond to, except that the department disagrees that the agency is trying "to remedy a significant permitting error." The basis for the proposed rule is set forth in the notice of proposed rulemaking and further discussed in the responses to

comments. To the extent that the commenter is referring to a specific permitting decision or a specific technology, the comment is outside the scope of the proposed rulemaking.

ARM 17.30.718(7)

COMMENT 97: The commenter asked what the enforcement system is for systems not meeting the required treatment level and asked what happens after the initial two years of data collection required in (8)(b) of the proposed rule.

RESPONSE 97: This comment is outside the scope of this rulemaking as this proposed rule does not change any existing rules regarding enforcement.

COMMENT 98: The commenter asked how many systems per technology are needed to establish a statistically significant data set and asked how many samples per system are needed to establish a statistically significant data set.

RESPONSE 98: Please see the response to Comment 63.

COMMENT 99: The commenter asked a number of questions about the data evaluation and analysis process, specifically: (1) Are mean or median values used? (2) Is it a rolling average or annual average? (3) Does the analysis exclude outliers? (4) If a system is not meeting the required treatment criteria, is there a window of time provided to correct the system? (5) Is each individual treatment system evaluated independently or are all the systems from each manufacturer evaluated collectively?

RESPONSE 99: With regard to (1), (2), and (3) involving the statistical analysis of the required long-term effluent monitoring data, the proposed rule does not address details of how the long-term monitoring data is evaluated. Median or mean values can be most applicable depending on the number of data points in the data set. Median values can be more applicable in smaller data sets where outliers can significantly affect the results, and mean values can be more applicable in larger data sets where outliers do not create significant impacts. With regard to (4) involving the amount of time to correct a system that is not meeting the required treatment levels, there is no specified compliance time in the proposed rule because each situation is unique. Flexibility in the rules allows the department to best address each situation in a time frame that is appropriate to the specific compliance issue. With regard to (5) involving whether long-term effluent data is evaluated by an individual system or combined by each manufacturer, there is no specific requirement in the proposed rule.

ARM 17.30.718(8)

COMMENT 100: The commenter requested the department amend the requirement involving operation and maintenance to say, "In addition to maintaining proper licensing and insurance, an operation and maintenance provider must be certified

and trained to perform operation and maintenance by the manufacturer of each technology they maintain. In the case of field-built systems, the engineer of record, or their designee shall certify and train the operation and maintenance provider."

RESPONSE 100: The commenter asks to modify existing language in the rule that was not proposed to be amended and is therefore outside the scope of this rulemaking. The department notes, however, that the commenter's requested rule language appears to exceed the department's regulatory authority.

ARM 17.30.718(8)(a)

COMMENT 101: The commenter stated Montana's maintenance requirements fail to account for certain technologies, like scaled-down activated sludge type systems/blower-based systems, that likely need more frequent maintenance to perform at their approved treatment level, yet the department does not account for this in its current or proposed regulations.

RESPONSE 101: The proposed rule addresses this comment. For treatment systems with design flows less than 5,000 gpd that do not require an MPDES or MGWPCS permit, the proposed rule requires twice the inspection frequency for suspended growth wastewater treatment systems as compared to other systems. In addition, treatment systems with design flows of 5,000 gpd or larger that do not require an MPDES or MGWPCS permit require even more frequent inspections (monthly for the first two years and quarterly thereafter) as compared to the systems with design flows less than 5,000 gpd.

COMMENT 102: The commenter requested for this proposed rule section and for ARM 17.30.718(3)(d) and (e), that the department replace "monthly" in the proposed rule with "every 30 days." The commenter also requested that the department replace "1 year" and "2 year" with "12 months" and "24 months", respectively.

RESPONSE 102: After consideration, the department does not believe that the proposed changes improve the clarity of the rule, and the proposed language may introduce ambiguity to the rule for months that do not have 30 days.

COMMENT 103: The commenter requested the department add "at a minimum" to the last sentence in this section of the proposed rule; the suggested change to the last sentence would read: "Inspections must be made, at a minimum, according to the following schedules."

RESPONSE 103: The phrase "at a minimum" is already included in the proposed rule at the end of ARM 17.30.718(8), which applies to all the subsections of (8). Adding "at a minimum" a second time in (8)(a) is not necessary.

COMMENT 104: The commenter requested the department add "or per manufacturer's specifications, whichever is more stringent" at the end of the last sentence in this section of the proposed rule. The suggested change to the last

sentence would read: "Inspections must be made according to the following schedules, or per manufacturer's specifications, whichever is more stringent."

RESPONSE 104: The proposed rule language is already a minimum requirement; it does not restrict a manufacturer from conducting more frequent inspections. Therefore, the proposed rule will not be modified as requested.

ARM 17.30.718(8)(b)

COMMENT 105: The commenter recommended the department change the proposed rule to require influent wastewater monitoring in addition to the effluent wastewater monitoring as part of the long-term monitoring requirements. The commenter stated that without concurrent influent data (and assuming influent total nitrogen concentration is 50 mg/L), the department cannot determine if the systems tested are performing as intended and as approved by the department.

RESPONSE 105: Collecting representative influent samples from wastewater treatment systems that recirculate partially treated wastewater with influent wastewater is inherently difficult without greatly disrupting a system's operation. While collecting representative influent samples would be useful in determining proper operation of systems, the disruption to active systems needed to collect the sample is not prudent when weighed against the reduction in wastewater treatment and additional resources involved. Therefore, the department will not amend the proposed rule as requested. Additionally, please see the response to Comment 65.

COMMENT 106: The commenter asked the following questions in regard to collecting data from previously approved level 2, 3, and 4 wastewater treatment systems that are installed in the state: (1) What is the process for adjusting level 2, 3, and 4 wastewater treatment system approvals? (2) How often will effluent data be requested from approved level 2, 3, or 4 wastewater treatment systems by the department? (3) Who collects the data? Are the manufacturers required to keep the data and make it available upon request? (4) Where, specifically, would samples be collected? (5) Are there any procedures for cleaning the effluent sampling ports? (6) If there are no specific procedures, why require manufacturers to spend thousands of dollars to collect samples?

RESPONSE 106: Responding to (1) regarding the department's authority to rescind level 1a, 1b, and 2 wastewater treatment system approvals, that authority is included in (7) of the proposed rule. Please also see the response to Comment 42 regarding the removal of the proposed level 3 and level 4 wastewater treatment system classifications. Responding to (2) regarding how often the department will require submittal of long-term monitoring data, the time frame between data requests (audits) is not specified in the proposed rule. Since this rule was originally adopted in 2005, the department has requested data twice, 2009 and 2022. Responding to (3) regarding data collection requirements, including who may collect the wastewater samples and if the data has to be maintained for future department requests for the data, (8)(a) of the proposed rule specifies data must be collected by the system

manufacturer, an approved vendor, or other qualified personnel. When data is requested by the department pursuant to (8)(b) of the proposed rule, it may be submitted by any of those entities listed in (8)(a). Responding to (4) regarding the location of the effluent sampling required in (8)(b), the location of effluent sample location is not specified in the proposed rule due to the proprietary variations between different treatment systems. The qualified personnel collecting the sample determines the appropriate sample location. Responding to (5) regarding the lack of requirements for cleaning the effluent sampling port, the qualified personnel collecting the sample is responsible for proper sampling techniques. Responding to (6) regarding the lack of specific sampling procedures and associated costs, due to the proprietary variations between different systems, the specific details of sampling described in the comment are not prescribed in the proposed rules. The qualified personnel performing the monitoring, in (8) of the proposed rule, are responsible for collecting representative samples. The data collected under these proposed rules remains valid and useful without the prescribed conditions described in the comment because the qualified personnel collecting the samples understand the proprietary system best and know how to best collect representative samples.

ARM 17.30.718(10)

COMMENT 107: The commenter stated this proposed rule section should not apply to wastewater treatment systems approved for level 2 using the NSF/ANSI 245 protocol because those approvals were flawed to begin with. The commenter stated that real world data from Montana (including data from the department's field audits of approved level 2 wastewater treatment systems) should be accepted from previously approved level 2 wastewater treatment systems for approval as level 3 or level 4 wastewater treatment systems.

RESPONSE 107: Section (10) of the proposed rule has been removed because the proposed level 3 and level 4 wastewater treatment system classifications have been removed from this rulemaking. Please also see the response to Comment 42.

COMMENT 108: The commenter stated that during a 2018 or 2019 stakeholder meeting there was a discussion of adding two new types of nutrient-reducing wastewater systems to the rules that would be called "Class 3" wastewater treatment systems. The commenter stated that the department did not want to add level 3 wastewater treatment systems to the rules because then the commenter would selectively submit only monitoring data that met the new criteria for level 3 wastewater treatment systems and would not submit monitoring data that did not meet the requirements of level 3 wastewater treatment systems in order to obtain level 3 wastewater treatment system approval. The commenter also stated that with the addition of the proposed rule section the department is precluding real-world data that has been collected in Montana from being used to meet level 3 or level 4 wastewater treatment system designation.

RESPONSE 108: The department is not aware of any situation where a manufacturer has purposely not submitted effluent data because the data would not

meet the criteria for level 2 wastewater treatment system approval. However, the comment does bring up the issue regarding the potential that, in the future, any manufacturer could selectively submit only data that meets the level 1a, 1b, or 2 wastewater treatment system criteria because the proposed rules do not require all the applicable influent and effluent data be submitted to the department as part of an application for level 1a, 1b, or 2 wastewater treatment system approval. The department does not have the database capabilities to track all systems installed and tested in Montana or other states; it relies on manufacturers to submit all the applicable data required in (3) of the proposed rule. This can potentially result in department review of a level 1a, 1b, or 2 wastewater treatment system application without all of the applicable data available to the department. As a result, the department could approve a treatment system as level 1a, 1b, or 2 wastewater treatment system based on review of only some of the data collected by the manufacturer even though the complete data set indicates it should not be approved as such. To prevent selective data submittal, the department has amended (3) of the proposed rule to require manufacturers submit all monitoring data from any system that meets the climate requirements in (3)(g) and analysis requirements in (3)(i), which will help ensure that the department has all the applicable data to conduct a complete review of a level 1a, 1b, or 2 wastewater treatment system application.

In addition, (10) of the proposed rule has been removed because the proposed level 3 and level 4 wastewater treatment system classifications have been removed from this rulemaking. Please also see the response to Comment 42.

Department Circular DEQ-20

COMMENT 109: The commenter stated the Department Circular DEQ-20 Section 1.8, first paragraph, second sentence, where it references 76-4-130, MCA, and non-compliance with the existing conditions of approval (COSA) has recently been a subject of debate. The commenter asked whether this applies to any existing approved parcel where the improvement was not installed in the locations shown on the lot layout portion of the COSA document, or only those parcels where the improvements were placed in such a manner as to evade the law.

RESPONSE 109: The comment is outside the scope of this rulemaking, as the department did not propose to modify the existing language in the circular.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State June 25, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.15.101, 18.15.504, 18.15.801, 18.15.802, 18.15.803, and 18.15.805 pertaining to Alternative Fuels	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 24, 2024, the Department of Transportation published MAR Notice No. 18-197 pertaining to the proposed amendment of the above-stated rules at page 1104 of the 2024 Montana Administrative Register, Issue Number 10.

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

3. No comments or testimony were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Lawrence Flynn
Lawrence Flynn
Deputy Director
Department of Transportation

Certified to the Secretary of State June 25, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- 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.

RECENT RULEMAKING BY AGENCY

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, 2024. This table includes notices in which those rules adopted during the period January 12 through June 21, 2024, occurred 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, 2024, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

2-5-643	Intent to Award - Public Notice - Competitive Sealed Bids - Competitive Sealed Proposals - Sole Source Procurement - Exigency Procurements - Alternative Procurement Methods - Requisitions From the Agencies to the Division - Enforcing the Contract - Contract Renewal - Completion Notification for Contracts With Performance Security - Bid, Proposal, and Contract Performance Security, p. 770, 1450
2-12-646	Local Government Public Meeting Recordings, p. 781
2-59-642	Definitions - Out-of-State State-Chartered Bank or National Bank Seeking to Exercise Fiduciary Powers in Montana - Out-of-State Nonbank Trust Companies Seeking to Exercise Fiduciary Powers in Montana - Fiduciary Foreign Trust Companies, p. 490, 1058

(Public Employees' Retirement Board)

2-43-641	Application Process for Disability Benefits, p. 1201, 1428, 44
2-43-647	Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement - 457(b)

TRANSPORTATION, Department of, Title 18

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

(Public Safety Officer Standards and Training Council)

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

(Board of Barbers and Cosmetologists)

(Board of Chiropractors)
24-126-39 Board of Chiropractors, p. 680, 1461

(Board of Dentistry)
24-138-83 Board of Dentistry, p. 837
24-138-84 Dental Hygiene Limited Access Permit, p. 1782, 1463

(State Electrical Board)
24-141-39 State Electrical Board, p. 579, 1194

(Board of Funeral Service)
24-147-41 Board of Funeral Service, p. 697

(Board of Medical Examiners)
24-156-94 Physician Assistants, p. 813, 1149, 1591, 273

(Board of Nursing)
24-159-96 Board of Nursing, p. 1428

(Board of Physical Therapy Examiners)
24-177-37 Board of Physical Therapy Examiners, p. 1335

(Board of Respiratory Care Practitioners)
24-213-23 Board of Respiratory Care Practitioners, p. 704, 1469

(Board of Behavioral Health)
24-219-37 Board of Behavioral Health, p. 1480, 279

(Board of Veterinary Medicine)
24-225-43 Veterinary Retail Dispensing, p. 1509, 84

LIVESTOCK, Department of, Title 32

32-23-340 Records to Be Kept, p. 860, 1735, 728

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-221 State Land Leasing, p. 1523, 282
36-222 East Valley Controlled Groundwater Area, p. 1434
36-223 Dam Safety Hazard Determinations, p. 1437

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1004 Foster Care Licensing, p. 214, 1390
37-1009 Community First Choice Services and Self-Directed Personal Care Services, p. 1593, 332

REVENUE, Department of, Title 42

SECRETARY OF STATE, Office of, Title 44

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CHRISTI JACOBSEN
SECRETARY OF STATE

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