MONTANA ADMINISTRATIVE REGISTER

2024 ISSUE NO. 5
MARCH 8, 2024
PAGES 358-489

ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3814 and 8.94.3815 pertaining to the submission and review of applications for funding under the Montana Coal Endowment Program (MCEP)	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 28, 2024, at 10:00 a.m., the Department of Commerce will hold a public hearing via Zoom to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video: https://mt-gov.zoom.us/webinar/register/WN_1wUtUozQRjyvsNHG-5Ms9A

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., March 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to docadmimistrativerules@mt.gov.

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

8.94.3814 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF MONTANA COAL ENDOWMENT GRANTS (1) The Department of Commerce adopts and incorporates by reference the Montana Coal Endowment Program Project Administration Manual ~~(March 2022)~~ (March 2024) as rules for the administration of MCEP grants.

(2) and (3) remain the same.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule with the passage of House Bill 795 (HB 795) in the 68th Legislative session, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when authorizing grants in certain circumstances set by statute. The department has updated the MCEP application to reflect the changes to the program for the 2027 Biennium.

8.94.3815 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE MONTANA COAL ENDOWMENT PROGRAM – PROJECT GRANTS (1) The Department of Commerce adopts and incorporates by reference the Montana Coal Endowment Program ~~2022~~ 2024 Construction Application Guidelines for the ~~2025~~ 2027 Biennium as rules governing the submission and review of applications under the MCEP program.

(2) and (3) remain the same.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule with the passage of House Bill 795 (HB 795) in the 68th Legislative session, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, MCA, when authorizing grants in certain circumstances set by statute. The department has updated the MCEP application to reflect the changes to the program for the 2027 Biennium.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community MT Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 5, 2024.

5. The Office of Legal Affairs has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may 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. Written requests may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to docadministrativerules@mt.gov, or by completing a request form at any rules hearing held by the department.

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 amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State on February 27, 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 PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On April 23, 2024, at 1:00 p.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

https://mt-gov.zoom.us/j/85151908418?pwd=em5JU2RYUWp1VjBuVUVyVTdwMEV4dz09
Passcode: 221161
Or One tap mobile :
+12063379723,,85151908418#,,,,*221161# US (Seattle)
+12133388477,,85151908418#,,,,*221161# US (Los Angeles)
Or Telephone:
Dial (for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 851 5190 8418
Passcode: 221161
International numbers available: https://mt-gov.zoom.us/u/kcXT05X25N

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
Meeting ID: 851 5190 8418
Passcode: 221161

SIP: 85151908418@zoomcrc.com
Passcode: 221161

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 April 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-439@mt.gov.

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

17.30.508 SPECIFIC RESTRICTIONS FOR GROUND WATER MIXING ZONES (1) remains the same.

(2) No mixing zone for ground water will be allowed if the zone of influence of an existing or proposed drinking water supply well will intercept the mixing zone.

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

REASON: The proposed amendment to (2) is necessary to protect public health by providing the same protection from potential ground water contaminant sources for proposed drinking water supply wells and existing drinking water supply wells. The modification to (2) will eliminate the discrepancy for setbacks between existing and proposed drinking water supply wells and will ensure restrictions for ground water mixing zones in ARM 17.30.508 are consistent with Department Circulars DEQ-1, Standards for Water Works (section 3.2.3.2); DEQ-3, Standards for Non-Community Public Water Systems (section 3.2.3.2); and DEQ-20, Standards for Non-Public Water Systems (section 1.4.2.d).

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) remains the same.

(b) Disposal systems that discharge to ground water through infiltration, ~~drainfields~~ absorption systems, injection through a disposal well, leakage from an impoundment, seepage from a land application area, or other methods may qualify for a standard mixing zone.

(c) remains the same.

(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 (iv) remain the same.

(v) It is also assumed that pollutants discharged from the source do not change in volume or concentration as they migrate through the unsaturated zone down to the water table except as allowed in (vi).

(vi) For total nitrogen in residential strength wastewater discharged from a wastewater treatment system that does not require an MPDES or 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.

(vi) and (vii) remain the same, but are renumbered (vii) and (viii).

~~(viii)~~(ix) The downgradient boundary of the standard mixing zone extends:

(A) ~~100 feet for a single family septic system drainfield in towns or subdivisions where individual lots are less than two acres in size~~ between 100 and 500 feet as proposed by the applicant for individual or shared wastewater absorption systems that discharge residential strength wastewater;

(B) ~~200 feet for a single family septic system in subdivisions of five to 10 acres where lots are two acres in size or larger~~ between 200 and 500 feet as proposed by the applicant for multiple-user wastewater absorption systems that discharge residential strength wastewater with a design flow greater than 800 gpd;

(C) between 100 and 500 feet as proposed by the applicant for commercial, multiple-user, or public wastewater absorption systems that discharge residential strength wastewater if the design flow is 800 gpd or less; and

~~(C) For subdivisions with centralized water service, to the exterior boundaries of the contiguous surrounding undeveloped land, if development of that land is prohibited in perpetuity and title evidence of this fact is provided to the department.~~

(D) 500 feet for any other source of waste, including industrial wastewater, discharging into ground water.

~~(ix)~~(x) Monitoring may be required at the downgradient boundary of the mixing zone to measure compliance for a ground water mixing zone established for other than ~~a single family septic system drainfield~~ an individual wastewater absorption system, if there is an overriding site-specific impact-related reason to require monitoring and the mixing zone is within 500 feet of surface water, another ground water mixing zone, or a drinking water well, or if there is some other overriding site-specific, impact-related reason to require monitoring.

(2) The department adopts and incorporates by reference Department Circular DEQ-13, entitled "Montana's Policy for Nutrient Trading" (December 2012 edition), which provides procedures and requirements for generating and applying nutrient credits in department-issued discharge permits. Copies of Department Circular DEQ-13 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

REASON: The department proposes to replace the word "drainfield" in (1)(b), (1)(d)(ix), and (1)(d)(x) with "absorption system," which is the term used and defined in Department Circular DEQ-4, in order to ensure consistency of terms across different agency rules. No change in the intent or meaning of the rule is proposed.

The addition of (1)(d)(vi) is proposed to implement Senate Bill 285 from the 2023 legislative session. That bill directed the department to, among other things, adopt criteria for crediting nitrogen attenuation at the drainfield and riparian zone based on soil type in making nonsignificance determinations for non-permitted septic system discharges. New (1)(d)(vi) meets this requirement by providing a method to estimate the reduction in the nitrogen load impacting state ground water and surface water by using Montana's Septic Trading Method in Appendix A of Department Circular DEQ-13 to account for the natural environmental reduction of nitrogen after being discharged to the subsurface from a wastewater absorption system. This method estimates the reduction of the nitrogen wasteload discharged from a wastewater treatment system using an NRCS soil drainage classification for both the soils beneath the absorption system and soils in the riparian area and the distance from the absorption system to the end of the ground water mixing zone or the surface water as applicable. This method was chosen because it has been long-established in Montana, uses readily available information, and addresses the requirement in SB 285 to incorporate drainfield and riparian zone soil attenuation.

The proposed changes to (1)(d)(ix) are necessary to replace inconsistent standard ground water mixing zone lengths that were based on wastewater treatment system size, lot size, subdivision size, and type of water system, which results in widely different standard mixing zones for wastewater treatment systems designed for the same use and the same design wastewater flow. The proposed changes are necessary to provide flexible and consistent standard mixing zone lengths that are based on the most important factors, design flow and the nature of the wastewater discharge. The proposed changes allow more flexibility in assigning standard mixing zone lengths that stay within the lot boundaries that may be necessary under ARM 17.36.122(6). The proposed changes also eliminate unnecessarily long standard mixing zones (up to 500 feet under the current rules) for many small wastewater treatment systems (individual, shared, and multiple-family) that do not provide any environmental benefit over shorter standard mixing zones.

The proposed deletion of (1)(d)(ix)(C) would remove a provision that is unnecessary because source specific mixing zones are available in ARM 17.30.518.

The proposed amendment that adds "industrial wastewater" to (1)(d)(ix)(D) is necessary to provide clarity and consistency for industrial discharges that have characteristics similar to residential wastewater but that discharge other constituents not addressed by the residential strength wastewater definition in DEQ-4 and therefore require longer mixing zones to protect state waters and their uses. Industrial dischargers may request a different ground water mixing zone length pursuant to the source specific mixing zone requirements in ARM 17.30.518.

The department also proposes to replace the term "single family septic system" with "individual wastewater system" in (1)(d)(ix) and (1)(d)(x), which is the term used and defined in Department Circular DEQ-4, in order to ensure consistency of terms across different agency rules. No change in the intent or meaning of the rule is proposed.

In (2), the existing Department Circular DEQ-13 is incorporated by reference because Appendix A in that circular contains Montana's Septic Trading Method, which is proposed to be used as described in the proposed changes to (1)(d)(vi). Department Circular DEQ-13 is available online at: https://deq.mt.gov/files/Water/WQPB/Standards/NutrientWorkGroup/NutrientWorkGroupRulePackage12_13/CircularDEQ13.pdf.

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 the same.

~~(9) "Level 1a treatment" means a subsurface wastewater treatment system (SWTS) 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 SWTS 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.~~

~~(11)~~(9) "Level 2 treatment" means a ~~SWTS~~ wastewater treatment system that:

(a) removes at least 60 percent of total nitrogen as measured from the raw ~~sewage~~ wastewater load to the system; or

(b) remains the same.

(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 (18) remain the same.

(19) "Ordinary high-water mark" is defined in 23-2-301, MCA.

(19) through (26) remain the same, but are renumbered (20) through (27).

~~(27)~~(28) The department adopts and incorporates by reference:

(a) and (b) remain the same.

(c) Department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems" (~~2013~~ 2023 edition), which establishes technical standards for construction of subsurface wastewater treatment systems; and

(d) and (e) remain the same.

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

REASON: The department proposes to remove the definitions of "Level 1a treatment" and "Level 1b treatment" because these treatment technologies have become outdated, making it unnecessary to retain the definitions. Since those treatment levels were added to the rules in 2004, the department has received only one application for such approval, and that system also sought and received level 2 approval.

The department also proposes to replace the term "sewage" in (9)(a) with the term "wastewater," which is the term used and defined in Department Circular DEQ-4, in order to ensure consistency of terms across different agency rules. No change in the intent or meaning of the rule is proposed.

It is necessary to define "level 3 treatment" and "level 4 treatment" in proposed (10) and (11) to incorporate definitions for these improved wastewater treatment technologies currently available for use in wastewater treatment systems. Level 3 and level 4 treatment technologies provide greater nitrogen reduction than the existing definition of level 2 treatment systems. The proposed definitions in (10) and (11) provide the different nitrogen reduction capabilities for level 3 and level 4 treatment technologies prior to discharge. "Level 2 treatment" has been defined in the rule since 1994. For purposes of nonsignificance determinations in ARM 17.30.715(1)(d)(iii), wastewater treatment systems using level 2 or higher treatment are treated the same.

In conjunction with the proposed amendments to ARM 17.30.715, the department proposes in (19) to add a definition for "ordinary high-water mark." This is necessary to assist the department and public in consistently and accurately defining the distances between a proposed discharge and surface water for purposes of nonsignificance review. The department proposes to use the definition in 23-2-301, MCA, because it is a clear and well-established statutory definition.

It is necessary to update new (28) in order to incorporate by reference the 2023 edition of Department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems," which is the current version of that document. The 2023 edition of Department Circular DEQ-4 was previously adopted by the department in April 2023 as part of MAR Notice No. 17-421.

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 the same.

(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) remains the same.

(ii) 5.0 mg/L for domestic sewage effluent discharged from a conventional ~~septic~~ wastewater treatment system;

(iii) 7.5 mg/L for domestic sewage effluent discharged from a ~~septic~~ wastewater treatment system using level ~~two~~ 2, level 3, or level 4 treatment, as defined in ARM 17.30.702; or

(iv) 7.5 mg/L for domestic sewage effluent discharged from a conventional ~~septic~~ wastewater treatment system in areas where the ground water nitrate level exceeds 5.0 mg/L primarily from sources other than human waste.

For purposes of this subsection (d), the word "nitrate" means nitrate as nitrogen; ~~and~~

(e) and (f) remain the same.

(g) for nutrients in domestic sewage effluent discharged from a ~~septic~~ wastewater treatment system that does not require an MPDES or MGWPCS permit, except as specified in (1)(d) and (e), which will not cause changes that equal or exceed the trigger values in Department Circular DEQ-7~~. Whenever the change exceeds the trigger value, the change is not significant if the changes outside of a mixing zone designated by the department are less than ten percent of the applicable standard and the existing water quality level is less than 40 percent of the standard~~; and

(h) through (3) remain the same.

(4) The following criteria and the criteria in (1)(g) apply to determine whether subsurface wastewater treatment system discharges that are not subject to ground water permitting requirements will result in nonsignificant changes in existing water quality.

(a) Except as provided in (b), the criteria in (1)(g) apply in either of the following cases:

(i) the ordinary high-water mark of a potentially impacted downgradient state surface water is less than 1/4 mile from any portion of the wastewater absorption system; or

(ii) the ordinary high-water mark of a potentially impacted downgradient state surface water is between 1/4 mile and 1/2 mile from any portion of the wastewater absorption system and:

(A) any of the absorption system soil profiles required by Department Circular DEQ-4 has a limiting layer less than 8 feet below the natural ground surface;

(B) the absorption system soil application rate pursuant to Department Circular DEQ-4 is 0.5 gallons per day per square foot (gpd/ft^2) or larger; or

(C) the absorption system soil application rate pursuant to Department Circular DEQ-4 is less than 0.5 gpd/ft^2 and the soil classification modifier includes extremely cobbly, extremely stony, or extremely bouldery.

(b) The criteria in (1)(g) do not apply to subsurface wastewater treatment systems that are more than 1/2 mile from a state surface water or to wastewater treatment systems in which the absorption trench is lower in elevation than all downgradient state surface water within 1/2 mile of the absorption system.

(c) The distances to surface water in (a)(i) and (a)(ii) include the five-degree expansion of the effluent plume as described for ground water mixing zones in ARM 17.30.517(1)(d)(iii)(B). The distance is based on the measured ground water flow direction between the absorption system and the ordinary high-water mark of the potentially impacted downgradient state surface water, or the shortest distance between the absorption system and the ordinary high-water mark of the potentially impacted downgradient state surface water when the ground water flow direction is estimated from topography or other method.

(d) The analysis of impacts to state surface water must use the waste load, as described in ARM 17.30.517(1)(d)(vii)(B), discharged from the absorption system, except when:

(i) the waste load can be reduced pursuant to ARM 17.30.517(1)(d)(vi); or

(ii) a saturated zone solute transport or saturated zone particle tracking model is used to demonstrate that the waste load potentially impacting the state surface water should be reduced. The model must include site-specific data characterizing the necessary hydrogeologic properties of the water-bearing units in the effluent flow path and calibrated to site-specific data.

(e) Pursuant to 75-5-301(5)(e), MCA, the requirements of (2) do not apply to subsurface wastewater treatment system discharges that are not subject to ground water permitting requirements under 75-5-401, MCA.

(4) remains the same, but is renumbered (5).

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

REASON: The department proposes in (1)(d)(ii), (1)(d)(iii), (1)(d)(iv), and (1)(g) to replace the term "septic system" with "wastewater treatment system," which is the term used and defined in Department Circular DEQ-4, in order to ensure consistency of terms across different agency rules. No change in the intent or meaning of the rule is proposed.

The department proposes to amend (1)(d)(iii) to add references to level 3 and level 4 systems, which is necessary to ensure consistency between this rule and the proposed changes to ARM 17.30.702 that add new definitions for such systems. As discussed above, the proposed changes are necessary because certain technologies provide higher levels of treatment than those currently recognized in the rules. Because level 3 and level 4 systems provide even higher levels of treatment than the existing definition of level 2 systems, the proposed rules provide that such systems should be evaluated under the same ground water nonsignificance criteria for level 2 systems in 75-5-301, MCA.

In (1)(g), the department proposes to delete the reference to a nonsignificance limit based on the numeric nutrient water quality standard in Department Circular DEQ-12A. It is necessary to remove any use or reference to

Department Circular DEQ-12A to comply with Senate Bill 358 from the 2021 legislative session.

New (4) is necessary to implement Senate Bill 285 from the 2023 legislative session, which requires the department to adopt new criteria to determine when septic system discharges that are not subject to permit requirements result in nonsignificant changes in water quality. These proposed criteria in (4) consider soil type, mixing, nitrogen attenuation, the distance between the subsurface discharge and downgradient surface water, and the comparative elevation of the discharge and downgradient state surface water within 1/2 mile of the absorption system.

As required by SB 285, proposed (4)(a) limits the adjacent-to-surface-water trigger analysis in (1)(g) to a maximum of 1/4 or 1/2 mile from the drainfield to the state surface water, depending on soil type. These soil types are proposed in (4)(a)(ii)(A) through (C). In (4)(a)(ii)(A), surface water impacts would be considered when the absorption system is between 1/4 and 1/2 mile from surface water and if any of the absorption system soil profiles required by DEQ-4 has a limiting layer less than 8 feet below the natural ground surface. This is necessary to determine nonsignificant impacts for those wastewater discharges that will have less unsaturated soil treatment and, thus, have shorter travel times to surface water and higher risk to impact surface water. In (4)(a)(ii)(B) and (C), the department proposes absorption system application rates and soil classification modifiers to assess the relative travel time and vulnerability of surface waters that are between 1/4 and 1/2 mile distant. The soil application rates are based on soil types and defined for wastewater absorption systems in Department Circular DEQ-4. Areas with the faster soil application rates listed in the rule (and soils classified as extremely cobbly, stony, or bouldery) are correlated with faster travel times and reduced natural wastewater treatment that increases risk to surface waters; and these wastewater treatment systems, when located between 1/4 and 1/2 mile from high-quality surface waters, are required to undergo assessment of impacts to surface water. Using the soil application rate and soil classification modifier is necessary to provide a consistent and well-defined process to estimate the relative amount of natural treatment and relative travel time between the wastewater discharge and surface water. The soil profile information required here is already required for each proposed wastewater absorption system in Department Circular DEQ-4.

Proposed (4)(b) provides that the criteria in (1)(g) do not apply to systems that are more than 1/2 mile from a state surface water or to wastewater treatment absorption system trenches that are lower in elevation than downgradient surface waters. These requirements are necessary to comply with the requirements in SB 285 that the criteria must consider elevation and the horizontal distance between the discharge and the surface water in the direction of ground water flow and that the analysis must be limited to a maximum of 1/2 mile.

New (4)(c) provides requirements for measuring the distance between the absorption system and the state surface water to ensure consistency in determining whether surface water nonsignificance assessments are required for wastewater treatment systems. Two methods of measuring the distance are necessary to account for uncertainty when a measured ground water flow direction is not available. In cases where the ground water flow direction is not measured, using the closest distance to surface water is necessary to protect surface waters that may be

within the 1/4 and 1/2 mile distances specified in (4)(a) depending on the actual ground water flow direction. In cases where the ground water flow direction is measured, it is necessary to use that information to prevent underestimating or overestimating the distance from a wastewater absorption system to surface water.

As required by SB 285, new (4)(d) accounts for mixing zone dilution and credits nitrogen attenuation at the drainfield and riparian zone. Waste loads are used to determine compliance with the applicable water quality standards and nonsignificance criteria in state waters. Section (4)(d)(i) refers to the nitrogen waste load reduction described in proposed revisions to ARM 17.30.517(1)(d)(vi). See the reason statement for that rule in this notice of proposed rulemaking for further discussion of that method. Section (4)(d)(ii) provides a method to estimate a reduction in the phosphorus and nitrogen waste load from a wastewater treatment system using site-specific data and modeling. Both of these sections require site-specific data to estimate the waste load reductions. Providing methods to estimate more accurate waste loads entering state waters is necessary to ensure that the correct regulatory requirements for treatment, location, and amount of wastewater are applied. Finally, as required by SB 285, new (4)(e) provides that a discharge that meets the criteria in (1)(g) and (4) is nonsignificant without further review.

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) remains the same.

(2) ~~Except as provided in (5), a~~ A ~~subsurface~~ wastewater treatment system ~~(SWTS)~~ that does not require an MPDES or MGWPCS permit and meets ~~all of~~ the criteria in ~~(2)(a)~~ (3) and (4) ~~falls within one of the categories in (2)(b)~~ is nonsignificant.

~~(a)~~(3) The ~~SWTS~~ wastewater treatment system, including primary and replacement absorption systems, ~~drainfields~~ must meet ~~all of~~ the following criteria:

~~(i)~~(a) the ~~drainfield~~ absorption systems must be ~~1,000~~ 500 feet or more (~~400~~ 200 feet or more for lots that meet the criteria in ~~(2)(b)(iv)~~ (4)(b)) from the nearest downgradient high-quality state surface water that might be impacted. Distance between the absorption system and downgradient high-quality state surface water is based on the criteria in ARM 17.30.715(4) ~~This distance may be reduced by 50% (to 500 and 200 feet, respectively) if the drainfield is pressure-dosed~~;

~~(ii) if the drainfield is not pressure-dosed:~~

~~(A) the soil percolation rate must be between 16 and 50 minutes per inch, if a percolation test has been conducted for the drainfield; and~~

~~(B) the natural soil beneath the absorption trench must contain at least six feet of very fine sand, sandy clay loam, clay loam, or silty clay loam;~~

~~(iii) the SWTS must serve no more than two single-family residences, or must serve a facility that produces non-residential, non-industrial wastewater with a wastewater design flow of 700 gallons per day or less;~~

(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) the wastewater discharge must be residential strength;

~~(iv) there must be only one SWTS receiving wastewater from the lot;~~

~~(v)~~(d) ~~the SWTS~~ each wastewater treatment system must be located entirely on the lot where wastewater is produced;

~~(vi)~~(e) ~~the SWTS~~ each wastewater treatment system must meet the current design standards defined in ARM Title 17, chapter 36, ~~subchapter~~ subchapters 3 and 9, and ~~department~~ Department Circular DEQ-4; and

(f) all wastewater treatment systems on the lot must meet the requirements in this rule.

~~(vii) for lots smaller than 20 acres, and for lots 20 acres and larger on which the drainfield is 500 feet or less from the downgradient property boundary, the background nitrate (as N) concentration in the shallowest ground water must be less than two mg/L.~~

~~(A) The department may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.~~

~~(b) The SWTS must fall within one of the following five categories:~~

~~(i) for category one:~~

~~(A) the lot size is two acres or larger;~~

~~(B) the percolation rate is 16 minutes per inch or slower, if a percolation test has been conducted for the drainfield;~~

~~(C) the natural soil beneath the absorption trench contains at least six feet of very fine sand, sandy clay loam, or finer soil; and~~

~~(D) the depth to bedrock and seasonally high ground water is eight feet or greater;~~

~~(ii) for category two:~~

~~(A) the drainfield is pressure-dosed;~~

~~(B) the lot size is two acres or larger;~~

~~(C) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;~~

~~(D) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam, or finer soil; and~~

~~(E) the depth to bedrock and seasonally high ground water is 12 feet or greater;~~

~~(iii) for category three:~~

~~(A) the drainfield is pressure-dosed;~~

~~(B) the lot size is one acre or larger;~~

~~(C) the subdivision consists of five lots or fewer;~~

~~(D) there is no existing or approved SWTS within 500 feet of the subdivision boundaries;~~

~~(E) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;~~

~~(F) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam, or finer soil; and~~

~~(G) the depth to bedrock and ground water is 100 feet or greater;~~

~~(iv) for category four:~~

(4) A wastewater treatment system that meets the requirements in (3) must also meet:

(a) all the requirements in one of the categories in Table 1; or

(b) the following requirements:

~~(A)~~(i) the wastewater treatment system is in a county where the total number of subdivision lots that were reviewed pursuant to ~~76-4-101 et seq.~~Title 76, chapter 4, part 1, MCA, and were created in ~~a~~ that county during the previous 10 state fiscal years is fewer than 150; ~~and~~

~~(B)~~(ii) the lot is not within one mile of the city limits of an incorporated city or town with a population greater than 500 as determined by the most recent census; ~~or~~ and

(iii) the absorption system is pressure dosed.

~~(v) for category five:~~

~~(A) the SWTS is a level II system;~~

~~(B) the lot size is two acres or larger;~~

~~(C) the bottom of the drainfield absorption trenches is not more than 18 inches below ground surface; and~~

~~(D) the depth to limiting layer (based on test pit data) is greater than six feet below ground surface.~~

(c)

Table 1

	Requirement	Category(1)								
		1	2	3	4	5	6	7	8	9
(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	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	feet of natural soil below absorption system that is fine sandy loam, loam, or finer [3]									
(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	N/A	N/A	50	N/A	N/A	N/A	N/A	N/A	N/A

	ground water (feet) [4]									
(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)	Maximum depth of absorption system below natural ground surface (inches) [5]	24	24	24	18	18	18	18	24	24
(xv)	Gray water in waste segregation systems [6]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	N/A

FOOTNOTES

(1) "N/A" means not applicable for purposes of this rule. Requirements in all other applicable laws, rules, and circulars must be met.

(2) The reviewing authority may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.

(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 stony or extremely bouldery 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.

(4) Depth below ground surface to ground water and bedrock can be determined using local well logs or other applicable information as approved by the reviewing authority.

(5) For depths shallower than 24 inches, absorption systems must meet the requirements in Department Circular DEQ-4 for shallow-capped absorption systems.

(6) Category only applies to the gray water discharge. It does not include a blackwater discharge or an alternate system required by Department Circular DEQ-4 that treats gray water and other wastewater from the lot.

~~(3) A mixing zone is not required for SWTSs that meet the criteria in this rule. However, SWTS drainfields must be located so that there is a 100-foot setback between existing and approved water supply wells and the boundaries of a 100-foot mixing zone that is provisionally designated for purposes of applying this setback.~~

(4) remains the same, but is renumbered (6).

(5) A 100-foot provisional mixing zone is required for each wastewater treatment system approved as nonsignificant under this rule. Source specific provisional mixing zones are not allowed. Provisional mixing zones are subject to the same setbacks and siting requirements as mixing zones but are not subject to the requirements of ARM 17.30.715.

~~(5) Notwithstanding an activity's designation as nonsignificant in this rule, the department may review the activity for significance under the criteria in ARM 17.30.715(1) based upon the following:~~

~~(a) cumulative impacts or synergistic effects;~~

~~(b) secondary byproducts of decomposition or chemical transformation;~~

~~(c) substantive information derived from public input;~~

~~(d) changes in flow;~~

~~(e) changes in the loading of parameters;~~

~~(f) new information regarding the effects of a parameter; or~~

~~(g) any other information deemed relevant by the department and that relates to the criteria in ARM 17.30.715(1) .~~

~~(6)~~(7) The department may determine that ~~the categorical exclusion in (2) does not apply to~~ lots within a specific geographic area do not meet the nonsignificance criteria in (2), and those lots must be reviewed pursuant to ARM 17.30.715. This determination must be based upon information submitted in a petition demonstrating that the ~~categorical exclusions~~ nonsignificance criteria in (2) should not apply within that area.

(a) remains the same.

(b) A petition submitted under this rule must contain the following information:

(i) a legal description of the petition area, which is the geographic area within which the ~~categorical exclusions~~ nonsignificance criteria in (2) would not apply;

(ii) and (iii) remain the same.

(iv) data from ground water samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (2)(b). The ground water data must demonstrate that one of the following conditions is met:

(A) nitrate as nitrogen concentrations exceed 5.0 mg/L in ground water samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in ARM 17.30.517(1)(d)~~(viii)~~(ix), for a ~~septic~~ wastewater treatment system; or

(B) remains the same.

(c) Within 90 days after receipt of the information required in (6)(b), the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements in (6)(b), and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:

(i) through (v) remain the same.

(vi) the name, e-mail address, and telephone number of a person to contact for additional information.

(d) remains the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, 75-5-317, MCA

REASON: This rule sets forth categories of subsurface wastewater treatment systems that cause nonsignificant changes to water quality in addition to those in ARM 17.30.715 and 75-5-317, MCA. Each of the nonsignificant categories in this rule use multiple site-specific, property-specific, and treatment-specific requirements to ensure that small wastewater treatment systems do not degrade state waters and comply with the requirements of 75-5-301, MCA, for nonsignificant activities. The existing rule provides five such categories. In SB 285, the 2023 Legislature directed the agency to create additional nonsignificant ground water and surface water categories of 500 or more feet from surface water that consider soil texture, ground water depths, and other pertinent information.

The proposed changes are necessary to implement this statutory directive. The proposed changes also simplify the rule by providing a table of the categories to allow for easier comparison of requirements that might be applicable to a site; require pressure dosing for more categories than the existing rules, which provides additional environmental protection by providing better distribution of wastewater across the entire absorption system which increases the amount of effluent treatment by the biofilm and soils beneath the absorption system; and encourage the use of wastewater treatment systems that provide higher levels of treatment (levels

2, 3, and 4 treatments) compared to conventional (septic tank and absorption system) wastewater treatment systems by providing three new nonsignificant categories that apply only to level 2, level 3, and level 4 treatment systems. Each of the changes is discussed in more detail below.

The amendment to (2) is necessary to clarify that the rule applies only to systems that do not require an MPDES or MGWPCS permit. This is not a change in the meaning of the rule, as the design discharge rate in the rule already limits the rule to wastewater treatment systems with lower design flows than those that might require a discharge permit.

The amendments to (3)(a) maintain minimum distances to surface water for all nonsignificant categories to 200 or 500 feet and remove references to other distances (400 or 1,000 feet) for non-pressure dosed systems. The 500-foot setback for new nonsignificant categories is required in SB 285. The 200-foot setback to surface water applies only to the category in (4)(b) and has not been modified from the existing rule. Except for new category 9 in Table 1 that requires larger lots than the other categories, pressure dosing is required for all systems seeking to qualify for any of the nonsignificant categories in this rule. Pressure dosing of the absorption systems provides better wastewater treatment, and expanding its requirement in the proposed rule would provide additional protection of state waters. The current setbacks (500 feet and 200 feet, as applicable) in the rule remain unchanged for pressure-dosed absorption systems (and for new category 9 in Table 1) and are necessary to provide protection to state surface waters. The distance between the absorption system and downgradient state surface water is based on the criteria in proposed ARM 17.30.715(4) to ensure consistency across the rules. Finally, it is necessary to delete the percolation rate and soil classification requirements in existing (2)(a)(ii)(A) and (B) for absorption systems that are not pressure dosed because the use of absorption systems that are not pressure dosed is being eliminated in existing (2)(a) as an option for all categories except for new category 9 in Table 1.

The proposed changes to (3)(b) include maintaining similar limits for wastewater flow compared to the existing rule (700 gallons per day (gpd)), but allows for less wastewater discharges from conventional wastewater treatment systems (600 gpd) than level 2, 3, and 4 treatment systems (800 gpd) that provide better treatment including the removal of more nitrogen compared to conventional wastewater treatment systems. Using different discharge volumes for level 2, 3, and 4 systems would encourage the use of wastewater treatment systems that provide better treatment and have long-term monitoring requirements while allowing for greater flexibility and application of the proposed nonsignificant categories.

The existing rule in (3)(b) limits the nonsignificant categories to systems that treat single family, shared facilities, or non-residential, non-industrial wastewater. This requirement is unnecessarily complex and has led to confusion. The amendments to (3)(b) and (3)(c) correct this by providing simple and clear criteria for the wastewater discharge requirements that revise the wastewater flow rates in (3)(b) and specify the type of wastewater (residential strength) in (3)(c).

The amendments to (3)(d) specify that a wastewater treatment system seeking an exemption under the rule must be located entirely on the lot where the wastewater is produced. This is necessary to ensure that systems are not

considered nonsignificant if they are primarily or partially located on lots that do not meet the rule requirements.

The amendment to (3)(e) is necessary to correct an omission in the existing rule and to clarify the rule applies to systems reviewed under ARM Title 17, chapter 36, subchapter 9 in addition to those reviewed under ARM Title 17, chapter 36, subchapter 3.

New (3)(f) requires all the wastewater treatment systems on a lot to meet the rule requirements. This section is necessary because the current rule only allows one wastewater treatment system on a lot, and the proposed revisions to (3)(b) allow more than one wastewater treatment system on a lot. Without this addition, a lot could contain a combination of wastewater treatment systems that meet one of the nonsignificant categories in the rule and other wastewater treatment systems that do not, which would conflict with the intent of the nonsignificant categories to limit the amount of wastewater discharged on a lot as described in (3)(b).

The existing subsections in (2)(a)(vii) through existing (2)(b)(iii) and (2)(b)(v) are proposed to be moved to new Table 1, which sets forth those requirements in a format that is easier for both applicants to use and for the reviewing authority to review.

Row (i) in Table 1 maintains the existing minimum lot size for existing categories 1 through 4 and provides minimum lot sizes for new categories 5 through 9. This requirement is necessary to limit the density of wastewater treatment systems to protect state waters because discharging excess wastewater in a given area increases the potential to degrade state waters.

Proposed category 9 is for lots that are 20 acres and larger. This category is necessary to account for areas of low density where the cumulative effects of multiple wastewater treatment systems are not a threat to state waters and therefore have less requirements in Table 1.

Row (ii) in Table 1 maintains the existing limitation of maximum number of lots for category 3 and applies that same limitation to category 5. Because those categories may be used on lots as small as one acre, it is necessary to limit the number of lots in the subdivision to ensure that the category is not applied to large, dense subdivisions. The proposed rule also provides that the maximum number of lots includes common developments or phases of a subdivision so that multiple exemptions cannot be stacked on top of each other. This is necessary to protect state waters because discharging excess wastewater in a given area increases the potential to degrade state waters.

Row (iii) in Table 1 limits the maximum background ground water nitrate (as N) concentration for each of the categories. The existing requirements for categories 1 through 4 remain the same. The requirement for categories 5 and 8 would be limited to 2 mg/L to be consistent with the existing categories 1 through 4. A maximum background ground water nitrate (as N) concentration for these categories is necessary to restrict use of the nonsignificant categories when ground water nitrate concentrations indicate the ground water is already being impacted by nitrogen; higher background ground water nitrate concentrations indicate a numerical analysis of impacts to state waters is necessary under ARM 17.30.715 to prevent degradation of state waters. In combination with the minimum lot size in row

(i) and the lot limitation in row (ii), this requirement also protects state waters from excessive wastewater discharges in a given area.

The background ground water nitrate concentration row (iii) for category 6 is proposed to be 3 mg/L, which would encourage the use of level 3 and level 4 wastewater treatment systems that provide better nitrogen treatment than level 2 or conventional wastewater treatment systems. A maximum background ground water nitrate (as N) concentration for category 6 is necessary to restrict use of the nonsignificant categories when ground water nitrate concentrations indicate the ground water is already being excessively impacted by nitrogen and a numerical analysis of impacts to state waters is necessary under ARM 17.30.715 to prevent degradation of state waters. In combination with the minimum lot size in row (i), this requirement also protects state waters from excessive wastewater discharges in a given area.

It is not necessary to limit the maximum background ground water nitrate (as N) concentrations in row (iii) for category 7 because level 4 wastewater treatment is required, and level 4 treatment reduces nitrogen to equal to or less than the ground water nondegradation limit (7.5 mg/L) in ARM 17.30.715. At that level of wastewater nitrogen treatment, the ground water is protected from degradation; however, it is necessary to maintain other requirements in category 7 to protect surface waters from degradation because, in some circumstances, surface waters can be degraded by wastewater nitrogen (as N) concentrations less than 7.5 mg/L.

For category 9, the maximum background ground water nitrate as (N) concentration (iii) is 4 mg/L. This is larger than the other categories because of the 20-acre minimum lot size required in row (i). The large 20-acre lot size provides protection from dense development that is not available in the other listed categories. Raising the maximum nitrate (as N) concentration is necessary to increase the applicability of this category in areas where the large lot size requirement provides the primary protection of state waters from degradation.

Row (iv) in Table 1 requires pressure dosed absorption systems for all categories except for category 9. Pressure dosing provides better treatment of wastewater than other methods of disposal and therefore provides additional protection of state waters. Pressure dosing is not required for category 9 because of the low density of development imposed by the 20-acre minimum lot size.

Row (v) in Table 1 modifies the type of soil classification for category 1. The existing rules require soil types with an absorption system application rate of 0.4 gallons per day per square foot (gpd/ft^2) or less; adding the proposed new soils (fine sandy loam and loam) adds soils with a 0.5 gpd/ft^2 application rate. Adding those soils is necessary to include soils that provide good soil treatment similar to the allowed soils in the existing rule to allow additional sites to use this nonsignificant category and still protect state waters from degradation. This requirement is not applicable to proposed categories 5 through 9 because soil requirements for those categories are provided in rows (vi) and (vii).

Row (vi) in Table 1 requires a minimum soil classification of medium sand, sandy loam, or finer (equivalent to an application rate of 0.6 gpd/ft^2) for proposed categories 5 through 8 to provide adequate soil treatment to protect state waters. These soils can be coarser than those required for category 1 because these categories include additional requirements for level 2, 3, or 4 treatment or for gray

water discharges. Soil that is coarser than the required soil classifications have the highest application rate in DEQ-4 and provide less treatment than the required finer soils.

Row (vii) in Table 1 requires an elevated sand mound or a minimum soil classification of medium sand, sandy loam, or finer (equivalent to an application rate of 0.6 gpd/ft^2) to provide adequate treatment of wastewater for category 9, which is limited to lots of 20 acres or more. Soil that is coarser than the required soil classifications has the highest application rate in DEQ-4 and provides less treatment than the required finer soils. Allowing for an elevated sand mound is necessary to provide flexibility in applying this category for larger than 20-acre lots even in locations that have coarse soils.

Row (viii) in Table 1 provides the minimum depth required to a limiting layer in the soil profile. The proposed amendment would require that depth be measured below natural ground surface to ensure that the reference point for the depth measurement is applied consistently to all wastewater treatment systems. Under the existing rule, this minimum depth only applies to bedrock or seasonally high ground water. The proposed amendment would measure to the limiting layer instead of bedrock or seasonally high ground water because the current language is missing a third soil factor that would create similar limitations to adequate soil treatment of the wastewater, which is an impervious layer that is not bedrock (an impervious clay layer, for example). The definition of limiting layer is included in DEQ-4, and includes bedrock, seasonally high ground water, and impervious layer; therefore, for clarity and conciseness replacing "bedrock or seasonally high ground water" with the term "limiting layer" is necessary.

The department proposes to modify the minimum depth to a limiting layer, row (viii) in Table 1, for existing category 2 from 12 feet to 10 feet. This change is necessary because determining the limiting layer requires digging a test pit to 12 feet deep which requires excavating a large portion of the future absorption system to make the slope of the test pit safe enough to enter and properly evaluate the soils at that depth. The department also proposes to establish a 10-foot minimum for existing category 3. This change is necessary because the requirements for depth to bedrock and ground water (in row (ix) in Table 1) are proposed to be reduced from 100 feet to 50 feet to allow this category to be applicable in more situations, while still protecting state waters by adding the minimum 10-foot depth to the limiting layer. In both instances, the proposed depth of 10 feet provides 4 feet more soil depth and treatment than is required in Department Circular DEQ-4 for standard depth absorption systems. The depth to a limiting layer is not necessary for proposed categories 8 and 9 because of the dilute gray water wastewater in category 8 and the low density required in category 9.

For proposed categories 5, 6, and 7, the department proposes a minimum depth to a limiting layer of 8 feet below the ground surface in row (viii). Those categories only have one other soil requirement for 6 feet of medium sand, sandy loam, or finer (equivalent to an application rate of 0.6 gpd/ft^2). To protect state waters, it is also necessary to require an 8-foot minimum depth to limiting layer because it provides 2 additional feet of soil treatment over what is required in Department Circular DEQ-4 for standard depth absorption systems.

In row (ix) of Table 1, the department proposes to reduce the minimum depth below the natural ground surface to bedrock and ground water for category 3 from 100 feet to 50 feet. This change is proposed in conjunction with the addition of minimum depth to a limiting layer in (viii), which provides 4 more feet of soil treatment. Together, these changes allow more flexibility in using the category, while still maintaining protection of state waters. A minimum depth to bedrock or ground water in (ix) is not required for any categories other than category 3 because the other categories have larger minimum lot sizes; use level 2, 3, or 4 treatment; or are restricted to counties with historically low growth.

Rows (xi), (xii), and (xiii) in Table 1 require level 2; level 2 or 3; or level 2, 3, or 4 treatment systems, respectively. Rows (xi), (xii), and (xiii) apply to new categories 5, 6, and 7. This is necessary to encourage the use of those systems because they reduce effluent nitrogen concentrations compared to conventional wastewater treatment systems and have required long-term operation and maintenance and effluent sampling requirements that conventional systems do not have.

Row (xiv) in Table 1 provides a maximum depth of the absorption system below the natural ground surface. This is a necessary requirement for all the nonsignificant categories, except the category in (4)(b) for low density counties, to include soil treatment in the upper soil horizons that typically provide the best conditions for wastewater treatment. For categories 1, 2, 3, 8 and 9 this depth is set at 24 inches. This depth is set at 18 inches for categories 4, 5, 6, and 7; these categories have lesser soil or limiting layer requirements because they use level 2, 3, or 4 treatment systems. Because of that, it is necessary to set the maximum absorption system depth to 18 inches to maximize the soil available for treatment.

Proposed category 8 and row (xv) in Table 1 are for gray water discharges that are part of a waste segregation system (as defined in Department Circular DEQ-4). Category 8 is necessary to account for the dilute wastewater in a gray water discharge and to encourage the use of gray water systems that are often used for irrigation purposes during the summer growing season. Encouraging gray water systems is necessary to realize their benefit of reducing effluent discharge to ground water by allowing plants/grass to utilize nitrogen and phosphorus rather than direct it to ground water via wastewater absorption systems.

Footnote (1) of Table 1 is necessary to define "N/A" and to clarify that any requirement that is not applicable in Table 1 only applies to this rule; a wastewater treatment system that is nonsignificant under this rule still has to meet all requirements and design standards for wastewater treatment systems in other applicable rules and circulars.

Footnote (2) in Table 1 is a requirement in the existing rule, at (2)(a)(vii)(A). It has been moved to a footnote to Table 1. The reference to "department" is proposed to be revised to "reviewing authority." This amendment is necessary because counties are also authorized to review applications for nonsignificance pursuant to 50-2-116, MCA

In footnote (3) of Table 1, it is necessary to restrict soils with the listed soil modifiers in rows (v), (vi), (vii), and (viii) from meeting the specific soil requirements in Table 1. Soils with listed classification modifier in footnote 3 are considered to be very limited soils for wastewater treatment according to the 2017 United States

Natural Resources Conservation Service (NRCS) Soil Survey Manual. To ensure categories of nonsignificance have adequate soil treatment, it is necessary to exclude soils with these characteristics.

Footnote (4) of Table 1 provides the type of information that can be used to determine the minimum depth to bedrock and ground water in row (ix). This footnote is necessary to provide consistency and clarity in determining the correct depths.

Footnote (5) of Table 1 is necessary to provide information for row (xiv) on how to correctly install a wastewater absorption system at a shallower depth than a standard system and provide consistency and clarity in implementing the rule.

Footnote (6) of Table 1 is necessary to provide clarity for row (xv) and ensure that category 8 is not applied to the blackwater portion of a waste segregation system nor to an alternate wastewater treatment system (when required in Department Circular DEQ-4) that treats gray water and other wastewater from the lot. This is necessary because those other non-gray water discharges must be evaluated separately for nonsignificance.

Revising the language in (5) is necessary to clarify that any wastewater treatment system that meets the rule requirements as a nonsignificant activity is still required to maintain all applicable setbacks to the 100-foot-long provisional ground water mixing zone that applies to wastewater treatment systems with ground water mixing zones that are approved pursuant to ARM 17.30.517 and 17.30.715. The revised language is also necessary to clarify that the provisional mixing zone does not need to also meet the requirements of ARM 17.30.715 if it is classified as nonsignificant under this rule, which is also necessary to comply with Senate Bill 285.

Deleting current (5) from the rule is necessary to eliminate redundancy in the rule as the existing petition process new (7) already prohibits specific locations from being classified nonsignificant under this rule and requires those sites to be reviewed pursuant to ARM 17.30.715. Deleting current (5) is also necessary to comply with Senate Bill 285.

Although not explicitly addressed in the rule, cumulative effects of multiple wastewater treatment systems are primarily accounted for in rows (i), (ii), and (iii) in Table 1 and in proposed (3)(b) that provide limits for the minimum lot size, maximum number of lots in a development, maximum background ground water nitrate (as N) concentration, and the maximum discharge rate per lot, respectively. Combined, those four criteria minimize the potential for excessive cumulative effects from the proposed nonsignficance activities. The remaining rule requirements including pressure dosing, soil types, soil depths, and higher levels of wastewater treatment all provide additional protection from excessive cumulative effects.

Finally, the department proposes to replace the phrase "septic system" in (7)(b)(iv)(A) with "wastewater treatment system," which is the term used and defined in Department Circular DEQ-4. This change is necessary to ensure consistency of terms across department rules and circulars. No change in intent or meaning is proposed. The remaining changes to the wording of the rule are proposed to improve the readability of the rule.

17.30.718 CRITERIA FOR NUTRIENT REDUCTION FROM ~~SUBSURFACE~~ WASTEWATER TREATMENT SYSTEM ~~(SWTS)~~ (1) This rule describes the

information that must be submitted to obtain a department classification of a ~~SWTS~~ 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 ~~efficiency~~ level that a ~~SWTS~~ 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 ~~SWTS~~ 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 ~~SWTS~~ 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 (e) remain the same.

(f) information verifying the reliability of the ~~SWTS~~ wastewater treatment system manufacturer and vendor. At a minimum, the vendor or manufacturer must either:

(i) have maintained an office in Montana for the past five years with a significant portion of its bsiness related to design, construction, or installation of ~~SWTSs~~ wastewater treatment systems; or

(ii) remains the same.

(3) A person seeking classification of a ~~SWTS~~ 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~~ Department Circular DEQ-4) if necessary to verify the long-term reliable treatment capabilities of the system.

(a) remains the same.

(b) For a ~~SWTS~~ 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 ~~SWTS~~ wastewater treatment system that uses the percent total nitrogen removed from measured raw ~~sewage~~ 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) For each ~~SWTS~~ wastewater treatment system that is monitored, at least one representative sample of raw ~~sewage~~ wastewater must be collected and analyzed for nitrate (as N), nitrite (as N), ammonia (as N), total kjeldahl nitrogen (TKN) (as N), biological oxygen demand (BOD), and total suspended solids (TSS). This information will be used to determine the raw ~~sewage~~ wastewater strength, which must not exceed residential strength and have an average TKN or total nitrogen concentration higher than 40 mg/L. Chemical characterization of raw ~~sewage~~ wastewater must be based on one of the following representative samples:

(i) remains the same.

(ii) if the septic tank or other initial tank is used for treatment beyond primary treatment, the sample should be collected prior to start-up of the ~~SWTS~~ wastewater treatment system from that tank; or

(iii) remains the same.

(d) For level 2 or level 3 treatment approval, each ~~Each SWTS~~ wastewater treatment system must be monitored for one year~~. At~~, and at least one ~~SWTS~~ 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) Effluent sampling ~~Sampling~~ frequency must be at least monthly (or equivalent frequency as approved by the department) during the winter months (November through April), and at least quarterly during the summer months (May through October). At least 50% of the monitoring data from each ~~SWTS~~ wastewater treatment system must be collected during the winter months. For wastewater treatment systems that use percent total nitrogen removed to determine treatment efficiency, a raw wastewater sample must be collected on the same dates as the effluent samples.

(f) Each effluent sample must be analyzed for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), BOD, TSS, and flow. If raw wastewater influent monitoring is conducted concurrently with effluent monitoring, each influent sample must be analyzed for TKN (as N) or total nitrogen. If the ~~SWTS~~ wastewater treatment system is experiencing significant infiltration and inflow, the department may require that raw wastewater influent samples be collected and analyzed during each effluent monitoring event to determine an accurate representation of the nitrogen-reducing capabilities of the system.

(g) Monitored ~~SWTSs~~ wastewater treatment systems must be in Montana or ~~located in a climate similar to Montana.~~ a location that has an average annual air temperature of 50 degrees Fahrenheit or less. The temperature must be based on the most applicable active weather station with at least a 20-year record or the most recent 30-year National Oceanic and Atmospheric Administration average annual air temperature.

(h) and (i) remain the same.

(j) The department may waive specific requirements in this rule if~~:~~

~~(i)~~ the monitoring data are substantially equivalent to those requirements.~~; or~~

~~(ii) the SWTS uses a proven nutrient reduction technology listed in DEQ-4 with proprietary variations.~~

(4) The ~~results~~ data from a ~~SWTS~~ wastewater treatment system that is tested under the ~~EPA/National Science Foundation (NSF) environmental technology verification (ETV) program~~ NSF International/American National Standards Institute 245 (NSF/ANSI 245) certification may be used to demonstrate compliance with the requirements in (3), except that NSF/ANSI 245 data may only be used to replace one-third of the systems required in (3)(b).

(5) In response to a request for classification of a ~~SWTS~~ wastewater treatment system as ~~level 1a, level 1b, or~~ level 2, level 3, or level 4 treatment, the department may, after evaluating the ~~SWTS~~ wastewater treatment system under the criteria in this rule:

(a) through (d) remain the same.

(6) If a ~~SWTS~~ 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 ~~SWTS~~ wastewater treatment system be re-evaluated under the criteria in this rule.

(7) If subsequent data indicate that a ~~SWTS~~ 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 ~~SWTSs~~ wastewater treatment systems classified as ~~a 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 ~~SWTS~~ wastewater treatment system vendor or manufacturer must offer an O&M plan that meets the requirements of this section and the requirements in ~~department~~ 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 ~~SWTS~~ wastewater treatment system. ~~twice a year for the first two years after use of the system begins, and annually thereafter. Inspections of suspended growth systems must be twice as frequent.~~ 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 ~~SWTS; and~~ wastewater treatment system. Inspections must be made according to the following schedules:

(i) for a wastewater treatment system with a design flow less than 5,000 gpd that does not require an MPDES or MGWPCS permit, the inspection schedule is semi-annually for the first two years after use of the system begins and annually thereafter;

(ii) for a suspended growth wastewater treatment system with a design flow less than 5,000 gpd that does not require an MPDES or MGWPCS permit, the inspection schedule is quarterly for the first two years after use of the system begins and semi-annually thereafter; and

(iii) for a wastewater treatment system with a design flow of 5,000 gpd or larger that does not require an MPDES or MGWPCS permit, the inspection schedule is monthly for the first two years after use of the system begins and quarterly thereafter;

(b) annual effluent sampling and analysis for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), ~~BOD, TSS, fecal coliform,~~ specific conductance, carbonaceous biochemical oxygen demand (CBOD), field pH, and field temperature. Effluent sampling must be conducted after all treatment is complete, but before discharge to the absorption ~~area~~ system. All monitoring data ~~collected from a type of SWTS may be requested~~, including the identification of the wastewater treatment system manufacturer, must be submitted to the department if requested by the department to verify the total nitrogen reduction is adequate for the approved treatment level. ~~if the department has reason to believe that a type of SWTS that has been approved as a nutrient-reducing system is not meeting the required treatment efficiencies.~~

(9) All ~~SWTSs~~ 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 the same.

(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) All level 2, level 3, or level 4 treatment systems, regardless of approval date under this rule, must comply with the requirements in (8).

(12) An approval as 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

REASON: The department proposes to remove references to level 1a and level 1b throughout the rule because they are outdated and unnecessary. Since those treatment levels were added to the rules in 2004, the department has received only one application for such approval, and that system also sought and received level 2 approval. The technology for nitrogen removal has rendered those treatment levels outdated and no longer necessary to include in the rules.

Technological improvements in nitrogen removal have made it necessary to address those systems that provide additional nitrogen reductions. The department proposes to add level 3 and level 4 approvals to provide distinct designations for different amounts of nitrogen treatment instead of the single level 2 designation that does not specifically account for different nitrogen reductions and effluent concentrations in rule.

In (1), it is necessary to replace the word "efficiency" with "level" because efficiency only refers to the effluent percent reduction of a level 2, 3, or 4 treatment system but does not include the other criteria of the definitions for level 2, 3, and 4 (ARM 17.30.702) which is the effluent concentration. Using the term "level" is necessary to be inclusive, and thus improve rule clarity, of the two criteria used to classify wastewater treatment systems as level 2, 3, or 4.

The proposed amendments in (3)(b) and (3)(c) replace the term "raw sewage" with "raw wastewater," which is the term used and defined in Department Circular DEQ-4. This change is necessary to ensure consistency of terms across department rules and circulars. No change in intent or meaning is proposed.

The proposed monitoring requirements for level 3 systems in (3)(b) and (d) are the same as those existing requirements for level 2 systems because the level 2 requirements are considered adequate to provide the necessary data to classify wastewater treatment systems as level 3. The proposed monitoring requirements for level 4 treatment in (3)(b) and (d) are more extensive than those for level 2 and level 3 systems because the level of treatment for level 4 is a very high level of

treatment for an on-site system that requires additional processes compared to level 2 and 3 treatment systems. Additionally, level 4 systems are not required to have a ground water mixing zone to dilute the effluent (although a provisional mixing zone is required to maintain setbacks) because they discharge at or below the nondegradation ground water limit, so it is necessary to require additional data to ensure that such systems can reliably reduce nitrogen at the point of discharge.

In (3)(c), it is necessary to add a lower concentration limit for the raw wastewater total nitrogen (TN) or total kjeldahl nitrogen (TKN) to ensure the wastewater treatment system can treat to the required treatment concentrations or required reductions for level 2, 3, or 4 using typical wastewater instead of dilute wastewater. Using dilute raw wastewater in the testing process provides unrepresentative testing of typical raw wastewater and potentially could allow a system to achieve level 2, 3, or 4 classification even though the system cannot treat typical raw wastewater to the required concentration or percent reduction.

Adding "effluent" to (3)(e) does not change the intent of the rule, but it is necessary to clarify the sampling requirement is for wastewater effluent and not for raw wastewater or some intermediary location in the treatment system. The effluent data is needed to provide the correct information to determine if a system is meeting the required concentrations or percent reductions for level 2, 3, or 4 classification.

The amendment to (3)(e) requires sampling raw wastewater on the same date as effluent sample for systems that use percent reduction to demonstrate compliance with the requirements for level 2, 3, or 4 classification is necessary to ensure that the effluent sample is representative of treatment from raw wastewater with similar characteristics.

The existing rule in (3)(g) requires monitored wastewater treatment systems be located in Montana or in a climate similar to Montana. Because this allowance for a similar climate allows for significant variation in interpretation and application of the rule, the department proposes a specific average annual air temperature of 50 degrees or less, which is approximate to the warmest 30-year average within Montana. The correct temperature range is critical to maintaining the bacterial communities that are necessary to reduce nitrogen concentrations in wastewater, with lower temperatures inhibiting those bacteria. The proposed change is necessary to ensure that systems tested outside of Montana are tested in similar environments. The requirement that such temperature data be an active weather station with at least a 20-year record or the most recent 30-year NOAA average is necessary to ensure such data is reliable and consistent.

The proposed deletion of (3)(j)(ii) is necessary to ensure all systems have similar requirements and have to meet the same testing requirements in (3).

In (4), the department proposes changing the reference to the "EPA/National Science Foundation (NSF) environmental technology verification (ETV) program" to "NSF International/American National Standards Institute 245 (NSF/ANSI 245) certification" because the EPA/NSF ETV program no longer exists. It was replaced by the NSF/ANSI 245 certification process that is now referenced in the rule. Using the word "data" instead of "results" is necessary to clarify that the data published in the NSF/ANSI 245 certification may be used to determine whether the system meets the requirements of this rule, not the NSF/ANSI 245 certification itself. An NSF/ANSI 245 certification by itself cannot show compliance with the requirements of this rule

because the NSF/ANSI 245 criterion is for 50% reduction of TN, which does not meet the defined reduction requires for level 2, 3, or 4 in ARM 17.30.702.

The proposed amendment to (4) limits NSF/ANSI 245 data to replace only one-third of the number of the systems required for testing in (3). This is necessary because the NSF/ANSI 245 testing does not necessarily occur in locations with similar average annual air temperatures as Montana. Since temperature is an important factor in the nitrogen-reducing capabilities of a system, it is necessary to have at least a portion of the data from systems in cold-weather climates similar to Montana.

Section (6) allows the department to require re-evaluation of a system if it is modified. The proposed amendments clarify that re-evaluation is necessary only if the modification has the potential to reduce the system's nitrogen treatment capabilities.

The proposed amendments to (7) are necessary to include reference to "level 2, level 3, and level 4 treatment" to clarify what "classified" refers to in the existing rule.

Existing (8) and (8)(a) provide O&M and inspection requirements for systems approved under this rule. The proposed changes to (8)(a) are necessary to align this rule with the recent changes to ARM 17.30.1022 in MAR Notice No. 17-433. In that rulemaking, the department redefined the threshold for wastewater treatment systems that require a ground water permit. The proposed amendments to this rule specify that the inspection requirements of this rule do not apply to systems with an MPDES or MGWPCS permit, which is necessary to avoid inconsistent or overlapping inspection requirements imposed by the permit. The department also proposes separate inspection requirements for small and large systems. This is necessary because larger systems have a greater potential to exceed water quality standards than smaller systems if they are not operating correctly.

In (8)(b), the department proposes to modify the parameters required for annual effluent sampling. The modifications are necessary to remove parameters that are not necessary to determine the nitrogen reducing capabilities of level 2, 3, and 4 wastewater treatment systems and have been replaced with parameters that provide better information regarding the proper function of the systems. Total suspended solids (TSS) and fecal coliform have been removed and replaced with a more relevant parameter, field pH. Field pH is necessary because nitrogen reduction cannot occur if pH is too low. Biochemical oxygen demand (BOD) has been replaced with carbonaceous biochemical oxygen demand (CBOD) because CBOD measures the portion of BOD that is necessary to evaluate proper function of the treatment system. The requirement for temperature monitoring remains the same but includes clarification that the temperature should be measured in the field because the operating temperature is important to the proper functioning of the treatment system.

The department proposes to amend (8)(b) to require that all monitoring data be submitted to the department upon request, including the identity of the wastewater treatment system manufacturer. These changes are necessary to ensure the monitoring data is associated with a particular treatment system and for the department to independently evaluate whether approved systems are meeting the required treatment levels.

New (10) is necessary to clarify that systems with existing level 2 classification approvals that meet the treatment concentrations or percent reduction requirements for level 2, 3, or 4 treatment do not have to submit new information to meet the current rules. In such a case, additional review is unnecessary.

New (11) is necessary to clarify that level 2 wastewater treatment systems approved prior to the effective date of the proposed rule revisions need to be monitored under the revised proposed monitoring requirements (the same as new level 3 and 4 systems) instead of the existing requirements. This is necessary to eliminate confusion regarding what parameters are required for systems approved on different dates.

New (12) is necessary to ensure that applicants are aware that approval as a level 2, 3, or 4 wastewater treatment system does not constitute plan and specification approval for use on a specific project. Without this addition, there is potential for applicants to incorrectly conclude that the level 2, 3, or 4 treatment classification approval is also approval for use on specific projects. No change in the intent or meaning of the rule is proposed.

4. The proposed changes to Circular DEQ-20 are as follows, new language underlined:

<u>CIRCULAR DEQ-20 1.8 SOURCE SPECIFIC WELL ISOLATION ZONES</u>
The Department may approve a source specific well isolation zone (SSWIZ) for existing individual <u>and shared</u> wells that have well logs if the requirements of this standard are met. Wells that were constructed in violation of 76-4-121 or 76-4-130 are not eligible for a source specific well isolation zone request.

REASON: SB 327 from the 2023 legislative session directed the department to allow source-specific well isolation zones that are smaller than 100 feet. Amendments were made to ARM 17.36.323, 17.36.918, and Circular DEQ 20 in MAR Notice No. 17-430. The amendments to ARM 17.36.323, 17.36.918, and Circular DEQ 20 were intended to be applied to both individual and shared wells. However, during the drafting of DEQ 20, Section 1.8, "Shared Wells" were mistakenly omitted as being eligible for the SSWIZ. This change ensures there is no conflict between department rules, local health rules, and the design circular.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data views, or arguments may also be submitted to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-439@mt.gov, and must be received no later than 5:00 p.m., April 23, 2024.

6. Aaron Pettis, staff attorney for the department, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by 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. Written requests 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 the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on December 1, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment of the above-referenced rules may significantly and directly impact small businesses. In accordance with 2-4-111, MCA, the department has prepared a small business impact analysis. Copies of the department's small business impact analysis may be obtained by contacting the department at the contact information provided in paragraph 5.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State February 27, 2024.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.6.246 pertaining to Political Signs	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 1, 2024, at 10:00 a.m., the Transportation Commission will hold a public hearing, with the option to join via remote conferencing, in the Transportation Commission meeting room, Room 200 of the Department of Transportation building, 2701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

Please use the following link to join by Teams

Click here to join the meeting

Meeting ID: 243 542 017 698
Passcode: GJxLHe
Join on the web

Join with a video conferencing device
291818717@t.plcm.vc
Video Conference ID: 113 179 063 0

Or call in (audio only)
+1 406-318-5487,,155368341# United States, Billings
Phone Conference ID: 155 368 341#

2. The Department of Transportation 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 Transportation no later than 5:00 p.m., March 29, 2024, to advise us of the nature of the accommodation that you need. Please contact Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana; telephone (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov.

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

18.6.246 POLITICAL SIGNS (1) remains the same.

(2) Political signs must not~~:~~

~~(a)~~ be placed on or allow any portion to intrude in the public right-of-way or on public property.~~; and~~

~~(b) be placed within 100 feet of any entrance to the building in which a polling place is located.~~

(3) remains the same.

~~(4) Political signs must be removed within 14 days following the applicable election. The department shall notify the landowner of illegal signs which are not removed within 14 days. The signs shall be removed by the department 24 hours after notification to the landowner. The department shall retain removed political signs for five working days after notification of removal before their destruction. The sign owner may retrieve the signs during this period.~~

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

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The rule amendment is necessary to delineate the department's ability to ensure that the placement of political signs does not adversely impact the safety of the traveling public. However, the regulation of electioneering activities, including political signs, is within the purview of the Commissioner of Political Practices.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana; telephone (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov, and must be received no later than 5:00 p.m., April 5, 2024.

5. 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. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

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

8. The special notice requirements of 2-4-303, MCA, have been fulfilled. On February 27, 2024, written contact with Transportation Interim Committee staff members was made by email.

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

10. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rule will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Loran Frazier
Loran Frazier
Chair
Transportation Commission

Certified to the Secretary of State February 27, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.17.119, 24.17.120, 24.17.121, and 24.17.122 pertaining to prevailing wage rate adoption	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 28, 2024, at 9:00 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/82078494546
Meeting ID: 820 7849 4546, Passcode: 374986
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 820 7849 4546, Passcode: 374986

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 March 21, 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. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to update the rules pertaining to prevailing wage rate adoption to clarify that wage information must be submitted during the wage survey process. During recent years, significant wage information has been submitted during the adoption phase of the prevailed rate process. This has led to recalculations during the rulemaking process, which limits the ability of the public to review and ensure the accuracy of wage rate calculations. While the department will consider comments regarding the accuracy of calculations or comments regarding prevailing wage rates in general, the department has determined it is necessary to clarify the survey rules to specify, without ambiguity, that survey information must be submitted during the survey period–and not later.

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

24.17.119 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – BUILDING CONSTRUCTION SERVICES

(1) through (4) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) and (b) remain the same.

(c) Wage information received during public comment for the update of prevailing wage rates or fringe benefits will not be considered.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For purposes of this rule, wage information which was not submitted during the survey does not indicate that a rate is incorrect. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) remains the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-413, 18-2-419, MCA

24.17.120 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HEAVY CONSTRUCTION SERVICES

(1) through (4) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) and (b) remain the same.

(c) Wage information received during public comment for the update of prevailing wage rates or fringe benefits will not be considered.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For purposes of this rule, wage information which was not submitted during the survey does not indicate that a rate is incorrect. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) remains the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, 18-2-419, MCA

24.17.121 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HIGHWAY CONSTRUCTION SERVICES

(1) through (4) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) and (b) remain the same.

(c) Wage information received during public comment for the update of prevailing wage rates or fringe benefits will not be considered.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefit rate for that occupation that was adopted via the rulemaking and public hearing process. For purposes of this rule, wage information which was not submitted during the survey does not indicate that a rate is incorrect. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) remains the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, 18-2-419, MCA

24.17.122 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – NONCONSTRUCTION SERVICES

(1) through (4) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) and (b) remain the same.

(c) Wage information received during public comment for the update of prevailing wage rates or fringe benefits will not be considered.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For purposes of this rule, wage information which was not submitted during the survey does not indicate that a rate is incorrect. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) remains the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-415, 18-2-419, MCA

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., April 5, 2024.

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

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, do not apply.

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 February 27, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.601, 24.29.604, 24.29.607, 24.29.611, 24.29.616, 24.29.617, 24.29.618, 24.29.621, 24.29.624, 24.29.628, 24.29.703, 24.29.720, 24.29.721, 24.29.801, 24.29.813, 24.29.816, 24.29.818, 24.29.821, 24.29.824, 24.29.831, 24.29.837, 24.29.841, 24.29.844, 24.29.908, 24.29.1201, 24.29.1202, 24.29.1512, 24.29.1513, 24.29.1515, 24.29.1523, 24.29.1534, 24.29.1538, 24.29.1601, 24.29.1611, 24.29.1616, 24.29.1621, 24.29.1710, 24.29.1725, 24.29.1741, 24.29.2605, 24.29.2607, 24.29.2610, 24.29.2614, 24.29.2831, 24.29.2841, 24.29.2843, 24.29.2853, 24.29.3101, 24.29.3103, 24.29.3127, 24.29.3802, 24.29.4303, 24.29.4307, 24.29.4314, 24.29.4321, 24.29.4332, 24.29.4336, and 24.29.4339, the adoption of NEW RULES I through VII, and the repeal of ARM 24.29.205, 24.29.206, 24.29.207, 24.29.213, 24.29.215, 24.29.608, 24.29.610, 24.29.622, 24.29.623, 24.29.627, 24.29.704, 24.29.709, 24.29.713, 24.29.804, 24.29.851, 24.29.902, 24.29.907, 24.29.929, 24.29.954, 24.29.956, 24.29.962, 24.29.971, 24.29.1401, 24.29.1501, 24.29.1510, 24.29.1517, 24.29.1522, 24.29.1526, 24.29.1533, 24.29.1701, 24.29.1705, 24.29.1761, 24.29.2002, 24.29.2003, 24.29.2301, 24.29.2303, 24.29.2311, 24.29.2321, 24.29.2323, 24.29.2326, 24.29.2329, 24.29.2331, 24.29.2336, 24.29.2339, 24.29.2341, 24.29.2346, 24.29.2351, 24.29.2356, 24.29.2361, 24.29.2366, 24.29.2371, 24.29.2373, 24.29.2376, 24.29.2379, 24.29.2602, 24.29.2701, 24.29.2811, 24.29.2839, 24.29.2846, 24.29.2849, 24.29.2851, 24.29.2855, 24.29.3107, 24.29.3111,	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

24.29.3114, 24.29.3117, 24.29.3121,)
24.29.3124, 24.29.4301, 24.29.4311,)
24.29.4317, 24.29.4322, and)
24.29.4329 pertaining to workers')
compensation

TO: All Concerned Persons

1. On March 28, 2024, at 1:00 p.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/83341669516
Meeting ID: 833 4166 9516, Passcode: 356912
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 833 4166 9516, Passcode: 356912

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 March 21, 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. GENERAL STATEMENT OF REASONABLE NECESSITY: There is necessity to substantially review and revise the current workers' compensation rules to provide greater clarity, simplicity, and usability of the administrative rules. The rules are proposed to be amended to eliminate duplication of statute, to repeal no longer applicable rules, and to clarify departmental processes for those who use the workers' compensation rules. This rulemaking is in furtherance of Executive Order 1-2021 and efforts to reduce red tape in administrative rules.

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

24.29.601 DEFINITIONS For the purposes of ARM Title 24, chapter 29, subchapter 6, the following definitions apply:

(1) remains the same.

(2) "Administrative review" as used in Title 39, chapter 71, part 21, MCA refers to the process set forth in [NEW RULE II], except that the timelines specified in 39-71-2105, MCA, apply.

(2) through (5) remain the same but are renumbered (3) through (6).

~~(6) "Department" means the Montana Department of Labor and Industry.~~

~~(7) "Employer" means an "employer" as defined in 39-71-117(1), MCA, except those state agencies that are excluded from the definition pursuant to 39-71-403, MCA.~~

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

~~(9) "Guaranty fund" means the Montana self-insurers guaranty fund, established pursuant to 39-71-2609, MCA.~~

~~(10) "Occupational Disease Act" means Title 39, chapter 72, MCA, as it existed prior to July 1, 2005.~~

(11) and (12) remain the same but are renumbered (8) and (9).

~~(13) "Workers' Compensation Act" means Title 39, chapter 71, MCA.~~

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107, 39-71-2108, MCA

REASON: The definitions are proposed to be stricken which duplicate statute.

24.29.604 MONTANA SELF-INSURERS GUARANTY FUND--ACCEPTANCE REQUIRED FOR PRIVATE EMPLOYERS OR PRIVATE GROUPS

~~(1) The department's approval of requests from private applicants to self-insure is contingent upon the acceptance of membership in the guaranty fund in accordance with 39-71-2609, MCA. Public employers and groups of public employers are not eligible for membership in the guaranty fund, and the guaranty fund has no role in the approval of decisions regarding the eligibility of public employers or groups of employers to self-insure, or in the amount of security required.~~

~~(2)~~(1) The department will exchange all information with the guaranty fund ~~regarding financial statements, security deposit requirements, excess insurance requirements and any other information~~ pertinent to the department's review of the application.

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

~~(4) If the department does not approve an applicant to self-insure, or if the guaranty fund does not accept the applicant as a member, then the applicant may not be granted permission to self-insure under plan No. 1.~~

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, ~~39-71-2608,~~ 39-71-2609, MCA

REASON: Section (1) is proposed to be stricken because its terms duplicate 39-71-2609(2), MCA, and public employers are described in ARM 24.29.607. The implementation statutes are proposed to be amended to strike a statute which does not exist in favor of the statute actually implemented. Section (2) is proposed to be amended to conform to current business practice. Section (4) is proposed to be repealed because 39-71-2103, MCA, makes clear that both the department and the guaranty fund must approve a self-insurer.

24.29.607 PUBLIC EMPLOYERS OTHER THAN STATE AGENCIES

(1) The provisions of ARM Title 24, chapter 29, subchapter 6 apply to public employers and public employer groups, other than state agencies as defined in 39-71-403, MCA, except that the guaranty fund has no involvement in department decisions regarding public employers or public employer groups and public employers are not required to be members of the guaranty fund.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107, 39-71-2108, 39-71-2603, 39-71-2609, MCA

REASON: The rule is proposed to be amended to clarify that public employers need not be members of the guaranty fund.

24.29.611 SECURITY DEPOSIT--CRITERIA (1) ~~When a security deposit is required under ARM 24.29.610, it may be a surety bond, government bond, letter of credit, or certificate of deposit acceptable to the department and the guaranty fund.~~ When a security deposit is required, the following criteria apply:

(a) through (f) remain the same.

AUTH: 39-71-203, 39-71-2106, MCA
IMP: 39-71-403, 39-71-2106, MCA

REASON: Section (1) is proposed to be shortened and was duplicative of statute.

24.29.616 EXCESS INSURANCE--WHEN REQUIRED (1) and (2) remain the same.

(3) The contract or policy of specific excess insurance and aggregate excess insurance must comply with the following:

(a) and (b) remain the same.

~~(c) It may be canceled or its renewal denied only upon written notice by registered or certified mail to the other party to the policy and to the department and the guaranty fund, not less than 60 days before termination by the party desiring to cancel or not renew the policy. A carrier is liable for payment of all claims that occur from the date of inception of the policy to the cancellation date of the policy.~~

~~(d) Any contract or policy containing a commutation clause must provide that any commutation effected thereunder will not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by the department or a court. If the underwriter proposes to settle the liability as provided in the commutation clause of the policy for future compensation benefits payable for accidents or occupational diseases occurring during the term of the policy by the payment of a lump sum to the self-insurer, then not less than 60 days prior notice to such commutation must be given by the underwriter(s) or agent(s) by registered or certified mail to the department and the guaranty fund. If any commutation is effected, the department with the concurrence of the guaranty fund, shall have the right to direct such sum be~~

~~placed in trust for payment of benefits of the injured employee(s) entitled to such future payments.~~

~~(e) If a self-insurer becomes insolvent and, or, fails to make benefit payments, the excess carrier, after it has been determined the retention level has been reached on the excess insurance policy, shall make payments to the entity making payments on behalf of the insolvent self-insured in the same manner as payments would have been made by the excess carrier to the self-insured.~~

(c) All excess policies must include department-approved endorsements for cancellation, commutation (if allowed), insolvency, and late claim reporting.

(f) through (h) remain the same but are renumbered (d) through (f).

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2103, MCA

REASON: Subsections (3)(c) through (f) are proposed to be consolidated and simplified.

24.29.617 INITIAL ELECTION--INDIVIDUAL EMPLOYERS (1) An employer initially electing to be bound as a self-insurer shall provide the following:

(a) through (h) remain the same.

~~(i) certification that the self-insurance plan is not funded by a regulated or unregulated insurance company;~~

~~(j)~~(i) evidence that internal policies and procedures are satisfactory to administer a self-insurance program~~; and~~.

~~(k) evidence of permission to self-insure in other states, if applicable.~~

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, MCA

REASON: Subsection (1)(i) is proposed to be stricken because the department analyzes the employer's individual financial statements, and the employer is liable for self-insurance. Subsection (1)(k) is proposed to be stricken because the requirements for self-insurance in other states can differ significantly from Montana.

24.29.618 INITIAL ELECTION--EMPLOYER GROUPS (1) An employer group applicant shall provide the following:

(a) through (d) remain the same.

(e) a copy of at least the most recent year's audited financial statements, or reviewed financial statements, if audited statements are not prepared as part of the employer's normal business practice, from each member of the employer group. The total premiums payable to the group from employers having reviewed financial statements shall not constitute more than 10 percent of the group's total premium. The department or the guaranty fund may require copies of additional years' audited or reviewed financial statements from the applicant~~. Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant (CPA). The department will advise the CPA of the nature and format of the~~

~~information to be provided to the department. The applicant shall pay the cost of such a submission and review~~;

(f) through (v) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2106, MCA

REASON: The rule is proposed to be amended because the CPA requirement is no longer used to evaluate financial statements.

24.29.621 NEW MEMBERS OF EMPLOYER GROUPS (1) An employer group which has been self-insured for at least one year may add employers with the approval of the department, and the concurrence of the guaranty fund. ~~New members may only be added on January 1, April 1, July 1 and October 1.~~ The employer group shall provide the following information about the new employer at least 90 days prior to the requested date of addition to the employer group:

(a) through (c) remain the same.

(d) copies of ~~additional~~ two years' audited or reviewed financial statements may be required from each new applicant by the department or the guaranty fund~~.~~; ~~Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant. The department will advise the CPA of the nature and format of the information to be provided to the department. The applicant shall pay the cost of such a submission and review;~~

~~(e) the employer group may accept a new applicant who provides reviewed financial statements, provided the total premiums payable to the group from individual members having reviewed financial statements, including the new applicant, shall not exceed 25% of the employer group's total normal premium for the year the applicant joins the employer group;~~

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

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2106, MCA

REASON: Section (1) is proposed to be updated because timing for entry into the group need not be governed by rule and can be left to the discretion of the group. Subsection (1)(d) is proposed to be amended to align with current requirements. Subsection (1)(e) is proposed to be stricken because such verifications are not practicable.

24.29.624 REVOCATION, SUSPENSION, TERMINATION, AND WITHDRAWAL OF PERMISSION (1) The department may revoke its order granting permission to self-insure after determining that the self-insurer no longer meets the requirements of the statutes or ARM Title 24, chapter 29, subchapter 6. The self-insurer may appeal the department's revocation order in accordance with ~~ARM 24.29.207~~ [NEW RULE II]. If a self-insurer's permission to self-insure is revoked, the employer(s) shall elect to be bound by compensation ~~plan No. 1,~~ plan

No. 2~~,~~ or plan No. 3 on the effective date of the revocation of permission to self-insure.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107, 39-71-2108, 39-71-2609, MCA

REASON: Section (1) is proposed to be amended based on proposed amendments to subchapter 2 in this rulemaking. The subsection is further amended to reflect that a self-insured who is revoked may not elect plan No. 1.

24.29.628 NOTIFICATION OF CHANGES IN SELF-INSURER STATUS REQUIRED (1) The self-insurer shall notify the department in writing:

(a) remains the same.

(b) within 30 days subsequent to:

(i) and (ii) remain the same.

(iii) changes in excess coverage;

(iii) and (iv) remain the same but are renumbered (iv) and (v).

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107, 39-71-2108, MCA

REASON: There is reasonable necessity to amend (1) to reflect the requirement to notify the department of changes in excess coverage.

24.29.703 ~~ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 2 OR 3~~ EVIDENCE OF COVERAGE ~~(1) Any employer, except state agencies specified in 39-71-403, MCA, may elect coverage under plan No. 2 by owning an insurance policy that is in force, sold by a private insurance carrier authorized by the insurance commissioner's office to sell workers' compensation insurance in Montana.~~

~~(2) Any employer may elect coverage under plan No. 3 by owning an insurance policy that is in force, sold by the state compensation insurance fund.~~

~~(3)~~(1) Insurance policies ~~as required by (1) and (2)~~ under plan No. 2 or 3 must include: ~~section 3A, on the Insurance Declaration page, evidencing Montana coverage.~~

~~(4) In order to meet the requirements of this rule:~~

~~(a) the insurance policy must list Montana as a state under whose laws coverage is provided; or~~

~~(b) section 3A of the coverage declarations page must expressly list Montana as a state under whose laws coverage is provided.~~

(a) Montana in section 3A of the coverage declarations page; or

(b) Montana in section 3C of the other or all-states coverage declarations page, expressly as a state to which the policy extends coverage.

(2) To be valid for the purpose of electing coverage, the insurer must be authorized by the insurance commissioner to sell workers' compensation insurance in Montana.

AUTH: 39-71-203, MCA
IMP: ~~39-71-2201, 39-71-2301,~~ 39-71-401, MCA

REASON: Reasonable necessity exists to strike (1) and (2) because they are primarily not substantive. The rule is amended to recognize that all states and fifty states coverage is permissible for Montana workers' compensation in Montana. Reasonable necessity exists to strike 39-71-2301, MCA, from the implementation citations because it was repealed in 1989. Reasonable necessity exists to set the implementation citation as 39-71-401, MCA, because the rule discusses an election to be bound.

24.29.720 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

(1) ~~Effective January 1, 1993, payments~~ Payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred in the course and scope of employment are not wages if all of the following are met:

(a) through (d) remain the same.

(2) Reimbursement for expenses may be based on any of the following methods that apply:

(a) remains the same.

(b) for meals and lodging, at a flat rate no greater than the amount allowed to employees of the state of Montana pursuant to 2-18-501~~(1)(b) and (2)(b)~~, MCA, for meals~~,~~ and ~~2-18-501(5), MCA for~~ lodging, unless, through documentation, the employer can substantiate a higher rate;

(c) remains the same.

(d) for equipment other than vehicles, the reasonable rental value for that equipment~~, which for individuals involved in timber falling may not exceed $22.50 per working day for chain saw and related timber falling expenses~~;

(e) remains the same.

(f) for drivers utilized or employed by a motor carrier ~~with intrastate operating authority~~, meal and lodging expenses may be reimbursed by either of the methods provided in (2)(a) or (b) for each calendar day the driver is on travel status~~; or~~

~~(g) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in (2)(a) or (b), or by a flat rate not to exceed $30.00 for each calendar day the driver is on travel status~~.

AUTH: 39-71-203, MCA
IMP: 39-71-123, MCA

REASON: Reasonable necessity exists to amend (2)(b) because 2-18-501(1)(b), MCA no longer exists. For purposes of this rule, specific reference to subsections is unnecessary, and so the pin cites have been removed. Reasonable necessity exists to combine (2)(f) and (g) to simplify the rule and remove duplicative language. Flat

rates are proposed to be repealed in (2)(d) and (g) because they have not been tracked and timely updated and so are of limited value to stakeholders.

24.29.721 VALUE OF EMPLOYER-FURNISHED HOUSING (1) remains the same.

(2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana. ~~as specified~~ The rental value is specified in the publications ~~entitled~~ below, available on the department's website or on request:

(a) "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates." for the period from April 1, 2018, through [the day before the effective date of this rulemaking]; and

~~(a) The publication is available online via the department's web site, http://erd.dli.mt.gov.~~

~~(b) A printed copy of the publication is available to the public at no cost, upon request to the department's Employment Relations Division.~~

(b) "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates, 2024" beginning July 1, 2024.

(3) and (4) remain the same.

~~(5) The provisions of this rule apply to housing furnished any worker.~~

AUTH: 39-71-203, MCA
IMP: 39-71-123, MCA

REASON: Reasonable necessity exists to update the state's lodging rates because they have not been updated since 2018. In the intervening years, there has been a noticeable increase in lodging rates statewide, totaling a 17% increase across lodging sizes according to Housing and Urban Development's Fair Market Rents. Because of this marked increase, the department proposes an increase in the state's recognized lodging rates. Reasonable necessity exists to strike (5) because it is unnecessary to state the general applicability of a rule which is, by its terms, not limited in applicability.

24.29.801 ACCIDENT REPORTING (1) ~~Upon notice of an accident, injury, or occupational disease an employer shall, within six days of such notice, submit to the employer's workers' compensation insurer or to the department, a completed form known as the first report of occupational injury/occupational disease.~~ An employer shall submit the first report of injury/occupational disease form to its insurer within six days of notice of an accident, injury, or occupational disease. If a first report is improperly sent to the department, it will be forwarded to the insurer, if any.

(2) An employer not covered by workers' compensation shall submit the report to the department.

(3) An employee may submit a report to the department.

AUTH: 39-71-203, 39-71-307, MCA
IMP: 39-71-307, 39-71-603, MCA

REASON: Reasonable necessity exists to amend this rule to simplify its form for the reader. Additionally, the rule is amended to clarify that FROIs for insured employers should be provided to the employer's insurance, and only those instances where the employer is uninsured should the report come to the department.

24.29.813 DEFINITIONS For purposes of this subchapter, the following definitions apply:

~~(1) "Approved continuing education course" or "course" means any course, seminar, or program of instruction that has been approved by the department for presentation as part of the continuing education requirements for claims examiner certification and that relates to the state workers' compensation system or to interactions among injured workers, medical providers, and employers.~~

~~(2) "Certificate of completion" means a document issued by the sponsoring organization to the claims examiner signifying satisfactory completion of a course and reflecting credit hours earned by the claims examiner.~~

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

~~(4) "Claims examiner" means a claims examiner as defined under 39-71-116, MCA.~~

(5) through (8) remain the same but are renumbered (2) through (5).

~~(9) "Proctor" means a person who monitors the attendance, conduct, and the examination process for course participants, but who does not participate in course presentations, activities or discussions, or complete any required examinations.~~

~~(10) "Remote training" means a course format in which a body of students attend a training session using a web meeting tool and/or conference telephone service with a method approved by the department to ensure full participation of each student.~~

~~(11) "Self-study" means those independent study methods taught outside the classroom setting through approved text or prerecorded audio or video content, or another method of information exchange where both the means and content are approved by the department.~~

(12) through (14) remain the same but are renumbered (6) through (8).

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to strike the definition of "approved continuing education course" because it is the common definition. Reasonable necessity exists to strike the definition of "certificate of completion" because the term was not used in these rules. Reasonable necessity exists to strike the definition of "claims examiner" because it is not necessary to restate in rule what is set forth in statute. Reasonable necessity exists to strike the definition of "proctor" because it is the common, dictionary definition of the term and need not be restated in rule. Reasonable necessity exists to strike the definitions of "remote training" and "self-study" because their only use in these rules is proposed to be stricken as well.

24.29.816 DECISIONS WHICH MUST BE MADE BY A CERTIFIED CLAIMS EXAMINER (1) Except as provided by ARM 24.29.818 and this rule, only a certified claims examiner may perform the tasks identified by 39-71-116, MCA, as being the responsibility of a claims examiner. ~~As provided by 39-71-116, MCA, those tasks are to:~~

~~(a) determine liability;~~

~~(b) apply the requirements of the Workers' Compensation Act;~~

~~(c) settle workers' compensation or occupational disease claims; and~~

~~(d) determine survivor benefits.~~

(2) remains the same.

~~(3) Examples of decisions made under (2) include, but are not necessarily limited to:~~

~~(a) changing the disability status of a worker; and~~

~~(b) denying medical benefits.~~

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

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-107, 39-71-116, 39-71-320, MCA

REASON: Reasonable necessity exists to strike portions of (1) because they explicitly restate statute. Reasonable necessity exists to strike (3) because it is not necessary to state examples which are necessarily included in the provisions of (2).

24.29.818 NEW HIRES AND CLAIMS EXAMINER TRAINEES – DESIGNATION OF CERTIFIED CLAIMS EXAMINER TO BE ACCOUNTABLE FOR DECISIONS (1) remains the same.

(2) ~~The employer of a new hire or claims examiner trainee must maintain documentation for each claim being handled by a new hire or claims examiner trainee, of the certified claims examiner who is accountable for the decisions made by that new hire or claims examiner trainee.~~ Record of the accountable certified claims examiner must be maintained, including any change of accountability. The records must be provided to the department and the injured worker or their attorney if requested in writing.

~~(a) The employer may change the certified claims examiner designated as being accountable for decisions on a claim being handled by a new hire or claims examiner trainee at any time, so long as that change is appropriately documented within the insurer's records.~~

~~(b) The documentation required by this section must be promptly made available to the department, the injured worker, or the attorney of an injured worker, if that information is requested in writing.~~

~~(3) A person who is a new hire or claims examiner trainee that does not timely become a certified claims examiner is not allowed to perform tasks that are required to be performed by a certified claims examiner.~~

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to amend (2) to simplify the rule for ease of use. Reasonable necessity exists to strike (3) because it is duplicative of (1), which sets forth a definitive requirement that a new hire or claims examiner trainee may only work in such capacity for 180 days.

24.29.821 CERTIFICATION OF CLAIMS EXAMINERS (1) Claims examiners must be certified by the department upon the following:

(a) remains the same.

~~(b) meeting the minimum qualifications for certification in (2);~~

(c) and (d) remain the same but are renumbered (b) and (c).

~~(2) To meet the minimum qualifications, the applicant for certification shall be:~~

~~(a) at least 18 years of age; and~~

~~(b) have a high school diploma or equivalent certificate.~~

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

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to strike the requirement of a high school diploma and age limitation because it sets forth an artificial barrier to entry into the field of claims examination. While certification without a diploma may be atypical, there is not a reason to mandate the diploma.

24.29.824 EXAMINATION FOR CLAIMS EXAMINERS (1) ~~Each applicant for certification as a workers' compensation claims examiner shall, prior to the issuance of such certification, personally take and pass an examination given by the department or a department-approved agent as a test of qualifications and competency.~~ Certified claims examiner applicants must take and pass the department-approved examination.

~~(2) Satisfactory completion of an examination demonstrates the individual's:~~

~~(a) familiarity with Montana's workers' compensation statutes;~~

~~(b) ability to navigate the administrative rules found in this chapter;~~

~~(c) knowledge of workers' compensation definitions and concepts.~~

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

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to restate (1) for ease of reading. Reasonable necessity exists to strike (2) because it sets forth aspirational, nonessential language regarding the purpose for the statutorily required examination.

24.29.831 LAPSE IN CERTIFICATION (1) and (2) remain the same.

~~(3) A person may not perform the functions of a certified claims examiner with a lapsed certification.~~

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to strike (3) because it is not necessary to restate in this rule that an individual who is not a certified claims examiner may not act on claims. This is already stated in ARM 24.29.816.

24.29.837 REVIEW AND APPROVAL OF CONTINUING EDUCATION COURSES BY DEPARTMENT (1) remains the same.

(2) The department shall review the course submission and determine whether to approve the course and the number of credit hours to be awarded for completion of the course.

~~(3) Courses subject to an award of continuing education credits may include but are not limited to:~~

~~(a) classroom setting or seminars;~~

~~(b) self-study, electronic media;~~

~~(c) correspondence course;~~

~~(d) computer-based training; or~~

~~(e) remote training.~~

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to amend (2) to clarify that courses submitted to the department may be approved or disapproved based on the information provided. Reasonable necessity exists to strike (3) because CE may be offered in any format; providing a list of possible formats may cause confusion as to what might be intended to be excluded.

24.29.841 COURSE SUBMISSIONS (1) remains the same.

(2) Submissions for approval of courses must include ~~at least the following information:~~ all information requested by the department on the form for submission.

~~(a) the name of the sponsoring organization;~~

~~(b) the title of the course;~~

~~(c) the proposed date(s) of offering or the dates the course was held;~~

~~(d) course goals and objectives;~~

~~(e) major course topic(s);~~

~~(f) course length;~~

~~(g) a list of other states, if any, that have approved the course and the credits granted the course in those states;~~

~~(h) a syllabus or course outline;~~

~~(i) a summary of each course outline element;~~

~~(j) method of instruction, such as classroom, self-study, videotape, audiotape, teleconference, etc.;~~

~~(k) method of administering examinations, if any;~~

~~(l) method of attendance verification;~~

~~(m) method of student record maintenance;~~
~~(n) instructors, if any;~~
~~(o) a designated contact person;~~
~~(p) a written explanation of examination security measures and examination administration methods; and~~
~~(q) written notification of additional dates of course offering to the department three days in advance of presentation of any course.~~
(3) and (4) remain the same.
~~(5) Approved accredited university or college courses will be allowed 15 continuing education credits for each semester credit and ten continuing education credits for each quarter credit.~~
(6) through (12) remain the same but are renumbered (5) through (11).

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-320, MCA

REASON: Reasonable necessity exists to strike the subsections of (2) in favor of the simplicity of mandating the form for submission of approval produced by the department. Reasonable necessity exists to strike (5) because, while those courses may be approved, they will be approved through the regular application process based on a review of the application submitted.

24.29.844 QUALIFICATIONS FOR INSTRUCTORS (1) Instructors must ~~meet the following qualifications~~ have experience in at least one of the following for the department to approve the course:
~~(a) a high school diploma or equivalent certificate;~~
~~(b) experience in at least one of the following:~~
(i) through (iii) remain the same but are renumbered (a) through (c).
(2) through (4) remain the same.

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-320, MCA

REASON: There is reasonable necessity to strike the requirement of a high school diploma for an instructor because the level of formal education completed has no bearing on the knowledge or expertise the instructor might have. A training is approved based on the materials to be presented, rather than the completion of high school by the instructor.

24.29.908 PENALTIES, ADMINISTRATIVE FINES, AND INTEREST
(1) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-306, 39-71-915, 39-71-1049, 50-71-128, MCA

REASON: There is reasonable necessity to update the implementation citations to clarify and specify the applicability of this rule to all funds administered in workers' compensation.

24.29.1201 ~~INTRODUCTION~~ APPROVAL – WHEN REQUIRED ~~(1) The department may approve a petition for a lump-sum settlement between an insurer and an injured worker or the worker's beneficiary, which converts permanent disability biweekly payments to a lump-sum payment, in accordance with the provisions of 39-71-741, MCA.~~

(2) and (3) remain the same but are renumbered (1) and (2).

~~(4) Conversion of biweekly permanent partial disability benefits to a lump sum must meet the requirements of (3) only when the claimant's date of injury was prior to July 1, 1991.~~

~~(5)~~(3) Conversion of biweekly permanent total disability benefits to a lump sum must meet the test of ~~(3)~~ this rule for all dates of injury.

~~(6) The Workers' Compensation Court has jurisdiction over disputes between claimants and insurers regarding conversion of biweekly disability payments to a lump sum and disputes arising from the department's denial of approval of a petition for conversion. A dispute between an insurer and claimant is subject to mediation. A dispute arising from department denial of a petition for conversion is not subject to mandatory mediation.~~

AUTH: 39-71-203, MCA~~, Chapter 471, Laws of 1985~~
IMP: 39-71-741, MCA

REASON: Reasonable necessity exists to amend the catchphrase to clarify that the rule provides substance, not merely an introduction to substantive rules, and to set forth the reason for the rule. Reasonable necessity exists to strike (1) because it is duplicative of 39-71-741(1), MCA. Reasonable necessity exists to strike (4) because it applies to claims that are at least 33 years old. Reasonable necessity exists to strike (6) because it is duplicative of 39-71-741(6) and (7), MCA. Reasonable necessity exists to update the authorizing statutes to clarify the rulemaking authority for this rule.

24.29.1202 DOCUMENTATION REQUIREMENTS (1) A petition to the department for lump-sum conversion of biweekly permanent total disability benefits for all dates of injury must include a description of the lump-sum proposal, including but not limited to:

(a) analysis of the worker's current financial conditions as described in (3);

(b) analysis of the worker's financial condition under the proposed lump-sum conversion, that includes a description of the use of the lump sum and how this use will contribute to financially sustaining the worker over the same period biweekly payments would have been paid;

(c) analysis of financial condition that would be reasonably expected had the worker not been injured ~~as described in (6)~~; and

(d) through (2) remain the same.

(3) "Analysis of current financial condition" for purposes of (1) shall include a detailed list of all the worker's ~~income,~~ assets, ~~and~~ liabilities, ~~as well as other available resources, including but not limited to:~~ sources of income, and monthly obligations.

~~(a) periodic income (specify periods reported):~~
~~(i) social security disability income,~~
~~(ii) social security retirement income,~~
~~(iii) retirement or pension income,~~
~~(iv) other disability insurance,~~
~~(v) health insurance benefits,~~
~~(vi) mortgage insurance benefits,~~
~~(vii) spousal or other family income,~~
~~(viii) life insurance proceeds,~~
~~(ix) credit disability benefits,~~
~~(x) interest or dividend income,~~
~~(xi) workers' compensation benefits,~~
~~(xii) third party recovery (actual or potential);~~
~~(b) monetary assets:~~
~~(i) cash on hand,~~
~~(ii) checking account,~~
~~(iii) savings account,~~
~~(iv) accounts and notes receivable,~~
~~(v) savings bonds,~~
~~(vi) stocks and bonds,~~
~~(vii) mutual funds,~~
~~(viii) cash value of life insurance,~~
~~(ix) cash value of annuities,~~
~~(x) cash value of retirement fund;~~
~~(c) fixed assets:~~
~~(i) home and property,~~
~~(ii) other real estate,~~
~~(iii) retirement fund,~~
~~(iv) motor vehicles,~~
~~(v) personal property;~~
~~(d) liabilities:~~
~~(i) all monthly living expenses,~~
~~(ii) existing delinquent or outstanding debts,~~
~~(iii) periodic payments on debts,~~
~~(iv) long-term liabilities,~~
~~(v) attorney fees and costs.~~

(4) ~~If a~~ A petition for lump-sum conversion of permanent total benefits that involves the partial or total elimination of existing delinquent or outstanding debts~~, a debt management plan must be described and include:~~ must include a plan for debt consolidation.

~~(a) plan of management, through applying the proposed lump-sum payment, of all existing delinquent or outstanding debts, both short- and long-term; and~~

~~(b) description of how the worker will be sustained financially through use of the lump-sum payment and other available resources, including cash available throughout the life of the debt management plan, to manage delinquent or outstanding debts.~~

(5) If a permanent total benefit lump-sum proposal involves a business venture, the proposal must include a business plan ~~must be described and include:~~ that shows the net income available to the worker after business expenses are paid.

~~(a) Information indicating the worker's capability in proposed business venture, including:~~

~~(i) relevant educational and work history,~~

~~(ii) knowledge of the proposed business,~~

~~(iii) if managerial, managerial capability,~~

~~(iv) role to be assumed in the proposed business.~~

~~(b) If the venture is a new business, information about the proposed business venture including, but not limited to:~~

~~(i) description of the proposed business venture,~~

~~(ii) estimate of the purchase price of the business,~~

~~(iii) work sheets showing: total source of dollars, start-up costs, projected expenses and net income forecast,~~

~~(iv) feasibility study of the market conditions in the intended market area, showing that the business is a feasible venture.~~

~~(c) If the venture is an existing business, information about the proposed business including, but not limited to:~~

~~(i) description of proposed business venture,~~

~~(ii) legal agreement showing intent to sell the existing business, purchase price of the business, and any conditions placed upon such sale,~~

~~(iii) income tax statements and balance sheets for the two consecutive years prior to the agreement to sell the business,~~

~~(iv) work sheets showing total source of dollars, start-up costs, projected expenses and net income forecast,~~

~~(v) market analysis showing market conditions in the intended market area.~~

~~(d) A statement of cash that will be available to the worker as income on a biweekly basis after start-up costs and other business expenses are considered throughout the life of the venture.~~

~~(6) "Analysis of financial condition that would be reasonably expected had the worker not been injured" for purposes of (1) must include a description of the income the worker would have received and the basis upon which the estimate is derived. The analysis must include:~~

~~(a) evidence of education and work experience, including:~~

~~(i) work history, dates and descriptions of employment or unemployment, names and locations of employers;~~

~~(ii) highest level of formal education attained, degrees received, dates of attendance, names and locations of schools; and~~

~~(iii) special training, professional licenses, registrations, or certifications, certifications received; dates of attendance, names and locations of institutions providing training, licenses, registrations or certifications.~~

~~(b) evidence of probable job promotions and pay increases, including:~~

~~(i) supportive documentation from employers, union contracts, or other reasonable substantiation of probable job promotions,~~

~~(ii) wage history,~~

~~(iii) statement from employer at the date of the accident of last wage rate paid; and~~

~~(iv) supportive documentation estimating wage rates from the date of the accident up to age 65.~~

~~(7)~~(6) A request for lump-sum settlement of medical benefits must include ~~the following information~~ the following completed forms:

~~(a) copy of medical reports documenting maximum medical improvement, current diagnosis, and recommendations for future treatment, if any;~~

~~(b) specific dollar amount of the settlement allocated to medical benefits;~~

~~(c) statement from the claimant and insurer as to why it is in the best interest of the parties to settle medical benefits;~~

~~(d) statement signed by the claimant to acknowledge the claimant understands which specific medical benefits will terminate upon settlement;~~

~~(e) statement signed by the claimant to acknowledge the claimant is on notice and understands that the future medical benefits settled under the agreement may not be covered by secondary healthcare payers such as Medicare, Medicaid, or other health insurers; and~~

~~(f) submission of the following completed forms to the department:~~

~~(i) "Summary of Settlement of Medical Benefits" form with original signatures by the claimant and the insurer or the insurer's authorized representative; and~~

~~(ii)~~(a) "Petition for Settlement Injury/Occupational Disease Medical Benefits Closed On An Accepted Claim" form ~~with original signatures~~ signed by the claimant, a witness, and the insurer or the insurer's authorized representative;~~.~~

(b) "Recap Sheet" form signed by the claimant and the insurer or the insurer's authorized representative; and

(c) "Summary of Settlement of Medical Benefits" form signed by the claimant and the insurer or the insurer's authorized representative.

~~(8)~~(7) The total value of the workers' compensation benefits may be discounted at the current rate established by the department when an insurer calculates a conversion to a lump-sum payment. ~~Only for~~ For claims with dates of injury between April 15, 1985 and June 30, 1987, the lump-sum payment may be discounted by 7%, compounded annually.

AUTH: 39-71-203, MCA
IMP: 39-71-741, MCA

REASON: There is reasonable necessity to amend this rule to remove unnecessary detail and better communicate current practice. Section (7) is proposed to be amended to recognize the available use of electronic signatures and to remove the detail of what is already in the form. The forms required are additionally reordered and include the recap sheet, which is collected as part of current business practice.

24.29.1512 SELECTION OF PHYSICIAN FOR CLAIMS ARISING ON OR AFTER JULY 1, 2013 ~~(1) For claims arising on or after July 1, 2013, "treating physician" has the meaning provided by 39-71-116, MCA.~~

~~(2)~~(1) ~~The worker may select a treating physician.~~ Initial or repeated treatment in an emergency room or urgent care facility is not selection of a treating physician. ~~The selection of a treating physician should be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.~~

~~(3) Any time after an insurer accepts liability for an injury or occupational disease, the insurer may recognize a treating physician selected by the injured worker. The treating physician is compensated at 100 percent of the fee schedule.~~

~~(4) After acceptance of liability, the insurer may formally approve the treating physician selected by the injured worker as a designated treating physician or may choose a different physician to be the designated treating physician. The designated treating physician is compensated at 110 percent of the fee schedule.~~

~~(a) The designated treating physician is responsible for coordination of all medical care, pursuant to 39-71-1101(2), MCA. The designated treating physician must agree to accept these responsibilities.~~

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

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(c) A health care provider who is referred by the designated treating physician is compensated at 90 percent of the fee schedule. These providers are not responsible for coordinating care or providing determinations as required by the designated treating physician.~~

~~(5) Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.~~

~~(6) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.~~

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to strike (1) because it is not necessary to adopt a definition from the statutes which the rules implement and is duplicative of 39-71-1101, MCA. A portion of (2) is proposed to be stricken because it implies misfeasance on the part of injured workers and does not take into consideration the ability of insurers to designate a treating physician. Criteria for treating physician selection is unnecessary. Sections (3) and (4) are proposed to be repealed because they duplicate 39-71-1101, MCA. Reasonable necessity exists to strike (5) and (6) because it is not necessary to state in rule that treatment may be received from

multiple providers. Additionally, the rule artificially limits such treatment to physicians and duplicates 39-71-1101, MCA.

24.29.1513 DOCUMENTATION REQUIREMENTS (1) ~~When a treating physician, emergency room or similar urgent care facility sees the claimant for the first time (related to the claim), the provider must furnish to the insurer the initial report, the Medical Status Form (MSF), and the treatment bill (CMS 1500) within seven business days of the visit.~~ A treating physician or emergent or urgent care provider must provide the insurer the following documents within seven days of the first claim-related visit:

(a) initial report;

(b) Medical Status Form; and

(c) treatment bill (CMS 1500).

(2) ~~As soon as possible, upon completion of the initial diagnostic process, the treating physician must prepare a treatment plan and promptly furnish a copy to the insurer. Subsequent changes in the treatment plan must be documented and a copy of the amended treatment plan must be promptly furnished to the insurer.~~ The treating physician must prepare a treatment plan. The treatment plan must be provided to the insurer as soon as possible. The treating physician must provide any changes to the treatment plan to the insurer.

(3) To be eligible for payment ~~for subsequent visits~~, the provider must ~~furnish~~ provide to the insurer:

(a) ~~the treatment bill (~~CMS 1500~~)~~;

(b) functional improvement status with respect to the treatment plan; and

(c) applicable treatment notes ~~with the bill~~.

~~(4) Certain treatment plans may require services be obtained from a vendor that is outside the tradition of being a professional health care provider. Under that circumstance, the treating physician has the obligation to include the medical necessity for the service in the treatment plan and furnish functional improvement status as appropriate. The vendor, however, is responsible for furnishing documentation.~~

~~(a) The following are examples of services that are contemplated as falling within the meaning of this subsection:~~

~~(i) health club membership; and~~

~~(ii) home health care services.~~

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

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Sections (1) and (2) are proposed to be amended to simplify the language and improve readability. Section (3) is proposed to be updated to align with ARM 24.29.1515. Section (4) is proposed to be repealed because requirements for the treatment plan are set forth in the utilization and treatment guidelines. It is not necessary to reiterate that the provider seeking reimbursement must provide the billing information to the insurer.

24.29.1515 FUNCTIONAL IMPROVEMENT STATUS (1) remains the same.

~~(2) If there are any significant changes in the treatment plan, that fact must be noted and described.~~

AUTH: 39-71-203, MCA
IMP: 39-71-704, 39-71-1036, MCA

REASON: Reasonable necessity exists to strike (2) because it is duplicative of requirements set forth in ARM 24.29.1513. Reasonable necessity exists to update the implementation statutes to refer to the statute requiring the creation of the medical status form.

24.29.1523 MEDICAL EQUIPMENT AND SUPPLIES ~~FOR DATES OF SERVICE ON OR AFTER JULY 1, 2013~~ ~~(1) For both facility and professional services, reimbursement for DME dispensed through a medical provider is determined by the professional fee schedule in effect on the date of service, except for prescription medicines as provided by ARM 24.29.1529. On March 31 of each year, or as soon thereafter as is reasonably feasible, the professional fee schedule with updated HCPCS will be posted on the web site. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the lesser of either $30.00 or 30 percent of the cost of the item plus the freight cost. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.~~

~~(a) Copies of the instructions are available on the department web site or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.~~

(1) If the relative value unit is null or not listed on the fee schedule for durable medical equipment, reimbursement is the total of:

(a) item cost;

(b) shipping cost; and

(c) the lesser of $30 or 30% of the item cost.

(2) If a provider adds value to ~~DME~~ durable medical equipment (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. ~~Merely unpacking~~ Unpacking an item ~~is not a "value-added" service~~ or simple fitting may not be billed. ~~While extensive~~ Extensive fitting of devices may be billed ~~for, simple fitting (such as adjusting the height of crutches) is not billable~~.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to amend the catchphrase because the language pertaining to other dates is proposed to be repealed. Reasonable necessity exists to rewrite (1) to clarify, simplify, and shorten the rule, as well as to strike duplicative text. Section (2) is amended for brevity and to define "DME" (durable medical equipment).

24.29.1534 PROFESSIONAL FEE SCHEDULE ~~FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013~~ (1) ~~The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013.~~ An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the ~~Employment Relations Division~~ department's web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the instruction sets for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~ The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) remains the same.

(b) modifiers, listed on the ~~ERD~~ department's website;

(c) through (e) remain the same.

(2) The conversion factors, the Current Procedural Terminology (CPT) codes, and the relative value unit (RVU)~~s~~ used depend on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the Resource-Based Relative Value Scale (RBRVS) then multiplying the RVU for that code by the conversion factor. ~~For example, if the conversion factor is $5.00, and a procedure code has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is $15.00.~~

(3) Where a permitted procedure is not covered by these rules or uses a new code, the insurer must pay 75 percent of the usual and customary fee charged by the provider to nonworkers' compensation patients ~~unless the procedure is not allowed by these rules~~.

(4) remains the same.

(5) Professionals, including those who furnish services in a hospital, ~~CAH, ASC,~~ critical access hospital, ambulatory surgery center, or other facility setting must bill insurers using the CMS 1500, with the exception of ~~PT, OT, and ST~~ physical therapy, occupational therapy, and speech therapy services provided on an outpatient basis and billed on a UB04.

(6) remains the same.

(7) When billing the services listed below, the Montana unique code, MT001, must be used and a separate written report is required describing the services provided. The reimbursement rate for this code is 0.54 RVUs per 15 minutes with time documented by the provider. These requirements apply to the following services:

(a) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor; ~~or~~

(b) a report associated with nonphysician conferences required by the payor; ~~or~~

(c) through (10) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Amendments are proposed to strike superfluous language and to define acronyms.

24.29.1538 CONVERSION FACTORS ~~FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008~~ ~~(1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.~~

(2) and (2)(a) remain the same but are renumbered (1) and (1)(a).

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~

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

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~

~~(4) Up to the top five insurers or third-party administrators, ranked by premiums written in Montana providing group health insurance coverage through a group health plan as defined in 33-22-140, MCA, and who use the RBRVS to determine fees for covered services, must annually provide to the department their current standard conversion factors by July 1.~~

~~(5) The conversion factor amounts for professional services are calculated using the average rates for medical services paid by up to the top five insurers or third-party administrators providing group health insurance via a group health plan in Montana, based upon the amount of premium for that category of insurance reported to the office of the Montana insurance commissioner. The term "group health plan" has the same meaning as provided by 33-22-140, MCA. To be included in the conversion factor determination, the insurer or third-party administrator must occupy at least one percent of the market share for group health insurance policies as reported annually to the insurance commissioner.~~

~~(a) The department annually surveys up to the top five insurers to collect information on the rates (the RBRVS conversion factors) paid during the current year for professional health care services furnished in Montana.~~

~~(b) The department's conversion factors for the following year are set at no more than 110 percent of the surveyed average.~~

(3) The department will annually survey up to the top five insurers or third-party administrators providing group health plan coverage in Montana to collect information on the conversion factors paid during the current year for professional health care services in Montana. The term group health plan has the same meaning as provided in 33-22-140, MCA.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: The rule is proposed to be amended to strike contact information of the department. The referenced reports are available on the department's website, and additional contact information, if needed, is also available on the website. Section (4) is proposed to be stricken because it is duplicative of (5). Section (5) is proposed to be stricken and replaced with new (3) for brevity and simplicity.

24.29.1601 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same.

~~(2) "Department" means the Department of Labor and Industry, Employment Relations Division.~~

(3) through (19) remain the same but are renumbered (2) through (18).

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to strike the definition of "department" because it is unnecessary to define in rule something already defined by controlling statute.

24.29.1611 UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The applicable utilization and treatment guidelines are available electronically ~~at the web site: http://www.mtguidelines.com; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011~~ on the department's website. The Montana Guidelines incorporated by reference apply as follows:

(a) and (b) remain the same.

~~(2) The Montana Guidelines consist of the following ten chapters and General Guideline Principles which are included at the beginning of each chapter:~~

~~(a) Low Back Pain;~~
~~(b) Shoulder Injury;~~
~~(c) Thoracic Outlet Syndrome;~~
~~(d) Lower Extremity;~~
~~(e) Chronic Pain Disorder;~~
~~(f) Cervical Spine Injury;~~
~~(g) Complex Regional Pain Syndrome;~~
~~(h) Mild Traumatic Brain Injury;~~
~~(i) Moderate/Severe Traumatic Brain Injury; and~~
~~(j) Cumulative Trauma Conditions.~~

~~(3)~~(2) The utilization and treatment guidelines adopted in (1) are to be read in conjunction with the Centers for Disease Control publications~~:~~.

~~(a)~~ "CDC Guideline for Prescribing Opioids for Chronic Pain – United States, ~~2016~~ 2022."~~; and~~

~~(b) 2018 edition of "Implementing the CDC Guideline for Prescribing Opioids for Chronic Pain."~~

(4) through (7) remain the same but are renumbered (3) through (6).

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to update (1) to guide users more generally to the department's website to access guidelines. Section (2) is proposed to be stricken, because the table of contents is also available on the website. Section (3) is proposed to be updated to reference the current guidelines.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) through (3) remain the same.

(4) The formulary is available ~~from:~~ on the department's website and from

~~(a) the department's web site, at https://erd.dli.mt.gov/work-comp-claims, at no charge;~~

~~(b) the department at Employment Relations Division, Medical Regulations, P.O. Box 8011, Helena, MT 59624-8011, at the costs of reproduction and postage for a printed .pdf version; and~~

~~(c)~~ the vendor, via electronic access, at a subscription rate charged by the vendor, which may include supplemental information or materials that are not incorporated by reference. The vendor may be contacted ~~via the internet~~ at www.mcg.com/odg, and at ODG by MCG Health, 3006 Bee Caves Road, Suite A250, Austin, TX 78746.

(5) remains the same.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to amend (4) to eliminate incorrect titles and websites within the department. The information remains available from the department on its website.

24.29.1621 PRIOR AUTHORIZATION (1) Prior authorization must be obtained in cases where treatment(s) or procedure(s) are requested that:

(a) are not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline or for body parts not covered by the Montana Guidelines;

(b) through (d) remain the same.

~~(2) For those body parts not covered by a guideline, the rule for prior authorization set out at ARM 24.29.1517 applies.~~

(2) Prior authorization is not required for emergency procedures.

(3) and (4) remain the same.

(5) All prior authorization requests~~, whether in written, e-mail, or facsimile (fax) form,~~ must be made at least 14 days prior to the date the service is scheduled ~~to be performed~~.

(a) Authorization is presumed to be given ~~by the insurer if there is no written denial sent by the insurer to the interested party within 14 days of the date the written prior authorization request was made~~ if not denied within 14 days.

(b) remains the same.

(c) ~~Nothing in this rule precludes verbal communication. However, all deadlines in this rule must be satisfied in written form.~~ A verbal request for authorization must be memorialized in writing to the insurer by the provider promptly. The memorialization must include all relevant details of the request and approval.

(6) and (7) remain the same.

~~(8) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.~~

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: The rule is proposed to be amended to provide clarification as to the applicability of the rule. Additionally, the rule is amended to remove unnecessary verbiage.

24.29.1710 AUXILIARY REHABILITATION BENEFITS (1) remains the same.

~~(2) Travel and relocation expenses may be paid to a worker on the same schedule as reimbursed to state employees in the course of state business.~~

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

~~(6)~~(5) The ~~division~~ department may order the insurer to pay such other reasonable and necessary auxiliary rehabilitation benefits as it deems appropriate.

AUTH: 39-71-203, MCA
IMP: 39-71-1025, MCA

REASON: Reasonable necessity exists to strike (2) because the timing of such reimbursement is not well defined for state employees, and as such, the rule lacks clarity. Reasonable necessity exists to amend (6) to reflect the change from the Division of Workers' Compensation to the department.

24.29.1725 INFORMATION TO BE INCLUDED IN THE REHABILITATION PLAN (1) and (1)(a) remain the same.

~~(b) the beginning and completion dates of the rehabilitation plan;~~

~~(c)~~(b) a projection of expenditures to be made pursuant to the plan~~. The plan should include an estimate of the amount of tuition, fees, books, and other reasonable retraining expenses needed to successfully complete the plan. The plan should also include~~ including the date the funds are needed and to whom the funds should be paid;

~~(d)~~(c) a description of the claimant's responsibilities under the plan~~. The plan should identify the responsibilities the claimant has agreed to undertake for successful completion of the plan. For example, the claimant agrees to attend classes and maintain a 2.0 grade point average, or the claimant agrees to timely register for classes, etc.~~;

~~(e)~~(d) a description of the insurer's responsibilities under the plan~~. The plan should identify the responsibilities the insurer has agreed to undertake for successful completion of the plan. For example, the insurer will pay rehabilitation benefits for a period of 70 weeks to begin on a specific date, etc.~~;

~~(f)~~(e) a description of the vocational rehabilitation provider's responsibilities~~. The plan should identify and list what actions or understandings the provider has agreed to undertake for successful completion of the plan. For example, the provider will continue to monitor the claimant's progress and provide further vocational rehabilitation services necessary to successfully complete the plan, etc.~~; and

(g) remains the same but is renumbered (f).

AUTH: 39-71-203, MCA
IMP: Title 39, chapter 71, part 10, MCA

REASON: Reasonable necessity exists to strike (1)(b) and portions of (1)(c) because they duplicate 39-71-1006(1)(c), MCA. Amendments to (1)(d) through (f) are proposed to remove superfluous language.

24.29.1741 PAYMENT OF REHABILITATION EXPENSES ~~FOR CLAIMS~~ ARISING ON OR AFTER JULY 1, 1997 ~~(1) For claims arising on or after July 1, 1997, a disabled worker is entitled to receive payment for reasonable tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, MCA.~~

~~(2) The insurer and claimant must agree to payment of tuition, fees, books and other reasonable and necessary retraining expenses. The expenses must be specified in the rehabilitation plan agreed upon between the insurer and claimant. The expenses must be paid directly by the insurer.~~

~~(3)~~(1) The insurer must pay for tuition ~~required for the agreed upon rehabilitation plan. The insurer must pay for~~, fees, books, supplies, and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon by the insurer and the claimant, the insurer is not responsible for f~~ees, books, supplies and/or equipment which are~~ optional~~,~~ expenses which are not required to complete the retraining plan. ~~For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment, unless the claimant does not have health care insurance. If the claimant does not have health care insurance, the purchase of student health insurance is required. The payment of parking fees is required for enrollment at Montana universities.~~

~~(a) Supplies include, but are not limited to, pens, paper, notebooks, etc. and are limited to $25 for each term of training. For example, a term of training is a semester, quarter, etc.~~

~~(b) Equipment includes, but is not limited to, calculators, computer hardware and/or software, ergonomic furniture, tools, etc. The insurer may choose to rent or lease rather than purchase the equipment, if the insurer determines it is more cost effective to do so.~~

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

AUTH: 39-71-203, MCA
IMP: Title 39, chapter 71, part 10, MCA

REASON: Sections (1) and (2) are proposed to be stricken because they are duplicative of statutory requirements for the insurer to pay for rehabilitation benefits. Amendment to (3) is proposed to shorten and simplify the rule by eliminating non-substantive language.

24.29.2605 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) remains the same.

~~(2) "Certified" and "certification" mean the department has determined an individual has a permanent physical or mental impairment that constitutes a substantial obstacle to employment, based upon review of the SIF application, the medical evidence of impairment form, and rehabilitation evaluation, if applicable.~~

~~(3) "Department" means the Department of Labor and Industry.~~

~~(4) "Indemnity benefits" means any payment made by an insurer directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights. The term does not include expense reimbursements for items such as meals, travel, or lodging.~~

~~(5) "Maximum medical improvement" means the same as provided by 39-71-116, MCA.~~

~~(6) "Permanent impairment" means a significant deviation, loss, or loss of use of any body structure or function in an individual, with respect to a health condition, disorder, or disease that has reached maximum medical improvement.~~

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

~~(8)~~(3) "Referring agent" means a person or agency that assists an individual in preparing ~~an~~ a SIF application.

(9) remains the same but is renumbered (4).

~~(10) "Treating physician" means the same as provided by 39-71-116, MCA.~~

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-116, 39-71-901, 39-71-905, MCA

REASON: Reasonable necessity exists to strike the definition of "certified" because it is duplicative of the definition of certificate, set forth at 39-71-901, MCA. The definition of "department" is proposed to be stricken because the term is defined statutorily for the workers' compensation act. The definitions of "maximum medical improvement," "indemnity benefits," and "treating physician" are proposed to be stricken because the terms are defined in 39-71-116, MCA. The definition of

"permanent impairment" is proposed to be stricken because it is defined statutorily within the definition of "permanent partial disability" in 39-71-116, MCA.

24.29.2607 CERTIFICATION PROCESS ~~(1) A person with a permanent impairment that is a substantial obstacle to employment may apply for SIF certification. Application for SIF certification is voluntary on the part of the applicant.~~

~~(2)~~(1) Application for certification requires the following documentation:

(a) a completed SIF application form signed by the applicant~~, which includes:~~; and

~~(i) information regarding applicant's education, training, and job skills;~~

~~(ii) the applicant's employment history for the past ten years;~~

~~(iii) the applicant's assessment of the impact of applicant's permanent impairment on future employment; and~~

~~(iv) a description of any modifications to employment reasonably necessary to accommodate work restrictions; and~~

(b) ~~a completed SIF~~ medical evidence of permanent impairment ~~form~~ signed by a ~~treating~~ physician~~, which includes:~~ qualified to complete impairment ratings.

~~(i) an assessment of applicant's permanent impairment;~~

~~(ii) an assessment of the impact of applicant's permanent impairment on applicant's employability, including a description of permanent work-related restrictions and limitations;~~

~~(iii) copy of a treating physician's notes documenting applicant's permanent impairment and obstacles to employment, including any work restrictions, if available; and~~

~~(iv) evidence the applicant has achieved maximum medical improvement~~.

~~(3) The department shall review the application, the medical evidence of permanent impairment form, and other supporting documentation. The department shall evaluate whether the applicant qualifies for certification, in accordance with the requirements set forth by ARM 24.29.2610.~~

~~(4) The department encourages persons with a permanent impairment that is a substantial obstacle to obtaining employment or reemployment to apply for certification when a treating physician has not completed the medical evidence form. The department shall notify the applicant in writing when a medical evidence of form or other supporting information is needed to complete the certification process.~~

~~(5) The applicant may submit a signed release to the department that authorizes the department to contact, notify, and confer with a referring agent, a designated representative, or applicant's medical provider.~~

~~(6)~~(2) When the department approves an application, the department shall notify the applicant and referring agent, if applicable, and provide the applicant with ~~an~~ a letter of SIF certification ~~card~~.

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

~~(8)~~(4) When the department denies an application, the department shall issue an order ~~inform~~ informing the applicant and referring agent, if applicable~~, in writing of the reasons for denial~~.

~~(9) Upon the written petition of the applicant, the department shall reconsider the denial of an application, pursuant to the administrative review process outlined by ARM 24.29.206. The applicant shall submit the petition for administrative review~~

~~and any additional information for department consideration within six months following a denial.~~

~~(10) After an administrative review that affirms the denial of an application, the applicant may submit a written request to the department for a contested case hearing, pursuant to ARM 24.29.207.~~

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-905, MCA

REASON: Reasonable necessity exists to repeal (1) because it is duplicative of 39-71-901 and 39-71-905, MCA. Section (2) is proposed to be modified to specify that the SIF forms provided by the department must be filled out and executed. However, the details of the forms need not be set forth in administrative rules. Additionally, it is necessary to specify that a treating physician need not do the impairment rating. Instead it must be performed by someone qualified. Section (3) is proposed to be stricken because it duplicates 39-71-905, MCA. Section (4) is proposed to be repealed as unnecessary. Section (5) is proposed to be stricken because it sets forth a business process regarding the investigation to be performed by the department pursuant to statute. It need not be stated in rule that an applicant may voluntarily provide a release to the department. Section (6) is proposed to be updated to reflect change in business practice. Sections (9) and (10) are proposed to be stricken because the rule regarding administrative review is proposed to be repealed. A dispute of a departmental order is subject to a contested case proceeding and that need not be reiterated in this rule.

24.29.2610 CERTIFICATION REQUIREMENTS (1) The department shall grant SIF certification to an individual when all of the following requirements are met:

(a) The applicant ~~has documented the existence of a permanent physical or mental impairment that adversely impacts the applicant's employability, in accordance with ARM 24.29.2607~~ is a person with a disability. The applicant's ~~permanent impairment~~ disability may result from a congenital condition, trauma, or disease. The permanent impairment does not have to be caused by a work-related injury or occupational disease;

~~(b) The medical evidence of applicant's permanent impairment is not more than six months old at the time of application;~~

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

~~(d)~~(c) A ~~treating~~ physician has provided written documentation that the applicant is permanently impaired; and

~~(e)~~(d) A ~~treating~~ physician has provided written documentation of employment restrictions or limitations due to the applicant's permanent impairment that demonstrates the impairment presents a substantial obstacle to employment or reemployment.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-905, MCA

REASON: Subsection (1)(a) is proposed to be amended to utilize the definition set forth in 39-71-901, MCA. Subsection (1)(b) is proposed to be stricken because the impairment rating, typically permanent, is unlikely to be updated by a physician. Subsections (1)(d) and (e) remove "treating" because other physicians may provide valid documentation.

24.29.2614 REIMBURSEMENT PROCESS - SETTLEMENTS ~~(1) The department shall determine the right of an insurer to SIF reimbursement of medical and indemnity payments to an SIF-certified individual in accordance with the criteria outlined by this rule.~~

~~(2)~~(1) ~~An insurer shall send the following to the department to document~~ An insurer seeking reimbursement shall send proof of 104 weeks of insurer payments for medical and indemnity ~~after SIF has been notified of the insurer's intent to seek reimbursement~~ benefits to the department. Documents must include:

~~(a) for medical benefit reimbursements:~~

~~(i) a cover letter;~~

~~(ii) medical notes from first and last visit from the treating physician; and~~

~~(iii) a spreadsheet documenting all medical benefits, including prescriptions, paid by the insurer for the first 104 weeks.~~

~~(b) for indemnity benefit reimbursements:~~

~~(i) a cover letter; and~~

~~(ii) a spreadsheet documenting all indemnity benefits paid.~~

(a) claimant name and claim number;

(b) the insurer's representative's contact name, e-mail, and phone number;

(c) documentation of all medical and indemnity benefits paid; and

(d) medical notes from the first and last visit from the physician.

~~(3)~~(2) After an insurer's right to SIF reimbursement has been established, ~~the department recommends~~ the insurer shall request SIF reimbursement in writing at six-month intervals. Requests for reimbursement for benefits paid more than 18 months prior to the request will be denied.

~~(a) The department shall not reimburse the insurer for medical benefits paid to or on behalf of an SIF-certified individual during the first 104 weeks following the date of injury.~~

~~(b) The department shall not reimburse an insurer for indemnity benefits until after the insurer has paid a total of 104 weeks of indemnity benefits to the SIF-certified individual.~~

~~(4)~~(3) Each reimbursement request must state the amount of reimbursement claimed for medical and indemnity payments and include ~~the following documentation for the six-month reimbursement period:~~ documentation required by the department. When an insurer voluntarily agrees to provide reserve data as coordinated with the department, the department recognizes that individual reserve information is recognized to be proprietary information not subject to disclosure. Aggregated claim reserve information for all case reserves reported to the department may be disclosed.

~~(a) computer printout or comparable listing that identifies the type of indemnity payment to the SIF-certified individual (temporary partial disability,~~

~~temporary total disability, permanent partial disability, or permanent total disability) and includes:~~

~~(i) dates checks were issued;~~

~~(ii) dates of indemnity;~~

~~(iii) total weeks of indemnity; and~~

~~(iv) the total amount paid.~~

~~(b) computer printout or comparable listing of all medical bills paid, including:~~

~~(i) dates checks were issued;~~

~~(ii) provider names;~~

~~(iii) dates of service;~~

~~(iv) billed amount;~~

~~(v) paid amount;~~

~~(vi) NDC# or drug type and dosage;~~

~~(vii) date of fill; and~~

~~(viii) amount paid; and~~

~~(c) copies of all medical bills with the corresponding explanations of benefits and directly related medical records.~~

~~(5)~~(4) The insurer shall notify the ~~SIF representative and the~~ department at the outset of settlement negotiations involving an injured individual who is SIF-certified. The insurer ~~shall~~ waives the right to SIF ~~contribution~~ reimbursement for the settlement by failing to notify the department at the outset of settlement negotiations.

~~(6) The insurer shall submit any negotiated settlement agreement to the SIF representative and the department for approval prior to final settlement.~~

~~(a)~~ Attorney fees must be itemized separately from medical and/or indemnity benefits when a settlement is submitted for department approval.

~~(7)~~(5) Disputes arising over payment or reimbursement between the department and the insurer may be resolved by the contested case hearing process, pursuant to ~~ARM 24.29.207~~ [NEW RULE II], at the written request of ~~the~~ either party.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-907, 39-71-908, 39-71-909, 39-71-912, 39-71-920, MCA

REASON: Reasonable necessity exists to strike (1) because it is not substantive. Amendments to (2) are proposed to shorten and consolidate the rule for ease of use. Case reserve information will assist the department in generating reports to the legislature, and may be voluntarily produced. Section (3) is proposed to be amended to clarify that an insurer who fails to submit requests for reimbursement timely is not entitled to reimbursement. Subsections (3)(a) and (b) are proposed to be stricken because they duplicate statute. Section (4) is proposed to be shortened for ease of use and to further specify reporting on unpaid case reserves. Section (5) is proposed to be amended to clarify that the department must be notified of settlement negotiations and clarify the consequences for failing to do so. Section (6) is proposed to be stricken as duplicative of 39-71-920, MCA. Section (7) is amended because ARM 24.29.207 is proposed to be repealed. The dispute resolution process is redefined.

24.29.2831 ~~COLLECTION OF PENALTIES AND OTHER PAYMENTS~~ PENALTY CALCULATIONS FROM UNINSURED EMPLOYERS ~~(1) The department collects penalties from uninsured employers in the manner specified by 39-71-504, MCA. The department will assess a penalty on every uninsured employer of which it becomes aware, unless the department determines that the uninsured period is de minimis.~~

~~(2) The amount of the penalty assessed is $200.00, or twice the amount of the premium that the uninsured employer should have paid on the past three-year payroll while the employer was uninsured, whichever is greater.~~

~~(3)~~(1) ~~To the extent that the state compensation insurance fund (plan No. 3) has a multiple pricing of premium structure in effect during any period in which the employer was uninsured, the~~ The penalty ~~may be~~ is calculated using the highest tier (or pricing level) that could have been charged by the state fund during ~~that~~ the uninsured period.

~~(a) For good cause shown, the penalty will be calculated using the rate the state fund would have actually charged the employer during the uninsured period. The employer has the burden of proof of establishing what rate or rates would have been charged by the state fund during the uninsured period.~~

~~(b) The employer has the burden of proof of establishing good cause for use of the lower rate as provided in (3)(a).~~

~~(i) The employer's alleged financial inability to pay the cost of workers' compensation insurance premium during the uninsured period does not constitute "good cause" for the purposes of this rule.~~

~~(ii) The employer's alleged financial inability to pay the penalty imposed by this rule does not constitute "good cause" for the purposes of this rule.~~

~~(4) Amounts collected from an employer to reimburse the UEF for benefits paid must be deposited with the UEF. Any amount collected from an employer for future liability on a particular claim becomes an earmarked fund when there is an assignment agreement between the claimant and the UEF.~~

~~(5) An account balance is considered past due for the purposes of assessing a late fee if the payment is not received within 30 days after the original billing or notice of requirement of workers' compensation coverage.~~

AUTH: 39-71-203, MCA
IMP: 39-71-504, MCA

REASON: Reasonable necessity exists to repeal (1) and (2) because they duplicate 39-71-504, MCA. Reasonable necessity exists to amend (3) to simplify penalty provisions for purposes of clarity. An uninsured employer–by definition, an employer operating in violation of the Montana Workers' Compensation Act–is penalized based on the highest available rate which might have been charged by State Fund. An uninsured employer is not entitled to benefit from a reduced rate–essentially benefiting despite of its wrongdoing. Reasonable necessity exists to strike (4) because the first sentence is duplicative of requirements of 39-71-504, MCA. The second sentence merely sets forth terms which would exist in a written agreement between a claimant and the UEF; moreover, the UEF has not entered into such agreements. Reasonable necessity exists to strike (5) because it sets forth a

business process of establishing a due date for a penalty. Such due date is set forth in penalty and billing statements from the UEF and need not be defined in rule.

24.29.2841 CLAIMS FOR BENEFITS FOR INSOLVENT PERIOD

(1) remains the same.

~~(2) Effective July 1, 1987, 39-71-503, MCA was amended to remove the requirement that the UEF keep proper reserves and surpluses. Any claimant incurring an industrial injury or occupational disease in the course of employment with an uninsured employer on or after July 1, 1987, is eligible to apply for benefits by completing forms provided by the department. Upon receipt by the UEF of properly executed forms from a claimant, the department will initiate an investigation to determine whether the claimant meets eligibility requirements for benefits from the UEF. If the claimant is found to be eligible, the department will send a written notice to the employer advising of the employers' responsibilities under the law.~~

AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

REASON: Reasonable necessity exists to amend the catchphrase to clarify applicability of this rule to the insolvent period of the UEF. Reasonable necessity exists to strike (2) because it is duplicative of the UEF's general obligations under the Workers' Compensation Act. The department proposes to maintain (1) to continue to place the public on notice of the period during which the UEF was insolvent and will not, therefore, accept claims. Though infrequent, such claims continue to be filed on a periodic basis, and so the rule continues to serve its purpose.

24.29.2843 PAYMENT OF ~~ACCRUED~~ BENEFITS ~~(1) Although the purpose of the UEF is to pay claims as though the claimant's employer was properly insured, because the UEF does not have a stable source of funding, it is not always financially possible to pay every claim in full. Accordingly, the department has been granted the authority to make such payments as it deems appropriate, depending on available funds.~~

(1) The UEF pays benefits on a monthly basis.

(2) ~~Subject to ARM 24.29.2849, the~~ The UEF will pay compensation ~~benefits for losses~~ and medical benefits incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued compensation benefits will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued compensation benefits there is a proportionate reduction in benefits, there is no entitlement to retroactive reimbursement.

~~(3) The UEF will pay medical expenses incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued medical expenses will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued medical expenses~~

~~there is a proportionate reduction in medical benefits, there is no entitlement to retroactive reimbursement.~~

~~(4) The UEF pays current benefits in the manner described in ARM 24.29.2846.~~

(3) If the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay benefits, the UEF will pay back-due benefits a month at a time, beginning with the first month of benefits. Back-due benefits are subject to the proportional reduction which would have occurred during the month they would have been paid. The UEF will also pay current monthly benefits as set forth in (2).

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-504, 39-71-510, MCA

REASON: Reasonable necessity exists to strike (1) because it merely restates 39-71-503(3)(a), MCA. Reasonable necessity exists to insert a new (1) because it incorporates the language of ARM 24.29.2811 which is proposed to be repealed. This consolidation assists readers by collocating rules regarding the payment of benefits. Reasonable necessity exists to strike (3) because, with the inclusion of three words, it can be accomplished in (2). In the interest of shortening rules, it is proposed to be stricken. Reasonable necessity exists to strike (4) because it is unnecessary to state that the specificity of ARM 24.29.2846 (or given the proposed repeal of the rule–the specificity of statute) and 24.29.2849 governs over this general rule. New proposed (3) incorporates relevant portions from ARM 24.29.2849, which is proposed to be repealed.

24.29.2853 RIGHTS OF THIRD-PARTY PROVIDERS AFTER THE UEF REACHES $100,000 MEDICAL BENEFIT EXPENDITURE LIMITATION--APPLICABILITY ~~(1) Providers of medical services, referred to in 39-71-508, MCA, as "third-party providers", who are directly affected by the UEF's invocation of the $100,000 aggregate expenditure limit for medical benefits have a right to bring a legal action against the uninsured employer for unpaid charges for medical services furnished to the injured worker as follows:~~

~~(a) The UEF's payment of the amount allowed by the fee schedule constitutes payment in full for the charges for a given medical service. After the UEF has reimbursed all services that fall within its aggregate expenditure limit, a medical provider may pursue the uninsured employer for the full amount of reasonable and customary charges incurred for services rendered that were not reimbursed. The UEF will notify a provider to which services a given reimbursement applies.~~

~~(b) The uninsured employer has liability only for medical services directly related to those conditions arising out of the industrial injury or occupational disease which the UEF accepted as a claim.~~

(2) and (3) remain the same but are renumbered (1) and (2).

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA

REASON: Reasonable necessity exists to strike (1) because it duplicates statute and sets forth a business process which need not be in rule.

24.29.3101 INTRODUCTION--APPLICABILITY--VOLUNTARY PAYMENTS

(1) Subchapter 31 addresses the reopening of medical benefits terminated by ~~operation of law~~ statute for certain claims that occurred on or after July 1, 2011.

~~(2) Subchapter 31 does not apply to claims to which any of the following circumstances apply:~~

~~(a) arising before July 1, 2011;~~

~~(b) in which the medical benefits have expressly been settled by means of a department or Workers' Compensation Court approved settlement or judgment;~~

~~(c) in which the insurer did not fully accept liability for the underlying accident or occupational disease; or~~

~~(d) arising on or after July 1, 2011, where the injury results in:~~

~~(i) permanent total disability; or~~

~~(ii) the fitting of a prosthesis which may need to be repaired or replaced.~~

~~(3) The department will apply the provisions of subchapter 31 to claims accepted by the Uninsured Employers' Fund.~~

~~(4) Informational instructions regarding the process for a party to petition to reopen medical benefits terminated by operation of law are available from the Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, and online at the department's web site. These instructions provide supplemental information about the reopening process and an explanation of how to submit a petition for reopening to the department.~~

~~(5)~~(2) Nothing in subchapter 31 prohibits an insurer from making voluntary payments for medical benefits that have terminated by ~~operation of law~~ statute. An insurer that makes a voluntary payment for a medical benefit that has been terminated by ~~operation of law~~ statute must advise the worker in writing that the payment for a medical benefit is made on a voluntary basis and does not create a legal obligation for the insurer to make payment for any other medical benefits.

AUTH: 39-71-203, MCA
IMP: 39-71-105, 39-71-107, 39-71-704, 39-71-717, MCA

REASON: Section (2) is proposed to be repealed because it duplicates provisions of 39-71-704 and 39-71-717, MCA. Section (3) is proposed to be repealed because it need not be stated in rule that this statute of general applicability applies to the UEF. Section (4) is proposed to be repealed because, while the department is happy to provide customer service to those in need of assistance, such need not be specified in rule.

24.29.3103 DEFINITIONS ~~Terms defined in 39-71-116, MCA, are used in subchapter 31 as they are defined by statute.~~ As used in subchapter 31, the following definitions apply unless the context clearly indicates otherwise:

~~(1) "Accepted" means the petition has been evaluated by the department and was found to be eligible to be considered for medical review.~~

~~(2) "Additional information" means information other than a medical record, supplied by a worker or an insurer, and tendered as being relevant to the reopening of medical benefits.~~

~~(3) "Approved" means that after the medical review has been performed, medical benefits are reopened for not more than two years before being subject to a biennial review.~~

~~(4) "Denied" means that after the medical review has been performed, medical benefits are not reopened.~~

~~(5) "Department" means the Department of Labor and Industry.~~

(1) "Claim records" means documents related to the medical condition and work status of the worker. The records include but are not limited to notes and reports of health care providers, and any additional information relevant to the reopening of medical benefits. The term does not include medical billing records.

~~(6)~~(2) "Dismissed" means the petition ~~has been evaluated by the department and~~ was found ~~to be~~ ineligible ~~to be considered~~ for medical review or has been withdrawn at the injured worker's request.

~~(7) "Filed" means the status of a petition once it has been accepted by the department for medical review.~~

~~(8) "Joint petition" means a petition for reopening that has been signed by both the worker and the insurer, with agreed-to terms concerning the reopening of medical benefits.~~

~~(9) "Medical records" means documents related to the medical condition of the worker, and includes but is not limited to, notes, reports, and letters prepared by health care providers. The term does not include medical billing materials.~~

~~(10) "Medical review panel" means the department's medical director and two additional physicians selected from a pool of available physicians, who can review a petition for the reopening of medical benefits, as provided for in 39-71-717, MCA.~~

~~(11) "Periodic review" means the every-two-years consideration by the medical review panel or the medical director as to whether the recommendations previously made should be continued or changed.~~

~~(12)~~(3) "Petition" means the department-provided form upon which a party requests that medical benefits ~~which have been~~ terminated by ~~the operation of 39-71-704, MCA,~~ statute be reopened.

~~(13) "Physician" means a health care provider who takes part in a medical review panel under subchapter 31. A physician must be licensed in Montana in one or more of the following categories:~~

~~(a) medical doctor;~~

~~(b) osteopath;~~

~~(c) dentist;~~

~~(d) chiropractor;~~

~~(e) physician assistant; or~~

~~(f) advanced practice registered nurse.~~

~~(14) "Received" means a petition which has been delivered to the department, but has not yet been accepted and filed by the department.~~

~~(15)~~(4) "Reopened" means medical benefits ~~which had~~ terminated by ~~operation of law,~~ statute and which are now to be furnished by the insurer as recommended ~~by~~ in the medical report.

~~(16) "Report" means the written recommendations of the medical director or medical review panel concerning whether or not medical benefits should be reopened, and if reopened, to what extent those benefits should be furnished.~~

~~(17) "Returned" means the petition has been evaluated by the department and has been found to be incomplete.~~

~~(18) "Submission," as used in 39-71-717(8), MCA, means the same as being filed with the department.~~

~~(19) "Submit," as used in 39-71-717(6), MCA, means to deliver medical records or additional information to the department.~~

~~(20) "Work" means supplying labor or services for remuneration, although not necessarily in employment by another.~~

~~(21) "Worker" means the individual who suffered the workplace injury or occupational disease upon which basis a claim for benefits was made to the insurer.~~

~~(22) "Year" means 12 calendar months.~~

AUTH: 39-71-203, MCA
IMP: 39-71-116, 39-71-717, MCA

REASON: There is reasonable necessity to strike many of the definitions in this rule because they are duplicative or unnecessary.

24.29.3127 PERIODIC REVIEW OF CERTAIN REOPENED MEDICAL BENEFITS (1) The department's medical director shall biennially review claims where medical benefits have been reopened ~~and the recommended duration of the reopening is more than two years,~~ in order to determine whether the previous recommendations should be changed.

(2) The department shall request ~~that~~ the worker and the insurer deliver to the department ~~medical~~ claim records created since the prior medical review~~, as well as any additional information the party wants considered~~.

~~(a)~~ The department's request shall specify a deadline by which ~~those~~ claim records ~~and additional information~~ must be received by the department.

~~(b) Any medical records or other information submitted by a party which have not previously been provided to the other party must be sent to that other party at the same time the records or other information are delivered to the department.~~

(3) The biennial review will be based on the ~~materials~~ claim records previously submitted ~~by the parties at the time the original petition for reopening was considered,~~ and the records ~~and information~~ sent pursuant to (2). If a party does not timely send updated ~~medical~~ claim records ~~or additional information~~, the medical director shall base the review on the materials available.

(4) For parties which filed a joint petition for reopening and did not deliver ~~medical~~ claim records to the department with the initial petition:

(a) if ~~they~~ the insurer agrees medical benefits should remain open until the next review, medical records are not required ~~to be submitted~~ for periodic review and the department will acknowledge the continued concurrence for reopened medical benefits;

(b) if ~~they do~~ the insurer does not agree medical benefits should remain open until the next biennial review, they must notify the department and the other party

within 14 days of notice of the review that they believe benefits should not continue and submit claim records. The medical director will ~~then~~ conduct a review as set forth in ~~ARM 24.29.3114, except the date the petition is filed is the date of notification of dispute~~ [NEW RULE VII].

~~(5) The prior report and recommendation regarding medical benefits is presumed to be correct. A previous recommendation may be changed only if it is based on the updated medical records and information sent to the department.~~

~~(6)~~(5) Following the medical director's review, if the medical director believes there is reason to change the prior recommendation, the medical director shall:

(a) in cases where the original review was made by a medical review panel, convene a new medical review panel to review the updated ~~medical~~ claim records ~~and information~~; or

(b) in cases where the original review was made solely by the medical director, ~~issue a report and make recommendations as provided by (7)~~ only the medical director will review the updated claim records.

~~(7)~~(6) Following completion of the periodic review, the medical director shall issue a report and make recommendations ~~with respect to continuing the reopening of medical benefits~~.

~~(8) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.~~

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: The rule is proposed to be updated to recognize the new proposed definition of "claim record." Subsection (2)(b) is unnecessary because the rule need not state the general requirement that parties share information with each other. Sections (5) and (8) are proposed to be repealed as duplicative of 39-71-717(10), MCA.

24.29.3802 ATTORNEY FEE REGULATION ~~(1) This rule is promulgated under the authority of 39-71-203, 39-71-613, and 39-71-2905, MCA, to implement regulation of the fees charged to claimants by attorneys in workers' compensation cases as provided in 39-71-613, MCA.~~

~~(2)~~(1) An attorney representing a claimant on a workers' compensation claim shall submit to the department within 30 days of undertaking representation of the claimant~~, in accordance with 39-71-613, MCA,~~ on forms supplied by the department, a contract of employment stating specifically the terms of the fee arrangement. An attorney substituting for another attorney previously representing a claimant must submit a new contract conforming with this rule within 30 days of undertaking representation of the claimant. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the ~~administrator of the division of workers' compensation or the administrator's designee~~ department. The ~~administrator or the administrator's designee~~ department shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.

~~(3)~~(2) Except as provided in ~~(7)~~(6), an attorney representing a claimant on a workers' compensation claim who plans to utilize a contingent percentage fee arrangement to establish the fee with the claimant, may not charge a fee above the following amounts:

(a) remains the same.

(b) For cases that go to a hearing before the workers' compensation judge or the supreme court, 25% of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the supreme court due to the efforts of the attorney. However, a settlement approved by the workers' compensation judge which could have been submitted to the department for approval is subject to the limits set forth in (a).

~~(4)~~(3) The fee schedule set forth in ~~(3)~~(2) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate ~~not exceeding $100.00 per hour~~, but the total fee charged may not exceed the schedule set forth in ~~(3)~~(2) except as provided in ~~(7)~~(6). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

(5) through (7)(a) remain the same but are renumbered (4) through (6)(a).

(b) If a variance requested under ~~(7)(a)~~(6)(a) is not approved, an attorney may request that the administrator or the administrator's designee review the matter and issue an order of determination pursuant to procedures set forth in ~~ARM 24.29.201, et seq.~~ [NEW RULE II].

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

~~(10) The department retains its authority to regulate the attorney fee amount in any workers' compensation case according to the factors set forth in 39-71-613, MCA, and (7)(a) of this rule even though the contract of employment fully complies with 39-71-613, MCA, and this rule.~~

(11) and (12) remain the same but are renumbered (9) and (10).

AUTH: 39-71-203, MCA
IMP: 39-71-225, 39-71-613, 39-71-2905, MCA

REASON: There is reasonable necessity to amend (2) to clarify reference to the department. Section (3) is proposed to be updated to disincentivize unnecessary petitions to the workers' compensation court for settlement approval, avoiding the less costly departmental approval process. Section (4) is proposed to be updated to remove the hourly fee cap. The cap is unnecessary because, whatever the fee, it cannot exceed the contingency limitation, and is reasonably restricted based on the Montana Rules of Professional Conduct. Section (7) is proposed to be amended to reflect the proposed repeal of ARM 24.29.201. Section (10) is proposed to be repealed as it is duplicative of statute.

24.29.4303 DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) remains the same.

~~(2) "Data base system" means the electronic repository for workers' compensation data established by 39-71-225, MCA.~~

~~(3)~~(2) "Electronic data interchange", or "EDI" means ~~the intercompany exchange of standard business documents in a machine readable and standardized form~~ computer-to-computer exchange of business information in a standard and structured format.

~~(4) "Indemnity benefits" means any payment made directly to the worker (or the worker's beneficiaries), other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging.~~

~~(5) "Indemnity claim" means a workers' compensation or occupational disease claim where indemnity benefits in addition to medical benefits are being paid or are likely to be paid in the future.~~

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

~~(7) "Plan 1" or "Plan 1 self-insurer" means an employer that has been properly bound by the provisions of Title 39, chapter 71, part 21, MCA.~~

~~(8) "Plan 2" or "Plan 2 private insurer" means an insurer that provides workers' compensation insurance pursuant to the provisions of Title 39, chapter 71, part 22, MCA.~~

~~(9) "Plan 3" or "state fund" means the state compensation insurance fund, established by Title 39, chapter 71, part 23, MCA.~~

(10) through (12) remain the same but are renumbered (4) through (6).

~~(13) "UEF" means the Uninsured Employers' Fund, established by 39-71-503, MCA~~.

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

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: There is reasonable necessity to strike (2) because it defines a term already defined by statute at 39-71-225, MCA. Section (3) is proposed to be modernized to increase readability. There is reasonable necessity to strike (4), (5), (7), (8), (9), and (13) because they set forth terms of general applicability used throughout the Workers' Compensation Act and these rules and need not be further defined here.

24.29.4307 CLAIM FILE RECORDS MAINTENANCE AND RETENTION

~~(1) All insurers shall maintain their respective claim files. Upon request by the department, insurers shall provide to the department, in whole or part according to the request, a copy of the claim file, other than documents protected by the attorney-client privilege or attorney work-product doctrine. The copies must be provided at no cost to the department. If information is maintained by computer, "hard copy" information must be available upon request. Insurers shall submit requested copies of file information within 30 days of the department's request.~~

~~(2) All insurers shall retain complete copies of the claim file for the life of the claim or as long as liability or potential liability exists for the claim. The department is not responsible for maintaining a duplicate of any document pertaining to a claim.~~

~~(3)~~(1) Claim files must include, but need not be limited to, all of the following which exist in relation to the claim:

(a) the department's form first report of injury and occupational disease~~, Montana form ERD-991~~ or department-approved equivalent;

(b) through (h) remain the same.

~~(4) For the purposes of this rule, an insurer may maintain claim file documents either as an "original" or as a "duplicate", as those terms are used in the Montana Rules of Evidence. However, nothing in this rule affects the legal standards concerning the admissibility of an original versus a duplicate.~~

(2) Copies of insurer files must be provided to the department at no cost.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: Reasonable necessity exists to strike (1) because it is duplicative of requirements set forth in 39-71-107 and 39-71-304, MCA, with regard to the maintenance and production of records. Reasonable necessity exists to strike (2) because it is duplicative of requirements set forth at 39-71-107(3), MCA. Section (4) is duplicative of 39-71-107(3), MCA. Additionally, it comments on legal standards for admissibility of evidence. New (2) is transferred from current (1) to improve the logical order of the rule.

24.29.4314 ~~ELECTRONIC~~ REPORTING (1) Reporting parties who report electronically~~, whether voluntarily or when required by 39-71-225, MCA,~~ shall sign a written agreement with the department.

(a) The reporting parties may designate another entity, approved by the department, to serve as their reporting agent. ~~The written agreement will provide the effective date to send and receive the electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent agreements between the parties.~~

~~(2)~~(b) Electronic reporting for workers' compensation claims and insurance coverage information must be reported using a department-supported IAIABC ~~product, using the IAIABC flat file format. The department will not accept electronic reports submitted in any other formats after the transition to the IAIABC product is complete~~ standard.

(2) Reporting parties not required to report electronically may submit on hard copy forms approved by, or provided by at a cost to the reporting party, the department.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: Reasonable necessity exists to amend (1) because it is not necessary to insert a cross reference in a rule implementing a statute. Reasonable necessity exists to strike provisions and renumber to eliminate duplicative and unnecessary language and because the file format previously noted is no longer used. Because the transition to the IAIABC product is long-ago complete, it is no longer necessary

to refer to a transition period in the rule. Reasonable necessity exists to adopt a new (2) to incorporate the necessary repealed language from ARM 24.29.4311.

24.29.4321 INSURER REPORTING REQUIREMENTS--INJURIES AND OCCUPATIONAL DISEASES (1) All insurers and the UEF are required to submit a first report of injury or occupational disease to the department within 30 days of the report to the insurer of the ~~accident~~ injury or of an occupational disease.

(2) through (5) remain the same.

~~(6) The department may impose penalties as specified in 39-71-307, MCA, for failure to comply with these reporting requirements.~~

AUTH: 39-71-203, MCA
IMP: 39-71-225, 39-71-307, MCA

REASON: Section (1) is proposed to be amended to harmonize its requirements with 39-71-307, MCA. Reasonable necessity exists to strike (6) because it is not necessary to state in rule what is explicit in statute.

24.29.4332 CLAIMANT LEGAL FEES AND COSTS REPORTING REQUIREMENTS (1) through (6)(b)(iv) remain the same.

(v) documented long-distance telephone expenses; ~~and~~

(vi) documented postage expenses~~.~~; and

(vii) the amount of attorney fees received pursuant to a settlement.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: The rule is proposed to be amended to clarify that the amount of fees paid as a result of a settlement must be reported to the department.

24.29.4336 IN-HOUSE COUNSEL COST ALLOCATION (1) Insurers that use the services of in-house counsel for assistance in handling Montana indemnity claims shall report the cost of that legal assistance. ~~If the insurer does not separately track and report in-house legal costs on a per-claim basis, the insurer shall report the cost allocation information required by this rule.~~

(2) ~~The purpose of this cost allocation rule is to obtain a figure that reasonably reflects the per-claim cost of having in-house counsel. The~~ If the insurer does not separately track in-house legal costs on a per claim basis, the insurer shall report annually upon request by the department:

(a) and (b) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: Reasonable necessity exists to modify this rule to simplify it by setting forth the principal rule of reporting followed by the exception, rather than combining the exception in (1).

24.29.4339 VERIFICATION OF CONSULTANT AND LEGAL FEE REPORTING ~~(1) For the sole purpose of verifying the accuracy of the data reported, the department may periodically verify a consultant's billing documents used in the preparation and reporting of the information required by ARM 24.29.4332 and 24.29.4335.~~

~~(2)~~(1) For the ~~sole~~ purpose of verifying the accuracy of the data reported, the department may periodically verify ~~the amount of an attorney's billing~~ data reported pursuant to ARM 24.29.4332 and 24.29.4335. Documents protected by the attorney-client privilege or attorney work-product doctrine are not subject to verification.

~~(3)~~(2) At least 14 days' advance notice ~~of the time and place of the verification~~ will be given to the reporting party. A reporting party is responsible for full cooperation with the department.

AUTH: 39-71-203, MCA
IMP: 39-71-225, 39-71-304, MCA

REASON: Sections (1) and (2) are proposed to be consolidated to simplify and shorten the rule. Section (3) is updated to remove superfluous verbiage.

5. The proposed new rules are as follows:

NEW RULE I UEF PENALTY DISPUTES (1) A UEF penalty determination is final 15 days from the date it is sent to a party.

(2) A party disputing a UEF penalty determination must request a redetermination within 15 days of the date the determination is sent.

(3) A party disputing a UEF penalty redetermination must request mediation within 15 days of the date the redetermination was sent. Requested mediation must be completed pursuant to ARM Title 24, chapter 28.

(4) If mediation does not fully resolve the dispute, a party may request a hearing in accordance with Title 2, chapter 4, part 6, MCA. Requests for hearing must be received by the department within ten days from the date the mediator's report is sent. Failure to request a hearing means the original UEF penalty determination becomes final.

(5) Any party aggrieved by the order following hearing may petition the Workers' Compensation Court for judicial review, pursuant to Title 2, chapter 4, part 7, MCA.

(6) This rule governs procedures for disputes solely regarding penalties issued by the UEF. It does not apply to disputes for reimbursement regarding benefits paid by the UEF.

AUTH: 2-4-201, 39-71-203, MCA
IMP: 39-71-504, 39-71-506, 39-71-541, 39-71-2401, MCA

REASON: Reasonable necessity exists to adopt this rule to provide clarity and consistency with UEF penalty determinations. Previously, UEF penalty appeals

have been governed by the general rules of workers' compensation appeals. However, penalties are different in kind from the variety of workers' compensation orders issued by the department. Further, UEF penalties are increasingly issued simultaneous with other findings by the department. As such, this rule seeks to align, to the extent feasible, the appellate timelines from other programs of the department–in particular, wage and hour, prevailing wage, and independent contractor. This alignment will assist parties by providing a single route and timeline for appeal, so that no party seeking appeal is unaware of such process.

NEW RULE II ORDERS AND APPEALS (1) On request of any party or on its own, the department may issue an order on a dispute concerning workers' compensation. Any order issued must be in writing and signed by a department employee.

(2) A party aggrieved by an order which is not subject to a more specific appellate review procedure:

(a) may request reconsideration 30 days after the order was sent. A party who requested reconsideration may request a contested case hearing ten days after notice of the results of reconsideration are sent; or

(b) may, in the alternative to reconsideration, request a contested case hearing within 30 days of the date the order was sent.

(3) A party seeking judicial review of a final order of the department after a contested case hearing must file a petition with the Workers' Compensation Court within 30 days after the final order was sent.

(4) "Sent" for purposes of this rule means mailed, delivered by personal service, or transmitted electronically if electronic service has been consented to by the party.

AUTH: 2-4-201, 39-71-203, MCA
IMP: 2-4-201, 39-71-203, 39-71-2401, MCA

REASON: There is reasonable necessity to adopt this rule in place of those being repealed. This rule sets forth a streamlined and consolidated procedure for resolving disputes regarding departmental orders involving workers' compensation, but outside of disputes involving benefits.

NEW RULE III RENEWAL (1) A self-insured employer or employer group must renew each year. The renewal application must be submitted to the department 60 days before the renewal date.

(2) A renewal applicant must:

(a) submit all required documents; and

(b) be in compliance with laws governing plan No. 1 employers and groups.

(3) A self-insured employer or employer group not renewing shall elect to be bound by plan No. 2 or 3 on the effective date of the termination of permission to self-insure.

AUTH: 39-71-203, MCA
IMP: 39-71-2104, MCA

REASON: This new rule is proposed to replace ARM 24.29.623 to simplify, clarify, and consolidate requirements for renewals, without the need to list every document the department may need in rule. The renewal form utilized by the department for many years sets forth the requirements.

NEW RULE IV DESCRIPTION OF BENEFITS PAID FOR PURPOSES OF ASSESSMENT (1) Compensation benefits paid include periodic and lump-sum payments for:

(a) permanent total disability;

(b) permanent partial disability;

(c) temporary total disability;

(d) temporary partial disability;

(e) loss of hearing, whether under the Workers' Compensation or Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005;

(f) rehabilitation benefits (biweekly compensation paid to claimants);

(g) death benefits;

(h) disfigurement payments;

(i) SIF cases, to the extent paid by the insurer and not reimbursed by the SIF;

(j) settlement amounts paid pursuant to 39-71-741, MCA, except to the extent any portion of the settlement is reported as being medical benefits paid;

(k) benefits paid pursuant to 39-71-608, MCA; and

(l) settlement amounts paid pursuant to 39-71-405, MCA.

(2) Medical benefits paid include payments for:

(a) medical and dental treatment;

(b) prescription drugs;

(c) prosthetics and orthotics;

(d) other durable medical goods;

(e) hospital care;

(f) domiciliary care;

(g) diagnostic examinations for the purpose of determining what treatment is necessary;

(h) medical benefits paid pursuant to 39-71-615, MCA; and

(i) hearing loss treatment, whether under the Workers' Compensation or Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005.

(3) Miscellaneous expense costs are not included in the calculation of the administration fund assessment. Miscellaneous expense costs are all workers' compensation or occupational disease costs incurred by an insurer other than compensation or medical benefits paid. These costs include, but are not limited to:

(a) rehabilitation services provided by a licensed rehabilitation provider or the Department of Public Health and Human Services;

(b) rehabilitation expenses, such as books and tuition, or auxiliary rehabilitation benefits, such as relocation expenses;

(c) administrative costs for the processing of claims, such as the costs of investigating or adjusting the claim;

(d) independent medical examinations requested by the insurer, where the purpose of the examination(s) is not for the diagnosis or treatment of the claimant's condition;

(e) matching payments to a catastrophically injured worker's family; and

(f) various other miscellaneous costs that do not constitute a compensation benefit or medical benefit provided to the claimant or beneficiary.

(4) Benefits paid include any amount paid by the insurer or the employer, regardless of any deductible paid by the employer or reimbursements to the insurer from reinsurance or excess insurance other than by the claimant. Copayments actually made by the claimant are not considered to be "benefits paid" for the purposes of this rule.

(5) The department may inspect the insurer's records to determine whether the insurer is properly reporting compensation paid and medical benefits paid.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-306, 39-71-915, 39-71-1049, 50-71-128, MCA

REASON: There is reasonable necessity to adopt this new rule in place of those being repealed to clarify, simplify, and streamline the processes and procedures relating to reporting benefits related to assessment.

NEW RULE V ASSESSMENT OVERPAYMENTS AND UNDERPAYMENTS

(1) For the purposes of this rule an employer is also the insurer's policyholder.

(2) Each plan No. 2 insurer and the plan No. 3 insurer is responsible for correctly calculating the amount of the authorized premium surcharge for assessments that the insurer is to collect from each of its insured employers using the rates established by the department. Because the insurer, not the department, calculates the amount of premium due from the employer, disputes between the insurer and the insured regarding the amount of the premium surcharge are not disputes over which the department has jurisdiction.

(3) Insurers may address over-collections or overpayments in the following manner:

(a) Any over-collection of the premium surcharge(s) from a policyholder by the insurer may be refunded by the insurer or applied to premium or future surcharge payments due from the policyholder to the insurer. An accounting of the payment shall be provided by the insurer to the policyholder.

(b) If a surcharge remittance from an insurer to the department is later determined to include an overpayment, the insurer may deduct the amount overpaid from the next surcharge remittance due from the insurer to the department. The insurer shall maintain records documenting any surcharge amounts refunded to its policyholders.

(4) Each plan No. 2 insurer and the plan No. 3 insurer shall maintain reasonable records showing the total amount of premium and premium surcharge collected from each policyholder. The department may inspect those records.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-306, 39-71-915, 39-71-1049, 50-71-128, MCA

REASON: Reasonable necessity exists to adopt this rule as a streamlined, clarified version of ARM 24.29.956.

NEW RULE VI MANAGED CARE ORGANIZATION APPLICATION AND RENEWAL (1) In addition to statutory requirements, applicants for recognition as a managed care organization must electronically submit:

(a) an application fee of $1,500;

(b) the proposed organizational structure and contact information;

(c) evidence that the applicant can meet the financial obligations of the contract, including capital, insurance, and business plan; and

(d) the managed care plan.

(2) Applications are reviewed for completeness. The department may request more information. Applications will be approved or denied on the information received.

(3) Certification is valid for two years. Renewal applications must be submitted at least 60 days before expiration. There is no renewal fee.

(4) Applications and renewals are public documents. If an applicant believes part of its applications is a trade secret, it must mark the information as confidential. The applicant will be notified if the information is requested. The applicant is responsible for defending any action to release the information.

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: Reasonable necessity exists to repeal all existing managed care organization rules and consolidate them into this new rule. Some of the existing rules have language that is duplicative of what is in statute, and many of the rules document the department's business process in significant detail for managing the program, which is unnecessary. Some of the rules created red tape that need not be in place as part of approving managed care organizations.

NEW RULE VII PETITION TO REOPEN MEDICAL BENEFITS (1) A party wishing to reopen medical benefits terminated by statute must submit a petition to reopen to the department on the form provided by the department. A claim may go through the petition process, including initial petition and biennial reviews, one time.

(2) The department will provide notice of the petition to reopen to the insurer. The parties must provide claim records to the department and the other party within 14 days of the notice. Records not received in that time will not be considered.

(3) An insurer may dispute the presumption that a petition to reopen relates to a compensable claim. The dispute must be made within 14 days of the notice of the petition to reopen from the department.

(4) The petition to reopen may be reviewed solely by the department's medical director upon a mutual, irrevocable agreement from the injured worker and the insurer. The medical director will issue a report explaining the rationale for the decision pursuant to statutory criteria.

(5) If the injured worker and insurer agree to reopen medical benefits, they may submit a joint petition to reopen. The petition to reopen form must be completed, but claim records need not be provided. The reopened benefits are subject to biennial review.

(6) Any other petition to reopen will be reviewed by a three-member panel. Each panel member must prepare a report evaluating the statutory reopening criteria. The medical director will issue a report on behalf of the panel explaining the rationale for the decision.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: This new rule is proposed to simplify the rules surrounding petitions to reopen medical benefits. It is proposed to replace ARM 24.29.3107, 24.29.3111, 24.29.3114, 24.29.3117, 24.29.3121, and 24.29.3124, and sets forth in rule existing business processes.

6. The rules proposed to be repealed are as follows:

24.29.205 ISSUING ORDERS

AUTH: 2-4-201, 39-71-203, 39-72-203, MCA
IMP: 2-4-201, 2-4-202, 39-71-116, 39-71-120, 39-71-415, 39-72-203, MCA

REASON: There is reasonable necessity to repeal this rule in favor of simplification, shortening, and clarification of the appeal and procedural rules of the department pertaining to workers' compensation, set forth in NEW RULES I and II.

24.29.206 ADMINISTRATIVE REVIEW

AUTH: 2-4-201, 39-71-203, 39-72-202, MCA
IMP: 39-71-204, 39-72-402, MCA

REASON: There is reasonable necessity to repeal this rule because, while the department is willing to engage in informal processes to resolve disputes at the lowest level, these processes and the discussions had need not be subject to administrative rule.

24.29.207 CONTESTED CASES

AUTH: 2-4-201, 39-71-203, MCA
IMP: Title 2, chapter 4, part 6, 33-16-1012, 39-71-204, 39-71-415, 39-71-704, 39-71-2401, 39-71-2905, MCA

REASON: There is reasonable necessity to repeal this rule in favor of simplification, shortening, and clarification of the appeal and procedural rules of the department pertaining to workers' compensation, set forth in NEW RULES I and II.

24.29.213 PROCEDURE FOR ISSUING WORKERS' COMPENSATION DETERMINATIONS REGARDING EMPLOYMENT STATUS, INCLUDING THAT OF INDEPENDENT CONTRACTOR

AUTH: 39-71-203, MCA
IMP: 39-71-120, 39-71-415, MCA

REASON: There is reasonable necessity to repeal this rule in favor of simplification, shortening, and clarification of the appeal and procedural rules of the department pertaining to workers' compensation, set forth in NEW RULES I and II.

24.29.215 TIME LIMITS

AUTH: 39-71-203, 39-72-203, MCA
IMP: Title 2, chapter 6, 2-4-702, MCA

REASON: There is reasonable necessity to repeal this rule in favor of simplification, shortening, and clarification of the appeal and procedural rules of the department pertaining to workers' compensation, set forth in NEW RULES I and II.

24.29.608 ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 1--ELIGIBILITY

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, MCA

REASON: There is reasonable necessity to repeal this rule because it duplicates the statutes it implements.

24.29.610 WHEN SECURITY REQUIRED

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2106, MCA

REASON: This rule is proposed to be repealed because 39-71-2106, MCA, is sufficient on its own without further clarification by this rule.

24.29.622 PERMISSION TO SELF-INSURE

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, MCA

REASON: There is reasonable necessity to repeal this rule because its substance is found within 39-71-2101 and 39-71-2105, MCA.

24.29.623 RENEWAL REQUIRED

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2104, MCA

REASON: There is reasonable necessity to repeal this rule in favor of NEW RULE III, which is simpler and encapsulates current requirements.

24.29.627 RIGHT TO REVIEW

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107, 39-71-2108, 39-71-2905, MCA

REASON: This rule is proposed to be repealed because a specified right to appeal need not exist where a general applicable right exists. Additionally, changes to the cross-referenced rule are being proposed.

24.29.704 WHO MUST BE BOUND

AUTH: 39-71-203, MCA
IMP: 39-71-401, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of statute, which sets forth requirements for coverage.

24.29.709 SECURITY DEPOSITS FOR PLAN NO. 2 INSURERS--REPORTS

AUTH: 39-71-203, MCA
IMP: 39-71-2215, MCA

REASON: Reasonable necessity exists to repeal this rule because 39-71-2215, MCA, was repealed by House Bill 199 (2021). As such, the authority to require security deposits for plan No. 2 insurers has been repealed. Additionally, it is unnecessary to receive the reporting of (5) and (6) by this rule because the department receives similar information from the Commissioner of Securities and Insurance. This removes approximately 300 insurer reports that range from 3 to 15 pages each sent annually to the department, saving insurer and department resources.

24.29.713 EVIDENCE OF INSURANCE COVERAGE

AUTH: 39-71-203, MCA
IMP: 39-71-304, 39-71-401, 39-71-402, 39-71-2201, 39-71-2336, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of the authority of the department to request records of employers pursuant to 39-71-304, MCA.

24.29.804 EXAMINERS AND THIRD-PARTY ADMINISTRATORS IN MONTANA

AUTH: 39-71-107, 39-71-203, MCA
IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: Reasonable necessity exists to repeal this rule. Section (1) is duplicative of 39-71-107(2), MCA. Section (2) duplicates 39-71-107(3), MCA. Section (3) sets forth the common definition of "settled claim," which is apparent based on the requirement of the department to approve settlement agreements. Section (4) duplicates 39-71-107(4)(a), MCA. Section (5) sets forth a standard ability of an agent to communicate on behalf of its principal, and need not be restated in rule. Section (6) duplicates 39-71-107(4)(b), MCA.

24.29.851 MAINTENANCE OF CERTIFICATION DOCUMENTATION

AUTH: 39-71-203, 39-71-320, MCA
IMP: 39-71-105, 39-71-320, MCA

REASON: Reasonable necessity exists to repeal this rule because it is not necessary to state that records may be stored electronically–the normal means of storage at this time.

24.29.902 DEFINITIONS

AUTH: 39-71-203, 50-71-114, MCA
IMP: 39-71-201, 39-71-915, 39-71-1011, 39-71-2352, 50-71-128, MCA

REASON: There is reasonable necessity to repeal this rule because it is substantially duplicative of statute and defines terms for which definitions are not necessary.

24.29.907 BILLING AND PAYMENT OF THE ADMINISTRATION FUND ASSESSMENT

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-408, MCA

REASON: There is reasonable necessity to repeal this rule because it sets forth business process which need not be in rule.

24.29.929 ASSESSMENTS OTHER THAN THE ADMINISTRATION FUND ASSESSMENT

AUTH: 39-71-203, 50-71-114, MCA
IMP: 39-71-201, 39-71-915, 39-71-1011, 50-71-128, MCA

REASON: There is reasonable necessity to repeal this rule because it merely sets forth business practice which need not be in rule.

24.29.954 CALCULATION OF AMOUNT OF ADMINISTRATION FUND ASSESSMENT

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-203, 39-71-209, MCA

REASON: There is reasonable necessity to repeal this rule because it primarily defines terms which need not be defined in rule and sets forth business processes.

24.29.956 COMPUTATION AND COLLECTION OF THE ADMINISTRATION FUND AND SAFETY FUND ASSESSMENT PREMIUM SURCHARGE RATE FOR PLAN NO. 2 AND NO. 3

AUTH: 39-71-203, 50-71-114, MCA
IMP: 39-71-201, 39-71-203, 39-71-2352, 50-71-128, MCA

REASON: There is reasonable necessity to repeal this rule in favor of shortening and simplifying and removing business processes from rule.

24.29.962 COMPUTATION OF THE SUBSEQUENT INJURY FUND ASSESSMENT SURCHARGE

AUTH: 39-71-203, MCA
IMP: 39-71-915, MCA

REASON: There is reasonable necessity to repeal this rule in favor of shortening, simplifying, and reducing business process in rule.

24.29.971 FAILURE OF INSURER TO TIMELY REPORT PAID LOSSES--DEPARTMENT ESTIMATE OF PAID LOSSES--RECALCULATION OF ASSESSMENT AND PREMIUM SURCHARGE--PENALTY

AUTH: 39-71-203, 39-71-306, 50-71-114, MCA
IMP: 39-71-201, 39-71-306, 39-71-915, 50-71-128, MCA

REASON: There is reasonable necessity to repeal this rule in favor of shortening, simplifying, and reducing business process in rule.

24.29.1401 INITIAL LIABILITY

AUTH: 39-71-203, MCA
IMP: 39-71-510, 39-71-704, 39-71-743, MCA

REASON: Reasonable necessity exists to repeal this rule. Reasonable necessity exists to strike (1) because it is reasonably clear from 39-71-743(3), MCA that, while payment becomes the responsibility of the insurer after a claim is accepted, responsibility does not transition until such acceptance. Reasonable necessity exists to strike (2) because it is duplicative of 39-71-743(3), MCA. Reasonable necessity exists to strike (3) because it is duplicative of 39-71-704(11) and 39-71-743(3), MCA. Reasonable necessity exists to strike (3)(a) because it is not necessary to state in rule that statutory provisions supersede rule. Reasonable necessity exists to strike (4) because it is not necessary to state in rule that treatment unrelated to a claim or for which benefits are no longer payable are the responsibility of the individual seeking treatment.

24.29.1501 PURPOSE

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to repeal this rule because it sets forth general policy. While not inaccurate, these purpose provisions are unnecessary in administrative rule.

24.29.1510 SELECTION OF PHYSICIAN FOR CLAIMS ARISING FROM JULY 1, 1993 THROUGH JUNE 30, 2013

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to repeal this rule. Reasonable necessity exists to strike (1) because it is unnecessary to adopt a definition from the statute which creates this rule. Sections (2) and (3) substantially repeat statute, and relevant portions of (3) are proposed to transition to ARM 24.29.1621. Reasonable necessity exists to strike (4) because it is not necessary to state in rule that treatment may be received from multiple providers. Additionally, the rule artificially limits such treatment to physicians and duplicates 39-71-1101, MCA.

24.29.1517 PRIOR AUTHORIZATION FOR CERTAIN SERVICES

AUTH: 39-71-203, MCA
IMP: 39-71-704, 39-71-743, MCA

REASON: There is reasonable necessity to repeal this rule because it is proposed to be consolidated into ARM 24.29.1621. The department believes it is confusing to have multiple rules and rule locations to refer the public to when questions arise with regard to prior authorization.

24.29.1522 MEDICAL EQUIPMENT AND SUPPLIES PROVIDED BY A NONFACILITY FOR DATES OF SERVICE FROM JANUARY 1, 2008 THROUGH JUNE 30, 2013

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to repeal this rule because it is solely applicable to services provided more than ten years ago. Section (1) additionally implies that the rule applies to durable medical equipment provided after January 1, 2008, but it is no longer applicable.

24.29.1526 DISALLOWED PROCEDURES

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to repeal this rule. The procedures listed here were not generally accepted by the medical community at the time of adoption. However, the rule was adopted prior to adoption of the Utilization and Treatment Guidelines. Those guidelines better address procedures which may not be permissible, and when they might nonetheless be considered. Repeal of this rule avoids ambiguity and conflict within the rule and avoids a blanket prohibition where it is not necessary.

24.29.1533 NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED FROM JANUARY 1, 2008 THROUGH JUNE 30, 2013

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Reasonable necessity exists to repeal this rule because it is no longer necessary due to the passage of time because it applies solely to services provided on or before June 30, 2013. Section (1) implies its applicability to any claim after January 1, 2008, but it is not applicable.

24.29.1701 REHABILITATION PROVIDER DESIGNATION

AUTH: 39-71-203, MCA
IMP: 39-71-1014, 39-71-1015, 39-71-1023, MCA

REASON: There is reasonable necessity to repeal this rule because it implements two statutes which have been repealed, 39-71-1015 and 39-71-1023, MCA. The rule is no longer necessary in light of amendments to 39-71-1014, MCA and part 10 of the Workers' Compensation Act.

24.29.1705 LOCAL JOB POOL AREA DEFINITION

AUTH: 39-71-203, MCA
IMP: 39-71-1011, 39-71-1012, MCA

REASON: Reasonable necessity exists to repeal this rule because it defines a term which was repealed from 39-71-1011, MCA, in 1991, and 39-71-1012, MCA has been repealed.

24.29.1761 DISPUTES OVER REHABILITATION EXPENSES

AUTH: 39-71-203, MCA
IMP: Title 39, chapter 71, part 10, MCA

REASON: There is reasonable necessity to repeal this rule because all disputes regarding workers' compensation benefits may be appealed to the workers' compensation court, following mediation, pursuant to 39-71-2905, MCA. The rule is not necessary.

24.29.2002 STANDARDS FOR DIAGNOSIS FOR SERVICES PROVIDED ON OR BEFORE JUNE 30, 2011

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: Reasonable necessity exists to repeal this rule because it has become obsolete through the passage of time due to its applicability solely to services provided on or before June 30, 2011.

24.29.2003 WORKERS' COMPENSATION DOES PAY FOR CERTAIN SERVICES PROVIDED ON OR BEFORE JUNE 30, 2011

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: Reasonable necessity exists to repeal this rule because it has become obsolete through the passage of time due to its applicability solely to services provided on or before June 30, 2011.

24.29.2301 PURPOSE

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2303 DEFINITIONS

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2311 SELECTION OF MANAGED CARE ORGANIZATION AND TREATING PHYSICIAN WITHIN A MANAGED CARE ORGANIZATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2321 PRELIMINARY APPLICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-224, 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2323 TIME, PLACE, AND MANNER OF PROVIDING SERVICES

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2326 AREAS SERVED BY THE MANAGED CARE ORGANIZATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2329 STRUCTURE OF ORGANIZATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2331 CONTENTS OF THE MANAGED CARE PLAN

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2336 FINANCIAL ABILITY OF ORGANIZATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2339 APPROVAL OF PRELIMINARY APPLICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2341 FINAL APPLICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-224, 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2346 ORIGINAL CERTIFICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE.

24.29.2351 REPORTING REQUIREMENTS

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-224, 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2356 DEPARTMENT MAY INSPECT OR AUDIT

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2361 APPLICATION TO RENEW CERTIFICATION, NOTICE OF INTENT NOT TO RENEW CERTIFICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2366 RENEWAL CERTIFICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2371 APPLICATION TO MODIFY PLAN

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2373 ADDITION AND TERMINATION OF MEMBERS

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2376 REVOCATION OR SUSPENSION OF CERTIFICATION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2379 DISPUTE RESOLUTION

AUTH: 39-71-203, 39-71-1103, 39-71-1105, MCA
IMP: 39-71-1103, 39-71-1105, MCA

REASON: See reason statement for NEW RULE VI.

24.29.2602 INTRODUCTION

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-901, 39-71-905, 39-71-907, 39-71-908, MCA

REASON: Reasonable necessity exists to strike (1) through (4) and (6) because they are duplicative of statute. Section (5) is proposed to be incorporated into ARM 24.29.2614.

24.29.2701 PAYMENT OF SILICOSIS BENEFITS

AUTH: 39-73-102, MCA
IMP: 39-73-104, 39-73-107, 39-73-108, 39-73-109, 39-73-111, MCA, and Chap. 142, L. of 1999

REASON: Reasonable necessity exists to repeal this rule because it merely duplicates the statutes it implements.

24.29.2811 MONTHLY PAYMENTS--UEF

AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

REASON: Reasonable necessity exists to repeal this rule because it is proposed to be included in ARM 24.29.2843, so as to simplify the rules by collocating payment requirements.

24.29.2839 COMPROMISE OF PENALTIES ASSESSED

AUTH: 39-71-203, MCA
IMP: 39-71-506, MCA

REASON: Reasonable necessity exists to repeal this rule because it duplicates 39-71-506(2), MCA.

24.29.2846 PRIORITY OF PAYMENT OF CURRENT BENEFITS

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-504, 39-71-510, MCA

REASON: Reasonable necessity exists to repeal this rule. Section (1) restates 39-71-503(3)(a), MCA. Section (2) because it restates 39-71-510, MCA. Section (3) states the necessary conclusion of 39-71-503 and 39-71-510, MCA. Section (4) is unnecessary because such earmarked funds do not exist, and would be subject to a specified settlement agreement, which would govern.

24.29.2849 PAYMENT OF CLAIMS WHERE LIABILITY IS DISPUTED

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-504, 39-71-510, MCA

REASON: Reasonable necessity exists to repeal this rule. Section (1) sets forth general policy and is not substantive. Sections (2) through (4) are proposed to be incorporated into ARM 24.29.2843 in a more concise manner. Section (5) is unnecessary because the UEF is not an insurer and is not subject to the provisions of the Workers' Compensation Act regarding unreasonable conduct by insurers. *See Pekus v. UEF*, 2003 MTWCC 33. Section (6) is unnecessary because it sets forth business process, which need not be in rule. Section (7) sets forth business process with regard to settlement agreements. Reasonable necessity exists to strike (8) because it cross-references a rule proposed to be repealed.

24.29.2851 LIMITATION ON EXPENDITURES FOR MEDICAL BENEFITS PAYABLE BY THE UEF--APPLICABILITY

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-510, 39-71-704, 39-71-727, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of the statutes it purports to implement.

24.29.2855 RIGHTS OF THIRD-PARTY PROVIDERS UPON THE UEF'S PROPORTIONATE REDUCTION IN BENEFIT PAYMENTS--APPLICABILITY

AUTH: 39-71-203, MCA
IMP: 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of 39-71-508(3), MCA, which permits providers to pursue a cause of action against uninsured employers when costs of services are not paid by the UEF.

24.29.3107 TIMELINES AND EXPLANATION OF STATUS CLASSIFICATIONS OF A PETITION

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: See the general statement of reasonable necessity.

24.29.3111 PETITION FOR REOPENING

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: Reasonable necessity exists to repeal this rule because its substance is more concisely included within NEW RULE VII.

24.29.3114 SUBMISSION OF MEDICAL RECORDS AND ADDITIONAL INFORMATION--EFFECT OF FAILURE TO SUBMIT MEDICAL RECORDS OR ADDITIONAL INFORMATION

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: See the general statement of reasonable necessity.

24.29.3117 JOINT PETITION FOR REOPENING

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: See the general statement of reasonable necessity.

24.29.3121 REVIEW BY MEDICAL DIRECTOR--CONSENT OF BOTH PARTIES

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: See the general statement of reasonable necessity.

24.29.3124 REVIEW BY MEDICAL REVIEW PANEL--REPORT AND RECOMMENDATIONS

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

REASON: See the general statement of reasonable necessity.

24.29.4301 PURPOSE

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: There is reasonable necessity to repeal this rule because it is not substantive.

24.29.4311 FORMS USED FOR REPORTING

AUTH: 39-71-203, MCA
IMP: 39-71-205, 39-71-208, 39-71-225, MCA

REASON: Reasonable necessity exists to repeal this rule because its substance is more simply set forth in ARM 24.29.4314. Repeal is in the interest of simplifying, clarifying, and shortening the Administrative Rules of Montana.

24.29.4317 REPORTS PRODUCED BY THE DEPARTMENT

AUTH: 39-71-203, MCA
IMP: 39-71-205, 39-71-209, 39-71-224, 39-71-225, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of 39-71-205 and 39-71-225, MCA. To the extent it goes beyond those statutes, it merely sets forth business process and procedures when reviewing and responding to requests for public records and implicates constitutional and statutory provisions for public record requests. The rule is unnecessary.

24.29.4322 TRANSITIONAL RULE FOR INJURY AND OCCUPATIONAL DISEASE INFORMATION REPORTING REQUIREMENTS

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: Reasonable necessity exists to repeal this rule because, while necessary initially, nearly thirty years have passed since transition occurred. As such, the rule has become obsolete.

24.29.4329 VERIFICATION AND ADDITIONAL INFORMATION

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-225, 39-71-304, MCA

REASON: Reasonable necessity exists to repeal this rule because 39-71-107, MCA, requires insurers to provide information to the department on request. As a result, this rule is duplicative of statute.

7. 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., April 5, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

9. 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.

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

11. 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.

12. 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 February 27, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Economic Impact and Destination Event Grant Program	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 26, 2024, the Department of Commerce published MAR Notice No. 8-99-209 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 99 of the 2024 Montana Administrative Register, Issue Number 2.

2. The department has adopted NEW RULE I (8.99.1301) as proposed.

3. 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 commenter requested that non-profits and trade associations be considered eligible members for the grant program.

Response 1: There are multiple funding opportunities that may be provided through the Tourism Grant Program, and eligibility is determined within the guidelines of each funding opportunity. This comment was presented in the hearing for the Economic Impact and Destination Event Grant Program and a primary, registered non-profit 501(c) organization is an eligible entity to apply for an event grant.

Comment 2: A commenter requested that a match not be required for grants to smaller communities and that grant funds are not dispersed on a reimbursement basis.

Response 2: Because the event award is limited to $25,000 for defined allowed expenses, no match is required for this funding opportunity. Most of the permissible expenses will be incurred close to or at the time of the event, and event deliverables must be submitted to the department within 30 days. Grantees who submit deliverables within the contractual term should not incur large out-of-pocket expenses before grant funds are distributed.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State February 27, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.602 pertaining to the Housing Credit Program	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 26, 2024, the Department of Commerce published MAR Notice No. 8-111-208 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 102 of the 2024 Montana Administrative Register, Issue Number 2.

2. No comments or testimony were received.

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

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State February 27, 2024.

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of ARM 12.4.203, 12.4.205, 12.4.206, 12.4.207, and 12.4.210 and the repeal of ARM 12.4.204 and 12.4.208 pertaining to the block management program	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 3, 2023, the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-617 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1440 of the 2023 Montana Administrative Register, Issue Number 21.

2. On December 1, 2023, a public hearing was held on the proposed amendment and repeal of the above-stated rules via Zoom. FWP and the commission received both written and oral testimony comments by December 4, 2023.

3. FWP and the commission have amended ARM 12.4.203, 12.4.205, 12.4.206, 12.4.207, and 12.4.210 as proposed.

4. FWP and the commission have repealed ARM 12.4.204 and 12.4.208 as proposed.

5. 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: One commenter requested that ARM 12.4.203(3) ("Block management tabloid") remain in ARM 12.4.203.

RESPONSE 1: FWP and the commission believe that the definition for "Block management tabloid" is unnecessary. The only reference to a "Block management tabloid" was in ARM 12.4.208. As noted above, ARM 12.4.208 is repealed and, as a result, the definition is no longer needed. Nevertheless, while the definition for "Block management tabloid" may be removed, FWP does not plan to stop producing a tabloid at this time. Rather, FWP is considering shifting the tabloid from paper form to an online format to reduce the high costs associated with printing and mailing the tabloid.

COMMENT 2: One commenter requested that the definition for "Hunting season," in ARM 12.4.203(10), include unprotected species (such as rabbits, hares, ground

squirrels, coyotes, and rock chucks) thereby allowing hunters to access block management areas and legally take unprotected species.

RESPONSE 2: FWP and the commission disagree. While the ability to shoot unprotected species would most likely be a by-product of hunting game birds and game animals, there could be instances where an individual accesses a block management area with the sole intent to take unprotected species. Landowner compensation is funded from the sale of hunting licenses and permits required to hunt game birds and game animals and compensates landowners for the impacts received because of hunting. Unprotected species do not require a hunting license or permit and, as a result, any individual intending to access a block management area to take unprotected species are not contributing towards landowner compensation. Thus, FWP and the commission believe unprotected species should not be included in the definition and the decision of whether to allow hunters to take unprotected species should remain with the participating landowner.

COMMENT 3: One commenter requested that ARM 12.4.204 remain in administrative rule.

RESPONSE 3: While ARM 12.4.204 details criteria for participation that concerns management objectives or projects/programs, most of the criteria listed in ARM 12.4.204 concern public access to private and public lands for hunting purposes, as described in 87-1-265, MCA. Since the root of the block management program, as well as some of the criteria, is already listed in 87-1-265, MCA, FWP and the commission believe the language of ARM 12.4.204 is informational language that is better suited in the program's procedural document(s) and should be removed in accordance with the Governor's Red Tape Relief Project.

COMMENT 4: A few commenters requested that the repealed sections of ARM 12.4.205 remain in administrative rule.

RESPONSE 4: FWP and the commission disagree. Most of the language included in ARM 12.4.205 does not concern the use of the block management areas, such as enrollment in the block management program and consideration given to properties participating in the block management program. This language runs contrary to the stated purpose of ARM 12.4.205. Additionally, 87-1-265(3), MCA, identifies the terms of public access to or across private property; thus, inclusion of those terms is repetitive and unnecessary. Relevant language regarding the use of block management areas remains in ARM 12.4.205, and any language removed through this process is better suited in the program's procedural document(s) and adheres to the Governor's Red Tape Relief Project.

COMMENT 5: A few commenters requested that the repealed sections of ARM 12.4.206 remain in administrative rule. One commenter particularly expressed concern regarding the removal of (1)(b), and the fact that the removed language highlighted the department's responsibilities regarding permission books.

RESPONSE 5: The repealed sections of ARM 12.4.206 do not specifically relate to compensation cooperators receive while participating in the block management program. The language retained in ARM 12.4.206 condenses the rule and readily identifies the types of payment a landowner will receive and, in certain instances, how that payment may be computed. The repealed language is better suited in the program's procedural document(s) and should be removed in accordance with the Governor's Red Tape Relief Project. In addition, as per 87-1-265(7)(c), MCA, FWP will provide staffing assistance, permission materials, signage, and/or other forms of benefits to cooperators so long as financial resources are available to do so.

COMMENT 6: A few commenters requested that FWP and the commission define "unreasonably restricted" in ARM 12.4.207(1).

RESPONSE 6: FWP and the commission do not believe "unreasonably restricted" needs to be defined. Section 87-1-265(4), MCA, identifies that private land is not eligible for inclusion in a hunting access program if outfitting, commercial hunting, or fees charged for private hunting access "unreasonably restrict" public hunting opportunities. FWP and the commission believe the additional language proposed in ARM 12.4.207 provides FWP employees with adequate means to determine whether outfitting or commercial hunting will cause negative impacts to public hunting. If public hunting opportunity is unreasonably restricted, whether determined at the outset of the hunting season or during the hunting season, the landowner and their property are ineligible for enrollment or re-enrollment in the block management program, as per 87-1-265(4), MCA.

COMMENT 7: One commenter agreed with the suggested additions for ARM 12.4.207 and stated that the additions ensured fairness and equality for the block management program.

RESPONSE 7: This comment does not require acceptance or rejection by FWP and/or the commission. However, FWP and the commission acknowledge the comment and the commenter's acceptance to the additions.

COMMENT 8: A few commenters requested that ARM 12.4.208, or sections thereof, should remain in administrative rule.

RESPONSE 8: FWP and the commission believe that the language contained in ARM 12.4.208 is better left in the program's procedural document(s). FWP has continued to provide additional hunting season opportunities and continues to promote those opportunities to the public. By removing this language, it allows FWP greater flexibility in determining how program information may be produced and distributed. Landowner compensation is based on public use. Thus, if FWP ceased production and distribution of participating property information, or failed to provide sufficient information concerning those properties, landowner participation would significantly decrease or fail altogether. Additionally, 87-1-265(3), MCA, identifies the terms of public access to or across private property. Since the agreement must contain a detailed description of the conditions for use, the agreement, itself, acts as

the binding documents thereby removing the need for the rule language. Accordingly, FWP and the commission believe the language should be removed in accordance with the Governor's Red Tape Relief Project.

COMMENT 9: A few commenters requested that the repealed sections of ARM 12.4.210 remain in administrative rule.

RESPONSE 9: FWP and the commission disagree. In substance, ARM 12.4.210 has not changed. ARM 12.4.210 was condensed to better articulate the requirements for submitting a formal complaint and the process FWP staff must adhere to once a formal complaint is received. Any language removed better reflects FWP's streamlined process for formal complaints.

COMMENT 10: A few commenters suggested changes to the standard operations of the block management program. One commenter suggested that hunters be required to purchase an annual stamp to hunt on lands enrolled in block management. One commenter requested that the sign-in procedures change for vehicles with multiple hunters, whereby one hunter completes the sign-in slip and indicates the additional number of hunters in the vehicle. One commenter requested block management properties provide motorized access to and across the enrolled property to promote hunting for elderly, injured, or disabled individuals. One commenter identified that hunters have recently disposed their trash on the enrolled properties and/or nearby non-enrolled properties and cause loud vehicle noise during early morning hours.

RESPONSE 10: These comments do not require acceptance or rejection by FWP or the commission, as the comments are outside of the scope of the proposed rule changes. Nevertheless, FWP and the commission acknowledge the comments made and will continue to seek improvements to the block management program, as well as address any issues that arise related to the program.

COMMENT 11: A few commenters were dissatisfied with the proposed rule changes and did not agree that the removed language should reside in program procedural documents. The commenters requested that the removed language remain in their respective administrative rules.

RESPONSE 11: FWP and the commission disagree. The removed language is repetitive, dated, and, in some instances, does not reflect current practices or the content of the administrative rule. To ensure the block management program represents current day practices, as well as remove any unneeded language, FWP and the commission find that the removed language will be best reflected in the program's procedural document(s).

COMMENT 12: One commenter requested more time to review rule changes.

RESPONSE 12: This comment does not require acceptance or rejection by FWP or the commission. The proposed changes followed the Montana Administrative

Procedure Act and were presented to the commission in compliance with Montana's open meeting laws.

COMMENT 13: One commenter suggested that since the department could not quantify the impacts to small business, the issue should not have been raised or addressed in accordance with 2-4-111, MCA.

RESPONSE 13: This comment does not require acceptance or rejection by FWP or the commission. FWP and the commission are required to address 2-4-111, MCA, and is only required to conduct a small business impact analysis when the impacts are significant. Given the difficulty in quantifying the monetary impact to small business, specifically outfitters, FWP noted that there may be an impact, but did not expect the impact to be significant.

/s/ Alexander Scolavino
Alexander Scolavino
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 February 27, 2024.

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of ARM 12.9.901 and 12.9.908 and the repeal of ARM 12.9.902, 12.9.905, and 12.9.911 pertaining to contractual elk hunting access agreements	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 3, 2023, the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-618 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1449 of the Montana Administrative Register, Issue Number 21.

2. On December 1, 2023, a public hearing was held on the proposed amendment and repeal of the above-stated rules via Zoom. FWP and the commission received both written and oral testimony comments by December 4, 2023.

3. FWP and the commission have amended ARM 12.9.901 and 12.9.908 as proposed.

4. FWP and the commission have repealed ARM 12.9.902, 12.9.905, and 12.9.911 as proposed.

5. 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: One commenter requested that FWP further define "full-time employee" and provide definitions for "occupied elk habitat" and "successful public hunting."

RESPONSE 1: FWP and the commission do not agree that this change is needed. House Bill 596 already provides a definition for an "employee." There it states that an "'[e]mployee' means a person who works full time for the landowner as part of an active farm or ranch operation enrolled in the program." Moreover, although House Bill 596 does not provide definitions for "occupied elk habitat" and/or "successful public hunting," FWP and the commission find that defining those terms will act as an impediment rather than a benefit to the elk hunting access program. Determining whether a proposed property has elk presence and will allow public hunter opportunity is a multi-faceted approach that considers a multitude of variables. Those variables include the landscape of the proposed property, the elk's access to food or ability to forage, and neighboring landowner pressure/acceptance, etc. If

FWP and the commission were to define those terms, FWP staff would lose that much-needed flexibility, and many proposed properties would be disqualified based on failing to meet the stated criteria.

COMMENT 2: One commenter requested that FWP modify some of the reporting statistics used for the annual program status report that is then provided to the commission.

RESPONSE 2: Although outside the scope of the proposed rules, FWP will examine how best to improve annual reporting of the successes of the program to include other statistics that may be gathered for the program.

COMMENT 3: A few commenters suggested that ARM 12.9.905 and 12.9.911, or portions thereof, should remain in administrative rule.

RESPONSE 3: FWP and the commission disagree. ARM 12.9.905 addresses the contractual public elk hunting access agreements. The language included in ARM 12.9.905 will be included in the elk hunting access agreement application, as well as the contractual agreement, thus, contractually binding the landowner to those terms. Any concern that FWP loses its enforcement capabilities is unwarranted. Moreover, ARM 12.9.911 identifies FWP's process for selecting permit holders. There is no enforcement component required for this rule, and the language is better suited in a program operating procedure document.

COMMENT 4: One commenter requested more time to review rule changes.

RESPONSE 4: This comment does not require acceptance or rejection by FWP or the commission. The proposed changes followed the Montana Administrative Procedure Act and were presented to commission in compliance with Montana's open meeting laws.

/s/ Alexander Scolavino
Alexander Scolavino
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 February 27, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 17.55.110 pertaining to third-party remedial actions at order sites	) NOTICE OF REPEAL)) (STATE SUPERFUND)

TO: All Concerned Persons

1. On November 3, 2023, the Department of Environmental Quality published MAR Notice No. 17-435 pertaining to the proposed repeal of the above-stated rule at page 1469 of the 2023 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State February 27, 2024.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.117, 23.16.403, 23.16.509, 23.16.1802, 23.16.1811, 23.16.1823, 23.16.1826, 23.16.1827, 23.16.1907A, and 23.16.1924 pertaining to gambling licenses and video gambling machines	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 12, 2024, the Department of Justice published MAR Notice No. 23-16-282 pertaining to the proposed amendment of the above-stated rules at page 26 of the 2024 Montana Administrative Register, Issue Number 1.

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

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

COMMENT #1: The department received comments from the Gaming Industry Association of Montana, Inc. (GIA), and Montana Coin Machine Operators Association. Both organizations supported the overall rule amendments except they objected to the new definition for "Entertainment display" and the corresponding changes to ARM 23.16.1907A. The two organizations felt the additional language about entertainment displays would allow these types of displays and the displays would cause confusion among consumers. GIA also had concerns about proper random number generators, but the gambling rules do not in any way affect what is allowed for this topic.

RESPONSE #1: The department believes entertainment displays, although not mentioned, would be allowed under existing law and rules. It is the responsibility of the department to provide some guidelines for these displays. Section 23-5-621, MCA, requires the department to adopt rules that describe these displays, including images and the minimum area of the screen that depicts the game. By including entertainment displays in these rule amendments, the department is proactively taking action to describe these displays. The department believes that by including this information in the rule amendments any concerns about consumers being misled or confused about these kinds of displays is alleviated.

/s/ DAVID M. ORTLEY
David M. Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State February 27, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.16.7551, the amendment and transfer of ARM 24.16.102, 24.16.111, 24.16.211, and 24.16.1508, the transfer of ARM 24.16.2101, the adoption of NEW RULES I through IV, and the repeal of ARM 24.16.501, 24.16.502, 24.16.503, 24.16.1002, 24.16.1004, 24.16.1005, 24.16.1006, 24.16.1007, 24.16.1008, 24.16.1009, 24.16.1010, 24.16.1011, 24.16.1012, 24.16.1501, 24.16.1502, 24.16.1503, 24.16.1504, 24.16.1505, 24.16.1506, 24.16.1507, 24.16.2501, 24.16.2502, 24.16.2503, 24.16.2504, 24.16.2505, 24.16.2512, 24.16.2513, 24.16.2514, 24.16.2515, 24.16.2516, 24.16.2517, 24.16.2518, 24.16.2519, 24.16.2520, 24.16.2521, 24.16.2522, 24.16.2523, 24.16.2524, 24.16.2525, 24.16.2531, 24.16.2532, 24.16.2533, 24.16.2541, 24.16.2542, 24.16.2543, 24.16.2544, 24.16.2551, 24.16.2552, 24.16.2553, 24.16.2554, 24.16.2555, 24.16.2556, 24.16.2557, 24.16.2571, 24.16.2581, 24.16.5501, 24.16.6101, 24.16.6102, and 24.16.6901 regarding wages and hour rules	)	NOTICE OF AMENDMENT, AMENDMENT AND TRANSFER, TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On January 26, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-16-388 regarding the public hearing on the proposed changes to the above-stated rules, at page 108 of the 2024 Montana Administrative Register, Issue No. 2.

2. On February 15, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters thanked the department for simplifying and streamlining the wage and hour rules in this project.

RESPONSE 1: The department appreciates all comments received in the rulemaking process.

COMMENT 2: Several commenters questioned the exemption of 29 CFR 785.39 in NEW RULE I(1)(b), asking if a 9 to 5 employee getting a ride during regular work hours with a work crew to another location would count that travel time as hours worked.

RESPONSE 2: The department decided not to adopt the federal reference regarding travel time away from the home community because travel as a passenger may be considered work time even if outside the employee's regular working hours if the employer is requiring or allowing (suffered or permitted) the employee to travel. The department intends to review each matter independently to address hours worked when travel is away from the home community.

COMMENT 3: Some commenters asked if the new definition of "safety instruction" at ARM 24.16.102(12) (renumbered ARM 24.16.3001) would apply to the requirements of ARM 24.22.704(1)(c).

RESPONSE 3: As defined and used in ARM Title 24, chapter 22, subchapter 7, references to "safety instruction" are intended to guide employees to identify, report, and address hazards or incidents which can typically be done with two hours of new employee training. ARM Title 24, chapter 22 is intended to assist employers to obtain reimbursement for workers' compensation premiums when hiring students in a qualified high-quality work-based learning opportunity.

In 2021, House Bill 282 amended several sections of Title 41, chapter 2, MCA, and it is necessary to define some of the statutory terms. While "safety instruction" is used frequently in this area of law, the department is proposing the 10-hour training in ARM 24.16.3001(12) to further clarify 41-2-109(2), MCA, which allows minors under the age of 16 to work in otherwise prohibited employment and requires training approved by the 4-H program, the U.S. Department of Education, or the department. The department concluded that the training should be beyond a tour and explanation of a business' current safety practices typically included in new employee training. The department has an approved program and performs the OSHA 10 trainings.

4. The agency has amended ARM 24.16.7551 as proposed.

5. The agency has amended and transferred ARM 24.16.102 (24.16.3001), 24.16.111 (24.16.3004), 24.16.211 (24.16.3007), and 24.16.1508 (24.16.3022) as proposed.

6. The agency has transferred ARM 24.16.2101 (24.16.3025) as proposed.

7. The agency has adopted NEW RULES I (24.16.3010), II (24.16.3019), III (24.16.3013), and IV (24.16.3016), as proposed.

8. The agency has repealed ARM 24.16.501, 24.16.502, 24.16.503, 24.16.1002, 24.16.1004, 24.16.1005, 24.16.1006, 24.16.1007, 24.16.1008, 24.16.1009, 24.16.1010, 24.16.1011, 24.16.1012, 24.16.1501, 24.16.1502, 24.16.1503, 24.16.1504, 24.16.1505, 24.16.1506, 24.16.1507, 24.16.2501, 24.16.2502, 24.16.2503, 24.16.2504, 24.16.2505, 24.16.2512, 24.16.2513, 24.16.2514, 24.16.2515, 24.16.2516, 24.16.2517, 24.16.2518, 24.16.2519, 24.16.2520, 24.16.2521, 24.16.2522, 24.16.2523, 24.16.2524, 24.16.2525, 24.16.2531, 24.16.2532, 24.16.2533, 24.16.2541, 24.16.2542, 24.16.2543, 24.16.2544, 24.16.2551, 24.16.2552, 24.16.2553, 24.16.2554, 24.16.2555, 24.16.2556, 24.16.2557, 24.16.2571, 24.16.2581, 24.16.5501, 24.16.6101, 24.16.6102, and 24.16.6901 as proposed.

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

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

Certified to the Secretary of State February 27, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.165 pertaining to Livestock Reporting Deadline Revisions to Implement House Bill 66 (2023)	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 12, 2024, the Department of Revenue published MAR Notice No. 42-1074 pertaining to the proposed amendment of the above-stated rule at page 41 of the 2024 Montana Administrative Register, Issue Number 1.

2. No requests for a public hearing were received. The department did not receive any written comments in support of or opposition to the proposed amendment.

3. The department has amended ARM 42.21.165 as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State February 27, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2408 pertaining to ballot form and uniformity	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 26, 2024, the Secretary of State published MAR Notice No. 44-2-274 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 124 of the 2024 Montana Administrative Register, Issue Number 2.

2. On February 20, 2024, a public hearing was held on the proposed amendment of the above-stated rule.

3. The Secretary of State has amended the above-stated rule as proposed.

4. The Secretary of State did not receive any substantive comments on the proposed rulemaking action.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 27th day of February, 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.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

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 December 31, 2023. This table includes notices in which those rules adopted during the period August 25, 2023, through February 23, 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 December 31, 2023, 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 2023 or 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

(Public Employees' Retirement Board)
2-43-641 Application Process for Disability Benefits, p. 1201, 1428, 44

AGRICULTURE, Department of, Title 4

4-23-277 Nonrefundable Application Fees, p. 923, 126
4-23-279 Annual Report and Assessment Fees, p. 925, 127
4-23-280 State Grain Lab Fee Schedule, p. 927, 1599
4-23-281 Updating Administrative Rule References and Citations, p. 1576, 128
4-23-282 Seed Rules, p. 1587, 243

STATE AUDITOR, Office of, Title 6

6-279 Classification Review Committee Agency Organization, Administrative Appeal of a Classification Decision, Telephone and Electronic Hearings, and Establishment, Deletion, or Revision of Classifications

24-209-1 Property Management Licensure, p. 1473, 1870
24-217-1 Registered Sanitarians and Sanitarians-in-Training, p. 1728, 136
24-351-357 Building and Commercial Measurements Bureau, p. 1515, 1871

(Alternative Health Care Board)
24-111-29 Acupuncturist Licensing, p. 738, 1093, 1187

(Board of Dentistry)
24-138-84 Dental Hygiene Limited Access Permit, p. 1782

(Board of Medical Examiners)
24-156-94 Physician Assistants, p. 813, 1149, 1591, 273
24-156-95 General Revisions, p. 819, 1407
24-156-96 Montana Health Corps, p. 828, 1410
24-156-97 Supervision of Physician Assistant, p. 1243, 1864

(Board of Nursing)
24-159-93 Continuing Education, p. 560, 1611
24-159-95 Board of Nursing, p. 747, 1561

(Board of Optometry)
24-168-45 General Revisions, p. 994, 1621

(Board of Pharmacy)
24-174-80 Pharmacist Prescribing, p. 1471, 1865

(Board of Psychologists)
24-189-44 Board of Psychologists, p. 1245, 1749

(Board of Real Estate Appraisers)
24-207-47 Fees - Practical Application of Real Estate Appraisal, p. 754, 1095

(Board of Behavioral Health)
24-219-37 Board of Behavioral Health, p. 1480, 279

(Board of Speech-Language Pathologists and Audiologists)
24-222-29 Board of Speech-Language Pathologists and Audiologists, p. 1267, 1751

(Board of Veterinary Medicine)
24-225-43 Veterinary Retail Dispensing, p. 1509, 84

LIVESTOCK, Department of, Title 32

32-23-338 Issuance of Permits, p. 688, 1189
32-23-339 Diagnostic Laboratory Fees, p. 690, 1190
32-23-340 Records to Be Kept, p. 860, 1735

44-2-271 Annual Security Assessments and Training, p. 1846, 285
44-2-272 Guidelines for Polling Place Accessibility, p. 1850, 286
44-2-273 Postelection Audit Processes for Federal and Nonfederal Elections, p. 1852, 287
44-2-274 Ballot Form and Uniformity, p. 124

(Office of the Commissioner of Political Practices)
44-2-266 Contribution Limits, p. 1394, 1758

MONTANA ADMINISTRATIVE REGISTER

2024 ISSUE NO. 5
MARCH 8, 2024
PAGES 358-489

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620