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EQC rule review memo April 4, 2024

One-page summary

RULE PROPOSALS SINCE LAST EQC MEETING, MARCH 14, 2024

FWP	DEQ	DNRC	Sage grouse
12-626	17-441	None	none

ONGOING RULE PROPOSAL NOTICES

FWP	DEQ	DNRC	Sage grouse
12-625	17-437 17-438	None	none

RULE ADOPTIONS SINCE LAST EQC MEETING, MARCH 14, 2024

FWP	DEQ	DNRC	Sage grouse
None	17-436	None	none

RULE ADOPTIONS THIS INTERIM

FWP	DEQ	DNRC	Sage grouse
12-603	17-429	36-22-218	14-8
12-606	17-430	36-22-220	
12-607	17-431	36-22-221	
12-614	17-432A-E		
12-615	17-435		
12-617	17-440		
12-618			

ONGOING COMMITTEE ACTIONS

FWP	DEQ	DNRC	Sage grouse
None	None	None	none

How to use this memo

This memo summarizes [FWP rulemaking](#), [DEQ rulemaking](#), [DNRC rulemaking](#), and [Sage grouse oversight team rulemaking](#) so that EQC and its members can provide legislative oversight of the MAPA process, which is part of [EQC's mandate](#).

The [One-page summary](#) is a dashboard for current proposal notices, adoption notices from this interim, and any MAPA actions the committee may be taking. Each notice number links to this memo's summary for the proposal notice or adoption notice.

This memo is part of a zip file provided to the EQC. Each summary of a proposal notice or adoption notice is itself a link to the actual text of that notice contained in the zip file. If a rule is proposed to be repealed, a copy of that rule is provided.

The distinction between proposals and adoptions is important because EQC and its members have more oversight abilities over proposals and less oversight abilities over adoptions. For a full explanation, see [EQC committee abilities](#), [Legislator abilities](#), and [Schedules of abilities](#).

FWP rulemaking**NEW PROPOSALS SINCE LAST EQC MEETING**

MAR Notice No.	Topic	Proposed action	Timeline
12-626	Big game management policy	Repeal 1 rule	Proposal date: March 22, 2024 Hearing date: April 19, 2024 Comment due date: April 22, 2024 Adoptable: April 22, 2024 6-month expiration: September 22, 2024

Reason statement: [12.9.101] became effective on December 31, 1972. In the intervening years, this rule has become obsolete due to FWP's adoption of species-specific plans. These plans are initiated with citizen notice and participation, as well as commission guidance and approval. The commission proposes to repeal this rule that no longer aligns with or adapts to legislative, commission, or department species-specific management goals.

ONGOING PROPOSALS

MAR Notice No.	Topic	Proposed action	Timeline
12-625	Department liaisons	repeal 1 rule	Proposal date: February 23, 2024 Hearing date: March 22, 2024 Comment due date: March 25, 2024 Adoptable: currently 6-month expiration: August 23, 2024

Reason statement: [12.2.306] was adopted on April 5, 1976. FWP seeks to repeal this rule as an unnecessary regulation because it is archaic and no longer reflects

how the commission or the department engages with the public, including citizen organizations, in decision making processes.

ADOPTIONS SINCE LAST EQC MEETING

None.

ADOPTIONS THIS INTERIM

MAR Notice No. and topic	Action taken
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<p>12-603</p> <p>FWP public lands</p>	<p>39 rules repealed as proposed;</p> <p>8 rules adopted as proposed;</p> <p>16 rules adopted with changes from proposal based on comments received;</p> <p>32 public comments responded to.</p>
<p>12-606</p> <p>Brinkman Game Preserve</p>	<p>1 rule repealed as proposed;</p> <p>2 comments responded to.</p>
<p>12-607</p> <p>Smith River bonus points</p>	<p>2 rules adopted as proposed;</p> <p>8 public comments responded to.</p>
<p>12-614</p> <p>Grizzly bears</p>	<p>1 rule amended as proposed;</p> <p>4 rules adopted as proposed;</p> <p>9 rules amended with changes from proposal based on comments received;</p> <p>37 public comments responded to.</p>
<p>12-615</p> <p>Gray wolves</p>	<p>1 rule amended with changes from proposal based on comments received;</p> <p>4 public comments responded to.</p>
<p>12-617</p> <p>Block management</p>	<p>5 rules amended as proposed;</p> <p>2 rules repealed as proposed;</p> <p>13 public comments responded to.</p>
<p>12-618</p> <p>Elk hunting access</p>	<p>2 rules amended as proposed;</p> <p>3 rules repealed as proposed;</p> <p>4 public comments responded to.</p>

DEQ rulemaking**NEW PROPOSALS SINCE LAST EQC MEETING**

MAR Notice No.	Topic	Proposed action	Timeline
17-441	Motor vehicle recycling and disposal	Amend 1 rule	Proposal date: March 22, 2024 Hearing date: April 18, 2024 Comment due date: April 19, 2024 Adoptable: April 19, 2024 6-month expiration: September 22, 2024

Reason statement: Section 75-10-503(3), MCA, authorizes the department to adopt rules for reimbursement of charges by tow truck drivers for removing abandoned vehicles at the request of law enforcement in accordance with 61-12-401, MCA. ARM 17.50.213 establishes the amount of the reimbursement payment for each abandoned vehicle removed with a valid claim for payment. The money for reimbursement is contained in the junk vehicle fund authorized under 15-1-122(2)(a), MCA.

DEQ proposes to revise ARM 17.50.213(3) to increase the flat rate reimbursement amount from \$125 per abandoned vehicle removed to \$175 per abandoned vehicle removed. The most recent increase for the removal of abandoned vehicles was in 2019. Since that time, costs of goods and services have continued to rise, fuel and maintenance costs have increased, and the Bureau of Labor and Statistics Consumer Price Index indicates a 2019 \$125 reimbursement amount now equates to \$153 in 2023. To facilitate an equitable raise in reimbursements, the department proposes to increase the reimbursement slightly above the index rate. During the past legislative session, the department engaged with the Montana Towers Association and other stakeholders on a rate increase that would help offset their costs associated with towing abandoned vehicles.

Fiscal analysis prepared during the past legislative session showed that yearly towing reimbursement requests ranged from 845 to 975 in 2020-2022, averaging 895 requests for reimbursement annually. In 2023, 27 towing companies sought reimbursement from the department. Based on the average number of requests, the department estimates that the total yearly reimbursement payments would increase by \$44,750, from \$111,875 to \$156,625, annually. Sufficient funds are available in the junk vehicle fund authorized by 15-1-122(2)(a), MCA, to pay for the proposed increase in reimbursement payments.

ONGOING PROPOSALS

MAR Notice No.	Topic	Proposed action	Timeline
17-437	Hard rock mining	Adopt 1 rule; Amend 14 rules; Repeal 2 rules	Proposal date: January 12, 2024 Hearing date: February 7, 2024 Comment due date: February 9, 2024 Adoptable: currently 6-month expiration: July 12, 2024

DEQ has provided reason statements for each proposed change. Please see the MAR notices.

MAR Notice No.	Topic	Proposed action	Timeline
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17-438	State superfund; Petroleum tank cleanup; Solid waste	Amend 6 rules	Proposal date: January 12, 2024 Hearing date: no hearing scheduled Comment due date: February 9, 2024 Proposed action date: May 10, 2024 6-month expiration: July 12, 2024
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Reason statement: Through this rulemaking, the department is proposing to adopt and incorporate by reference the most recent edition of the federal Drinking Water Maximum Contaminant Levels (MCLs), the U.S. Environmental Protection Agency Regional Screening Levels (RSLs), the Reportable Quantities for Hazardous Substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Montana Risk-Based Corrective Action Guidance for Petroleum Releases. The department conducts periodic reviews of the Montana Risk-Based Corrective Action Guidance for Petroleum Releases to determine if changes to methods and toxicity information warrant updating the guidance. In addition to minor editorial changes, the following substantive updates were made in the December 2023 edition:

Readability and Usability of the Document: New tables were added to the document to walk the user through the Tier 2 risk based screening level (RBSL) adjustment, and instructions were added to help the user determine the appropriate Tier 2 RBSL for each release. A new Appendix D was added to provide an expanded discussion on the derivation of groundwater RBLs and a discussion on actions needed based on exceedances of water quality standards or screening levels. The order of compounds in the screening tables were rearranged to be consistent with the most common laboratory reports.

Revisions for Montana-specific Conditions: Residential and commercial worker RBSLs were recalculated to incorporate the Montana State Exposure Frequencies. These include factors specific to Montana's weather patterns, specifically frozen ground during the winter.

Increased Protection for Construction Workers and Other Users: Several construction worker RBSLs were recalculated using sub-chronic toxicity values rather than chronic toxicity values.

Clarification was added for evaluating construction worker exposure using soil sample data collected throughout the entire 0 - 10 foot interval. All direct contact non-carcinogenic RBSLs were recalculated to incorporate a hazard quotient of 0.1 (instead of 0.125) to ensure protectiveness in the initial screening phase. This will allow up to 10 (instead of 8) non-carcinogenic compounds present in the initial screening.

Toxicity and Data Reference Updates: Comprehensive review was completed of all equation inputs for both direct contact (soil) and water RBSLs. Updates were made where needed based on updates to chemical specific toxicity values or data reference updates. Final RBSLs either increased or decreased based on the chemical and receptor.

A copy of the Montana Risk-Based Corrective Action Guidance for Petroleum Releases (December 2023) may be obtained by contacting Terri Mavencamp at (406) 444-5595. In addition, a copy of the document has been posted to the department's website at <https://deq.mt.gov/public/publiccomment>

Reasons for the remainder of the proposed incorporation by references updates are discussed [further in the rule proposal].

ADOPTIONS SINCE LAST EQC MEETING

MAR Notice No. and topic	Action taken
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<p>17-436</p> <p>Asbestos</p>	<p>19 rules amended as proposed; 1 rule amended with changes from proposal;</p> <p>4 rules repealed as proposed;</p> <p>8 public comments responded to.</p>
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ADOPTIONS THIS INTERIM

MAR Notice No. and topic	Action taken
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17-429 Circular MFSA-2 Modernizing application and notice requirements	26 rules amended as proposed; 2 rules repealed as proposed; 1 public comment responded to.
17-430 Subdivisions	13 rules amended as proposed; 2 rules adopted as proposed; 2 public comments responded to.
17-431 Air quality	1 rule amended as proposed; No public comment received.
17-432 A through E Transfer of rulemaking authority from BER to DEQ	381 rules amended as proposed; 12 rules repealed as proposed; No public comment received.
17-435 State superfund	1 rule repealed as proposed; No public comment received.
17-440 Third-party review of claims and corrective action plans	2 rules amended as proposed; 7 rules repealed as proposed; 6 public comments responded to.

DNRC rulemaking

NEW PROPOSALS SINCE LAST EQC MEETING

None.

ONGOING PROPOSALS

None.

ADOPTIONS SINCE LAST EQC MEETING

None.

ADOPTIONS THIS INTERIM

MAR Notice No. and topic	Action taken
36-22-218 Navigable waterways	1 rule amended as proposed; No public comment submitted.
36-22-220 Reports by producers, tax report, and tax rate	1 rule amended as proposed; 1 public comment responded to.
36-22-221 State land leasing	5 rules amended as proposed; No public comment received.

Sage grouse oversight team rulemaking

NEW PROPOSALS SINCE LAST EQC MEETING

None.

ONGOING PROPOSALS

None.

ADOPTIONS SINCE LAST EQC MEETING

None.

ADOPTIONS THIS INTERIM

MAR Notice No. and topic	Action taken
14-8 Sage grouse habitat quantification tool designation	1 rule amended as proposed; No public comment received.

EQC's mandate

The Montana Administrative Procedures Act (MAPA) mandates and empowers the Environmental Quality Council (EQC) to review administrative rule proposals made by the Department of Fish, Wildlife, and Parks (FWP), the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), and entities attached to them,¹ except that the Water Policy Interim Committee reviews rule proposals where the primary concern is the quality or quantity of water.²

It is EQC's practice to review proposals by the Sage Grouse Oversight Team provided for in 2-15-243, MCA.³

EQC's mandate is minimally fulfilled by staff review of proposal and adoption notices published in the Montana Administrative Register (MAR). EQC's mandate may be additionally fulfilled by committee or individual member actions.

STAFF REVIEW OF PROPOSAL NOTICES

¹ 2-4-402(1), MCA; 75-1-324(10).

² 5-5-231(1)(e), MCA.

³ See EQC administrative rule review memos dated December 8, 2015, and November 2, 2023.

EQC staff will routinely review proposal notices for compliance with:

- 2-4-302(1) (a), requiring a statement of either the terms or substance of the intended action or a description of the subjects and issues involved; requiring a statement of reasonable necessity for the proposed action, written in plain, easily understood language; and requiring a statement of the time, place, and manner for interested persons to present their views on the proposed action;
- 2-4-302(1) (b), requiring a statement regarding the primary bill sponsor contact requirement;
- 2-4-302(1) (c), if applicable, requiring certain estimates if an agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive;
- 2-4-302(2) (a), requiring agencies filing proposals with the secretary of state to send proposals concurrently to EQC staff;
- 2-4-302(4), requiring 20 days' notice of a hearing, if one is scheduled - alternatively, requiring a

statement regarding the number of interested persons needed to request that a hearing be conducted, which must not exceed 25; and requiring that the public comment period last 28 days;

- 2-4-305(3), requiring a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted, and requiring a citation to the specific section or sections of the MCA that the rule purports to implement.

At the direction of an EQC member, staff can additionally review proposals for compliance with:

- 2-4-302(2)(b), requiring that copies of proposals be sent to an agency's list of interested persons within 3 days of publication;
- 2-4-302(2)(d), if applicable, which provides substantive requirements for working with a primary bill sponsor;
- 2-4-302(7), if applicable, which provides substantive requirements for a hearing;

- 2-4-305(2), regarding the repetition of statutory language;
- 2-4-305(5), (6), and (7), providing guidelines on statutory conformity.

STAFF REVIEW OF ADOPTION NOTICES

EQC staff will also routinely review adoption notices for compliance with:

- 2-4-302(2)(d), requiring at least 30 days from proposal to adoption for non-emergency rules;
- 2-4-305(7), providing a 6-month expiration on rule proposals, unless extended by a supplemental notice or modified by the provisions of 2-4-305(11) regarding adoption in the autumn of an even-numbered year.

At the direction of an EQC member, staff can additionally review adoption notices for compliance with 2-4-305(1), providing substantive requirements for considering and responding to views submitted to the agency.

EQC's committee abilities

EQC does not need to take any action during administrative rule review. Taking no action allows the agencies to carry on with the MAPA process. EQC may take actions on proposal notices and adoption notices by FWP, DEQ, and DNRC by a majority vote that impact the MAPA process, including:

- requesting an agency's rulemaking records;⁴
- submitting recommendations to the agency;⁵
- submitting testimony at a rulemaking hearing;⁶
- requiring that a rulemaking hearing occur;⁷
- instituting or intervening in MAPA litigation;⁸
- polling the legislature to determine whether a proposed rule is consistent with legislative intent;⁹
- requesting an agency prepare an economic impact statement;¹⁰

⁴ 2-4-402 (2) (a), MCA.

⁵ 2-4-402 (2) (b), MCA.

⁶ 2-4-402 (2) (b), MCA.

⁷ 2-4-402 (2) (c), MCA.

⁸ 2-4-402 (2) (d), MCA.

⁹ 2-4-403, MCA.

¹⁰ 2-4-405, MCA.

- objecting informally to a rule proposal, which can delay implementation to a date proximate to the “6-month expiration date” for further review by EQC;¹¹
- objecting formally to a rule proposal, if the committee considers the proposal not to be in substantial compliance with 2-4-302, 2,4-303, or 2-4-205, MCA, which can delay implementation to the day after *sine die* of the next regular session for further review by the full legislature;¹²
- objecting formally to an adopted rule, which can impact litigation but does not delay implementation of the rule;¹³ and
- recommending to the legislature¹⁴ the repeal, amendment, or adoption of a rule.¹⁵

INFORMAL OBJECTION

A vote to informally object to a rule proposal may be cast at any time by informing the chair of the

¹¹ 2-4-305(9), MCA.

¹² 2-4-406, MCA.

¹³ 2-4-406(4), MCA.

¹⁴ 2-4-412, MCA.

¹⁵ 2-4-411, MCA.

member's objection.¹⁶ The best practice is to email the chair, cc'ing council staff.

TIE-VOTE

In the event of a tie vote on a motion related to MAPA, the speaker of the house and president of the senate are *ex officio* voting members for the sole purpose of breaking the tie.¹⁷

SAGE GROUSE OVERSIGHT TEAM

Because the sage grouse oversight team is administratively attached to the office of the governor and not to FWP, DEQ, or DNRC, EQC's abilities may be limited with regards to proposal notices and adoption notices of the sage grouse oversight team.

¹⁶ 2-4-305(9), MCA.

¹⁷ 2-4-112.

Legislator abilities

ORDINARY PROCESS

Individual legislators have the same abilities as members of the public to participate in the MAPA process by participating in a public hearing or public comment period.

INTERIM PETITION

A legislator may petition an agency on behalf of an interested person requesting the promulgation, amendment, or repeal of a rule when the legislature is not in session.¹⁸

JOINT REQUESTS

Twenty legislators may together object to a rule proposal, causing the committee to poll the full legislature¹⁹ to determine whether a proposed rule is consistent with the intent of the legislature.²⁰

Fifteen legislators may together request the preparation of an economic impact statement on the adoption, amendment, or repeal of a rule.²¹

¹⁸ 2-4-315, MCA.

¹⁹ 2-4-403(2), MCA.

²⁰ 2-4-403(1), MCA.

²¹ 2-4-405, MCA.

LEGISLATIVE ACTION

Legislators may introduce bills into a legislative session to repeal any adopt, amend, or repeal a rule.²²

For rules or amendments to rules adopted during the most recent legislative interim, legislators may introduce into regular legislative sessions joint resolutions for the repeal of the rule or amendment.²³

²² Compare 2-4-412(1)(a), MCA, and 2-4-412(2), MCA.

²³ 2-4-412(1)(b), MCA.

Schedules of abilities

Because committee and legislator abilities to intervene in the MAPA process change throughout the MAPA process, this memo presents generalized schedules of those abilities divided into pre-adoption abilities and post-adoption abilities.

BEFORE AGENCY ADOPTION OF A RULE PROPOSAL

OBTAIN MORE INFORMATION

ACTION	PROCEDURE
Request additional staff review	Any EQC member can contact staff at any time
Obtain agency rulemaking record	Motion and majority vote required at an EQC meeting
Request an economic impact statement	Motion and majority vote required at an EQC meeting; Alternatively, 15 legislators may submit a request to EQC or the agency

EXPRESS VIEWS

ACTION	PROCEDURE
Participate individually in a MAPA hearing	Follow procedure in MAR notice
Participate individually in public comment	Follow procedure in MAR notice
Submit committee recommendations	Motion and majority vote required at an EQC meeting
Submit committee testimony	Motion and majority vote required at an EQC meeting
Poll the legislature regarding legislative intent	Motion and majority vote required at an EQC meeting;

	Alternatively, 20 legislators may submit a request to EQC
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REQUIRE A HEARING

ACTION	PROCEDURE
Require a MAPA hearing be conducted	Motion and majority vote required at an EQC meeting

DELAY ADOPTION AND IMPLEMENTATION

ACTION	PROCEDURE
Informal objection	email the chair at any time, cc'ing staff. Majority vote required. Alternatively, motion and majority vote required at an EQC meeting
Formal objection	When an informal objection is in effect, motion and majority vote required at an EQC meeting

IMPACT LITIGATION

ACTION	PROCEDURE
Publish formal objection	Motion and majority vote required at an EQC meeting to send previously made formal objection to the secretary of state. Costs must be paid by the committee ²⁴
Poll the legislature	Motion and majority vote required at an EQC meeting;

²⁴ 2-4-406(3), MCA.

	Alternatively, 20 legislators may submit a request to EQC
Institute or intervene in litigation	Motion and majority vote required at an EQC meeting

AFTER AGENCY ADOPTION OF A RULE PROPOSAL

OBTAIN MORE INFORMATION

ACTION	PROCEDURE
Request additional staff review	Any EQC member can contact staff at any time
Obtain agency rulemaking record	Motion and majority vote required at an EQC meeting

IMPACT LITIGATION

ACTION	PROCEDURE
Make and publish formal objection	Motion and majority vote required at an EQC meeting
Institute or intervene in litigation	Motion and majority vote required at an EQC meeting

ADVOCATE REPEAL OF RULE CHANGE

ACTION	PROCEDURE
Legislator petition on behalf of interested party	Follow agency procedure

LEGISLATE REPEAL OF RULE CHANGE

ACTION	PROCEDURE
EQC recommendation to legislature	Motion and majority vote for EQC report to legislature pursuant to 2-4-411 and 2-4-412; possibly including motion and majority vote for a committee joint resolution
Individual legislative action	Eligible legislators may request a draft joint resolution through the bill draft request (BDR) system