

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON PROPOSED RULEMAKING

Agenda # _____ III.B.1. _____

Agenda Item Summary: The department requests that the board initiate rulemaking to adopt the Revised Total Coliform Rule (RTCR) and the 2015 Code of Federal Regulations.

List of Affected Rules: ARMs 17.38.104, 17.38.201A, 17.38.202, 17.38.207, 17.38.208, 17.38.211, 17.38.215, 17.38.225, 17.38.234, and 17.38.271.

Affected Parties Summary: All public water systems will be affected by this proposal.

Scope of Proposed Proceeding: The department is requesting initiation of rulemaking and appointment of a hearing officer for a public hearing.

Background: The 1989 Total Coliform Rule (1989 TCR), a National Primary Drinking Water Regulation, became effective in 1990. This rule was designed to protect public health by having every public water system in the United States test and meet maximum contaminant levels for coliform bacteria, a group of bacteria that can indicate the presence of pathogenic bacteria. This rule was revised in 2013, and is now known as the Revised Total Coliform Rule (RTCR). The RTCR became effective, under federal jurisdiction, on April 1, 2016. This means that, while DEQ implemented and runs compliance for the rule, EPA has primary enforcement responsibility. In order to gain primary enforcement responsibility for the state, called 'primacy', the board needs to incorporate the RTCR into the public water supply rules.

The department requests to adopt the 2015 Code of Federal Regulations and several housekeeping items contained in the attached notice.

Hearing Information: No hearings have been held.

Board Options: The Board may:

1. Initiate rulemaking and appoint a hearing officer,
2. Direct the department to modify the rulemaking and proceed, or
3. Determine that the amendment of rules is not appropriate and decline to initiate rulemaking.

DEQ Recommendation: The department recommends initiation of rulemaking and appointment of a hearing officer for a public hearing as provided in the attached notice of public hearing.

Enclosures:

1. Draft Notice of Proposed Public Hearing.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.38.104, 17.38.201A, 17.38.202,)	ON PROPOSED AMENDMENT
17.38.207, 17.38.208, 17.38.211,)	
17.38.215, 17.38.225, 17.38.234, and)	(PUBLIC WATER SUPPLY)
17.38.271 pertaining to rules and)	
regulations governing public water)	
supply systems)	

TO: All Concerned Persons

1. On _____, 2016, at _____, a./p.m], the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., _____, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined (see the general reason statement for further explanation):

17.38.104 SIGNIFICANT DEFICIENCIES

(1) For the purposes of this rule, "significant deficiency" means any defect in design, operation, or maintenance of a public water supply system or public sewage system, or a failure or malfunction of the system, that the department determines causes, or has the potential to cause, the introduction of fecal, chemical, or other contamination into a drinking water supply or a source of ice. The term also includes fecal contamination in water used by a public water supply system practices and conditions that hinder the determination of the source or potential source of contamination, such as improper sample locations or sample taps.

(2) and (3) remain the same.

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

REASON: In order to determine a source or potential source of contamination, practices and conditions that allow that to happen must be in place.

MAR Notice No. 17-____

For example, proper sampling locations and proper sampling taps need to be in place. If they are not, it is challenging, if not impossible, to quickly track down a source of contamination. This rule change gives the department express authority to ensure that necessary practices and conditions are in place.

GENERAL REASON STATEMENT: On February 13, 2013, the Environmental Protection Agency adopted a new set of regulations, collectively called the "revised total coliform rule" (RTCR), under the Safe Drinking Water Act. See 78 FR 10354. The RTCR modified coliform requirements from the 1989 Total Coliform Rule (TCR). The RTCR, like the 1989 Total Coliform Rule (1989 TCR), applies to all public water systems. There are several updates to provisions of other rules, like the Ground Water Rule and Public Notification Rules, which reference analytical methods and other requirements of the 1989 TCR. In addition, there are three major changes dictated by the RTCR, all expected to protect public health above and beyond that of the 1989 TCR. First, the RTCR, like the 1989 TCR, will require systems to test for coliforms. Currently, the 1989 TCR requires monitoring and reporting of coliform test results. Systems are not required to determine the cause of any positive results. The RTCR, however, will require a system to apply a "find and fix" strategy that identifies the actual and/or potential causes of the positive coliform test results. The system is then required to take corrective action and fix the problem(s). Since total coliforms are indicators of microbial contamination entering the distribution system, this "find and fix" strategy will add an additional layer of protection for public health. Systems with positive coliform test results will be required to look closely at all aspects of their system, including the source water, treatment process, distribution system, and operating procedures. Then, any identified problems that could result in pathogens entering the system, and making people sick, need to be fixed.

Second, the RTCR requires seasonal systems to perform a department-approved start-up procedure, and certify to the department that the procedure has been completed, before opening for the operating season and serving water to the public. The start-up procedure will include flushing stagnant water from pipes, inspecting equipment to determine if repairs are needed, checking to ensure disinfectants are fresh, and testing a sample of water for coliforms. This procedure, not required under the 1989 TCR, is designed to protect public health by ensuring that the water system is fully operational and ready for the season. The final step, testing a sample of water for coliforms, will determine whether there are potentially harmful microbes in the water before it is served to the public.

Third, under the 1989 TCR rule, total-coliform samples are tested for either fecal coliforms or *E. coli*. However, studies conducted since adoption of this rule have shown that fecal coliform tests can turn positive due to bacteria that are not necessarily fecal in origin. Therefore, at times, positive samples may not contain waterborne pathogens that are hazardous to human health, and boil orders are implemented when they are not necessary to protect public health. As a result, the RTCR will require total-coliform samples to be tested specifically for *E. coli* -- choosing to test for fecal coliforms is no longer an option. *E. coli*, unlike fecal coliforms, almost always originate in the guts of humans and other mammals so are therefore, *E. coli* indicators of potential fecal contamination and the possibility of

pathogenic organisms in the water supply. This rule change is beneficial in two ways. It will decrease the likelihood of boil orders when public health is not at stake, and it will substantiate the need of boil orders when public health is truly in jeopardy.

Under 42 U.S.C. 300g-2 of the Safe Drinking Water Act, states can assume primary enforcement responsibility, called "primacy," for enforcement of federal drinking water requirements if the EPA determines that the state has adopted rules that are no less stringent than the EPA regulations. The Montana Legislature's policy is for DEQ retain primacy over environmental programs. Therefore, in order to maintain primacy for enforcement of safe drinking water laws, the board is proposing to adopt the RTCR requirements. The extensive changes required to adopt the RTCR will be accompanied by: 1) adoption by reference of the most current July 1, 2015, edition of the Code of Federal Regulations (CFR); 2) several housekeeping changes; and 3) several non-RTCR updates and/or clarifications to existing rules.

The 1989 TCR specified that community water systems (CWS) must test for coliforms monthly, unless the state adopts quarterly monitoring for small qualified systems. In addition, non-community water systems (NCWS) using only ground water and serving 1,000 or fewer people must test for coliforms quarterly, unless the state adopts annual monitoring for small qualified systems. NCWS include transient (TNC) and nontransient systems (NTNC).

In 1991, the Department of Health and Environmental Sciences (DHES) was responsible for public water supply rules, including those related to the 1989 TCR. They adopted monthly monitoring for community and NTNC systems, and quarterly monitoring for TNC systems using only ground water and serving 1,000 or fewer people. However, the rule was written to trigger TNCs to sample monthly starting in 1993.

In 1998, the department proposed that all TNC systems move from monthly to quarterly sampling to be consistent with federal requirements. Sanitarians, city-county health departments, and others commented during the rule writing process that quarterly sampling was not frequent enough, and the board agreed. MAR notice 17-089, published in 1999, documents the reasoning and support for keeping the more stringent rules requiring these systems to monitor monthly, and the guidelines for qualifying for and staying on reduced quarterly monitoring. The ways to qualify for quarterly monitoring were agreed upon between the above mentioned groups and the department, and written into the rule in ARM 17.38.215(1)(c).

Therefore, the State of Montana currently requires all public water systems to monitor monthly for coliform bacteria. However, a TNC system that uses only ground water and serves a maximum daily population of 1,000 or fewer may apply for quarterly monitoring if they meet the requirements of ARM 17.38.215(1)(c).

The RTCR, just like the 1989 TCR, specifies that CWS's must test for coliforms monthly, unless the department adopts quarterly monitoring for small qualified systems. In addition, NCWSs using only ground water and serving 1,000 or fewer people must test for coliforms quarterly, unless the department adopts annual monitoring for qualified systems.

Each state has the discretion to adopt baseline and reduced monitoring provisions of 40 CFR Part 141 that are appropriate for that state. In order to fully protect public health, the board is proposing to keep all of the current coliform

monitoring frequencies in place, including the rules requiring TNC systems to monitor monthly unless the system qualifies and applies for quarterly monitoring, except for two major changes. First, the requirements for triggering TNC systems to return to monthly coliform monitoring have been strengthened by incorporating RTCR triggers that mandate increased monitoring. This change will help ensure that only well-maintained systems that are complying with Safe Drinking Water regulations will qualify for and remain on reduced monitoring. This process will reduce the risk of serving contaminated water to the public. Second, only non-seasonal transient systems will be able to qualify for reduced monitoring under proposed ARM 17.38.215(3). Seasonal transients were required to sample monthly starting in April 2016. This change will emphasize the importance of the start-up procedure and upkeep for systems that are depressurized or without maintenance for part of the year.

The RTCR became effective April 1, 2016. Because the board has not yet adopted the rules necessary to implement the RTCR, it is currently being implemented under federal jurisdiction. EPA has given the department an RTCR primacy revision extension, until February 2017.

Most of the following rule amendments are necessary to adopt the RTCR. For amendments that are not necessary for RTCR compliance, additional reason statements are provided.

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~2009~~ 2015, edition of the Code of Federal Regulations (CFR).

(2) remains the same.

(3) Copies of federal materials may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; or from the Environmental Protection Agency internet web site at: ~~epa.gov/docs/epacfr40/chapt-1.info/subch-D/~~ <http://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23.pdf>.

(4) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The board is proposing the incorporation of the 2015 edition of the CFR, which is the most current edition, for several reasons. First, adoption of the most recent edition of the CFR is reasonably necessary to ensure that the Department retains primacy for the regulation of public water supplies under the federal Safe Drinking Water Act. Second, the federal revised total coliform rule is contained in the 2015 edition. Third, the 2015 edition is more readily available to the public than the 2009 edition. The proposed amendment to ARM 17.38.201A(3) is proposed to update a non-functioning EPA website link. The proposed amendment will update the link so that current federal regulations can be accessed easily. The

new link will take an interested party to the July 1, 2015 electronic version of 40 CFR, the version the board is proposing to adopt.

17.38.202 DEFINITIONS In this subchapter, the following terms have the meanings indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA. In addition, the board adopts and incorporates by reference the definitions in 40 CFR 141.2, except for the following terms: "clean compliance history," "person," "public water supply system (PWS)," "ground water under the direct influence of surface water (GWUDISW)," "special irrigation district," and "state." The terms "person," "public water supply system," "ground water under the direct influence of surface water," and "state," as used in this subchapter and in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, have the meanings defined below.

(1) through (6) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to 17.38.202 are necessary to 1) avoid adopting the term "clean compliance history"; and 2) to clarify that state definitions apply not only to federal code, but also to Montana rule. The term "clean compliance history" is not used in the existing rules or in the proposed rule amendments. The board has defined several terms used in both Montana rule and the federal code. The second proposed amendment is a housekeeping change and will clarify that state-defined terminology used in this subchapter is applicable to both this subchapter and the federal code.

17.38.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.63(a), 141.63(b), ~~and 141.63(c), and 141.63(d)~~, which set forth maximum contaminant levels for microbiological contaminants.

~~(2) Failure to submit the required number of repeat samples for a public water supply system is a violation of the coliform bacteria MCL set forth in 40 CFR 141.63.~~

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: Incorporation by reference of 141.63(d) is necessary because this provision is part of the RTCR. Deletion of ARM 17.38.207(2) is proposed to remove language that is contained in the 2015 CFR. The RTCR, unlike the 1989 TCR, specifically states in 40 CFR 141.63(c)(3) and 141.859(a)(1)(iii) the ramifications for failure to submit the required number of repeat samples. Therefore, subsection (2) is now redundant.

17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.

(4) The board adopts and incorporates by reference the following:

(a) through (c) remain the same.
(d) 40 CFR 141.63~~(d)~~ (e) and 141.63 (f), which sets forth BATs for microbiological contaminants;
(e) through (w) remain the same.

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

REASON: Incorporation by reference of 141.63(e) and (f) is necessary because this provision is part of the RTCR.

17.38.211 GROUND WATER RULE (1) The board adopts and incorporates by reference 40 CFR Part 141, subpart S except for 40 CFR 141.402(a)(2)(iv), which sets forth the requirements to ensure that systems using ground water sources are adequately protected.

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

REASON: The proposed amendment to ARM 17.38.211 would prohibit dual purpose sampling. A state, per the RTCR implementation guide, is given a choice whether to adopt this provision or not. If adopted, this rule would allow ground water systems utilizing only one well and serving ≤ 1000 people to use a repeat sample collected from a ground water source to meet both a requirement of the Ground Water Rule (GWR) and a requirement of the RTCR. The proposed amendment would protect public health by increasing the chance of isolating the contamination problem more quickly by requiring the collection of four samples rather than three after positive monthly total coliform routine sample for testing.

Community public water systems utilizing ground water are required to have a minimum of two sources. Therefore, even if the use of dual samples were allowed, the use of dual samples would not be an option for most of the state's community groundwater systems, which comprise approximately 32 percent of the groundwater systems serving ≤ 1000 people.

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1) The total coliform monitoring frequency for all public water supply systems serving 1,000 or fewer people is one sample/month.

~~(1) (2)~~ (2) The board adopts and incorporates by reference the table in 40 CFR ~~141.21(a)(2)~~ 141.857(b), which sets forth total coliform monitoring frequency requirements for all public water supply systems serving more than 1,000 people.

(a) The minimum monitoring frequency for total coliforms ~~for community and nontransient noncommunity public water supply systems~~ is based on the average daily population served by the system during the month of peak use, ~~and must be in accordance with the table in 40 CFR 141.21(a)(2).~~

~~(b) (3) The supplier of water for a transient noncommunity water system shall sample according to the table in 40 CFR 141.21(a)(2), except that a supplier of water for a~~ Upon written request of the water supplier, the department may reduce

the required coliform sampling frequency for a non-seasonal transient noncommunity water system that uses only ground water that is not under the direct influence of surface water and serves a maximum daily population of 1,000 persons or fewer shall sample for coliform bacteria in each calendar month during which the system provides water to the public unless allowed to sample quarterly as provided in (1)(c) or (d) to once in each calendar quarter. The department may not, however, grant permission to sample quarterly pursuant to (1)(c) for a minimum of 24 months of system operation after a system initially becomes regulated under this rule.

~~(c) Upon the written request of the water supplier, the department may reduce the required sampling frequency for coliform bacteria for a transient noncommunity public water supply system that uses only ground water and serves a maximum daily population of 1,000 persons or fewer to once in each calendar quarter during which the system provides water to the public if the department determines that quarterly sampling is adequate to protect public health.~~

(a) Before applying for quarterly monitoring, the system must operate and sample coliform bacteria monthly for a minimum of 24 consecutive months.

(b) This The determination to reduce monitoring must be based upon the results of coliform bacteria samples from the past 24 consecutive months of system operation, sanitary surveys, and any other information that indicates quarterly sampling is adequate to protect public health.

~~(d) (c) A water supplier, who is allowed authorized to sample quarterly pursuant to (1)(c) or who was authorized to conduct quarterly sampling on June 3, 1999, and is not required by the department to sample more frequently (3) may continue to sample quarterly except that unless triggered to return to monthly monitoring. The following will trigger monthly monitoring, or more frequent monitoring pursuant to (4), the month following the event:~~

~~(i) if E. coli bacteria or other microorganisms commonly found only in the intestinal tract of warm-blooded animals are detected in coliform bacteria samples taken under the requirements of this chapter, the supplier shall sample at least monthly, or more frequently if required by the department, until valid samples that do not contain coliform bacteria have been taken for at least 12 consecutive months of system operation. However, if the department determines before expiration of the 12-month period that the source of the contamination has been positively identified and removed, the department may allow the supplier to monitor in accordance with (e). the system triggers a Level 2 assessment or two Level 1 assessments under the provisions of 40 CFR 141.859 in a rolling 12 month period; or~~

~~(ii) if a maximum contaminant level violation occurs as a result of coliform bacteria samples taken under the requirements of this chapter, the supplier shall sample at least monthly, or more frequently if required by the department pursuant to (e), until valid samples that do not contain coliform bacteria have been taken for at least 12 consecutive months of system operation. If the department determines before expiration of the 12-month period that the source of the contamination has been positively identified and removed, the department may allow the supplier to monitor in accordance with (e). the system has an E. coli MCL violation; or~~

~~(iii) a supplier who fails to submit the required routine or repeat samples in two or more quarters during any consecutive four calendar quarters of operation~~

~~shall sample at least monthly for at least 12 consecutive months. the system has a coliform treatment technique violation; or~~

~~(iv) the system has two 40 CFR Part 141, subpart Y, monitoring violations or one subpart Y monitoring violation and one Level 1 assessment under the provisions of 40 CFR 141.859 in a rolling 12 month period for a system on quarterly monitoring; or~~

~~(v) a supplier who constructs constructing or modifying a system or system components without approval or who has modified a system without prior department approval, in violation of 75-6-112, MCA, and ARM 17.38.101, shall sample at least monthly, or more frequently if required by the department pursuant to (1)(e), until the supplier has submitted plans and specifications in accordance with 75-6-112, MCA, and ARM 17.38.101, the system modifications have been approved and the department has reduced sampling frequency pursuant to (1)(c); or~~

~~(vi) (vi) if the department determines and notifies a supplier that its determination that a source or distribution system is vulnerable to contamination based upon the results of a sanitary survey, sample analyses, technical investigations or other scientifically defensible information, the supplier shall sample at least monthly, or more frequently if required by the department pursuant to (e). If the department determines that the source of the contamination has been positively identified and removed, the department may allow the supplier to monitor in accordance with (c); or~~

~~(vii) a supplier that does not maintain or operate not maintaining or operating a system in accordance with the requirements of this chapter may be required to sample monthly, or more frequently if required by the department pursuant to (1)(e), when the department determines that the violation may affect the microbiological quality of the water supply system; or If the department determines that appropriate improvements in maintenance and operation have been implemented, it may allow the supplier to monitor in accordance with (1)(c). A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice from the department of the increase.~~

~~(d) When monthly monitoring is triggered, the department shall provide written notice to the system that monthly monitoring is required.~~

~~(e) Under extreme circumstances, for the purpose of determining eligibility for remaining on or qualifying for quarterly monitoring under ARM 17.38.215, the department may elect to not count monitoring violations under 40 CFR 141.860(c)(1) if the missed sample is collected no later than the end of the monitoring period following the monitoring period in which the sample was missed. The system must collect the make-up sample in a different week than the routine sample for that monitoring period and must collect the sample as soon as possible during the monitoring period. This authority does not affect the provisions of 40 CFR 141.860(c)(1) and 141.86(a)(4).~~

~~(f) The system must continue monthly monitoring until the following criteria have been met:~~

~~(i) within the last 12 months, the system must have completed a sanitary survey or a site visit by the department or a voluntary level 2 assessment by a party approved by the department, be free of sanitary defects, and have a protected water source;~~

(ii) no MCL violations under 40 CFR 141.63, no monitoring violations under 40 CFR 141.21 or subpart Y, and no coliform treatment technique trigger exceedances or treatment technique violations under subpart Y, for a minimum of 12 months;

(iii) valid samples that do not contain coliform bacteria have been taken for at least 12 consecutive months of system operation;

(iv) the department has approved all submitted plans and specifications for system construction and modifications in accordance with 75-6-112, MCA, and ARM 17.38.101;

(v) the identified sources of contamination have been removed;

(vi) appropriate improvements in maintenance and operation have been implemented; and

(vii) the public water system petitions the department and the petition is approved in writing.

(g) Systems collecting samples on a quarterly frequency must conduct additional routine monitoring the month following one or more total coliform-positive samples (with or without a Level 1 treatment technique trigger). Systems must collect at least three routine samples during the next month. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations under 40 CFR 141.859(a).

~~(e) (4)~~ The department may increase the required sampling frequency of any public water supply system based upon sampling results or other conditions that indicate a risk to the health of the water users. The department shall provide the supplier with a written explanation of any revised sampling requirements. A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice of the increase from the department.

~~(2) (5)~~ The board hereby adopts and incorporates by reference ~~40 CFR 141.21~~ the following, which sets forth ~~monitoring and analytical requirements for coliform bacteria, except as modified in the sections that follow:~~ requirements for the revised total coliform rule (RTCR):

~~(3) 40 CFR 141.21(a)(2) is not adopted, except for the table adopted in (1)(a). 40 CFR 141.21(a)(3) is not adopted.~~

(a) 40 CFR 141.851, except that the term "April 1, 2016" is replaced with "[the effective date of this rule]." This rule sets forth general requirements for the RTCR;

(b) 40 CFR 141.852, which sets forth analytical methods and laboratory certification requirements for coliform testing, except that, for the purpose of this subchapter, the phrase "certified laboratory" means "approved laboratory" as defined in ARM 17.38.202;

(c) 40 CFR 141.853(a), except for subsection (a)(5)(ii) and subsection (b). And except that the term "March 31, 2016" is replaced with "[the effective date of this rule]." This rule sets forth general monitoring requirements for all systems;

(d) 40 CFR 141.854(a) through 141.854(a)(3), which set forth general requirements for non-community water systems serving 1,000 or fewer people using only ground water;

(e) 40 CFR 141.854(i)(1), 141.856(a)(4)(i), and 141.857(a)(4)(i), except that the term "April 21, 2016" is replaced with "[the effective date of this rule]." This rule provides start-up procedure requirements for seasonal systems. The department may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating;

(f) 40 CFR 141.855(a), which sets forth general requirements for community systems serving 1,000 or fewer people using only ground water;

(g) 40 CFR 141.856(a) and 141.856(c) which sets forth general requirements for Subpart H public water systems serving 1,000 or fewer people;

(h) 40 CFR 141.857(a), except for subsection (a)(4). This rule sets forth general requirements for public water systems serving more than 1,000 people;

(i) 40 CFR 141.858, which sets forth repeat monitoring and E. coli requirements, except for the following changes:

(i) the first sentence in 141.858(a)(1) is changed to "If a sample taken under ARM 17.38.215(1) through (3), 40 CFR 141.856(c), or 40 CFR 141.857(c), is total coliform-positive, the system must collect a set of repeat samples within 24 hours of being notified of the positive result"; and

(ii) 141.858(a)(5) is changed to "Results of all routine and repeat samples taken under ARM 17.38.215, not invalidated by the State, must be used to determine whether a coliform treatment technique trigger specified in 40 CFR 141.859 has been exceeded."

(j) 40 CFR 141.859(a), except for subsection (a)(2)(iii) and subsection (b)(4)(iii). This rule sets forth requirements for coliform treatment technique triggers and assessments for protection against potential fecal contamination;

(k) 40 CFR 141.860, which sets forth requirements for violations; and

(l) 40 CFR 141.861, which sets forth requirements for reporting and recordkeeping.

(4) ~~(6)~~ 40 CFR 141.21(a)(6) is replaced with the following: "A special purpose sample, including a sample taken to determine whether adequate disinfection has occurred after pipe placement or repair, may not be taken from a part of the public water supply distribution system that is actively serving the public and must not be used to determine compliance with the RTCR. Repeat samples taken pursuant to 40 CFR 141.21(b) 141.858 are not special purpose samples and must be used to determine whether the coliform treatment technique trigger has been exceeded."

(7) The department shall perform a special monitoring evaluation during each sanitary survey of ground water systems serving 1,000 or fewer people to review the status of the system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule. After the department has performed the special monitoring evaluation during each sanitary survey, the department may modify the system's monitoring schedule, as necessary, or it may allow the system to stay on its existing monitoring schedule, consistent with this rule. The department may not allow systems to begin less frequent monitoring under the special monitoring evaluation unless the system has already met the applicable criteria for less frequent monitoring in ARM 17.38.215(3)(b).

~~(5) 40 CFR 141.21(b)(5) is replaced with the following: "If a supplier who collects fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample or samples under 40 CFR 141.21(c), the supplier shall collect at least five routine samples during the next month the system provides water to the public. At least one of these routine samples must be collected from the site where the previous month's contaminated sample was taken unless that site was invalidated according to 40 CFR 141.21(c)(1)(ii)."~~

~~(6) (8)~~ A supplier shall collect at least two samples that must be analyzed for coliform bacteria from any new source of water supply to demonstrate compliance with this subchapter before the source is connected to a public water supply system.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: See GENERAL REASON STATEMENT.

17.38.225 CONTROL TESTS (1) through (2)(c) remain the same.

(3) The department may waive, on a case-by-case basis, disinfection residual testing at the entry point sampling, in the distribution sampling system, or both for ground water and consecutive systems ~~that are referenced in ARM 17.38.225(2)(c).~~

(4) A test for chlorine residual in the distribution system must be made at selected points consistent with the departmental-approved microbiological sample siting plan ~~specified in 40 CFR 141.21~~ and changed regularly so as to cover the system completely at least each week.

(5) through (5)(d) remain the same.

(6) All control test measurements, except for bacteriological samples, ~~for pH, temperature, turbidity, and residual disinfectant concentrations~~ for community and nontransient noncommunity water supply systems must be conducted by a person certified under the provisions of Title 37, chapter 42, MCA, or by a person who has been properly trained to conduct these measurements by the operator in responsible charge or by the department. Bacteriological samples for community and nontransient noncommunity water supply systems must be collected by a person approved by the department or certified under the provisions of Title 37, chapter 42, MCA. Measurements for total coliform bacteria, fecal coliform bacteria, and heterotrophic plate count must be conducted by an approved laboratory.

(7) through (8) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to (3) are necessary to clarify parts of the rule that are confusing. The proposed amendment is housekeeping in nature, and will make the rule easier to understand, and therefore easier for operators to follow.

The amendment to (4) is proposed to specify that the sampling plan required by the RTCR is the plan to be used to implement this rule. 40 CFR 141.132(c) requires community and nontransient, non-community water systems to sample coliforms at their approved RTCR sample sites and at the same time.

The proposed amendments to (6) are necessary to update the list of control test measurements that must be taken by a certified operator or properly trained individual. Currently, pH, temperature, turbidity, and residual disinfectant concentration are specified in the rule. However, there are other control tests that are important for maintaining public health. These include testing fluoride and other process chemical concentrations, the results of which can be used to make changes to the water treatment process. The amendment is proposed to ensure that test results for these chemical tests are accurate and reliable, so that any resulting treatment process changes are truly necessary and not done when the need is not there.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) through (3) remains the same.

(4) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(a) and (b) remain the same.

(c) identification of the sample as to whether it was a routine distribution system sample, ~~check~~ repeat sample, triggered source sample, confirmation sample, composite sample, raw or process water sample, or other special purpose sample;

(d) date and time of analysis;

(e) through (g) remain the same.

(5) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 17.38.207 shall report the violation to the department by the end of the ~~next business day after learning it~~ learns of the violation either electronically, by fax, or by telephone to (406) 444-1947. If the supplier chooses to report by telephone, and a person does not answer the telephone, leaving a voicemail message will constitute compliance with this reporting requirement.

(6) through (10) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to (4)(c) are proposed to ensure that samples collected and submitted to a certified laboratory are more precisely labeled and thereby reduce confusion and the time required to verify sample identification when sample results are submitted incorrectly to the department t.

The proposed amendments to (4)(d) is proposed to ensure compliance with 40 CFR 141.852(a)(3) of the RTCR, which requires sample testing within 30 hours of collection.

The amendments to (5) are proposed to comply with 40 CFR 141.858(b)(1) of the RTCR.

17.38.271 DEPARTMENT RECORDKEEPING (1) remains the same.

(2) The department hereby adopts and incorporates by reference 40 CFR 142.14 and 142.15, which describe recordkeeping and reporting requirements for state drinking water programs, except as listed below:

(a) The first portion of 40 CFR 142.14(a)(10)(i)(B) is modified to read "Section 141.854(j) of this chapter –";

(b) 40 CFR 142.14(a)(10)(ii)(A), 142.14(a)(10)(ii)(B), and 142.14(a)(10)(ii)(C) are not adopted; and

(c) 40 CFR 142.15(c)(3) is not adopted.

(3) Copies may be obtained by contacting the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, (406) 444-2406.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments are necessary to adopt the applicable recordkeeping and reporting requirements necessary to revise primacy to include the RTCR. The exceptions to adoption relate to recordkeeping and reporting requirements for reduced monitoring provisions that the board is proposing not to adopt. The proposed amendments are necessary to retain primary enforcement responsibility for National Primary Drinking Water Regulations.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to dhartman2@mt.gov, no later than 5:00 p.m., _____, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; open-cut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing

preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

BY: _____
JOAN MILES
Chairman

Certified to the Secretary of State, _____, 2016.